

TECHNICAL AMENDMENTS WHICH SHOULD BE MADE IN TITLE III
OF PROPOSED BANKING ACT OF 1935 (H.R. 5357 and S. 1715).

Section 301. On page 51, line 14, after the words "shall not include", insert the following: "(except for the purposes of section 23A of the Federal Reserve Act, as amended) any corporation all of the stock of which is owned by the United States of America or".

(Note: The words "except for the purposes of section 23A of the Federal Reserve Act, as amended," are added in order that the restrictions of section 23A upon loans by member banks to affiliates and holding company affiliates will continue to be applicable to accidental holding company affiliates. The other words added by the amendment are for the purpose of confirming the present interpretation of the law to the effect that the Reconstruction Finance Corporation and other corporations whose stock is owned by the United States are not included within the term "holding company affiliate".)

Sections 310(a) and (b). Strike out all of subsections (a) and (b) of section 310 (page 56, line 20 through page 57, line 9) and insert in lieu thereof the following:

SEC. 310(a). The first paragraph of section 5144 of the Revised Statutes, as amended, (U.S.C., Supp. VII, title 12, sec. 61) is amended to read as follows:

"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 distribute them on the same principle among as many candidates as he shall think fit; and in deciding

all other questions at meetings of shareholders, each shareholder shall be entitled to one vote on each share of stock held by him; except that (1) this shall not be construed as limiting the voting rights of holders of preferred stock under the terms and provisions of articles of association, or amendments thereto, adopted pursuant to the provisions of section 302(a) of the Emergency Banking Act of March 9, 1933, as amended, (2) in the election of directors, shares of its own stock held by a national bank as sole trustee, whether registered in its own name as such trustee or in the name of its nominee, shall not be voted by the registered owner unless under the terms of the trust the manner in which such shares shall be voted may be determined by a donor or beneficiary of the trust and unless such donor or beneficiary actually directs how such shares shall be voted, (3) shares of its own stock held by a national bank and one or more persons as trustees may be voted by such other person or persons, as trustees, in the same manner as if he or they were the sole trustee, and (4) shares controlled by any holding company affiliate of a national bank shall not be voted unless such holding company affiliate shall have first obtained a voting permit as hereinafter provided, which permit is in force at the time such shares are voted, but such holding company affiliate may, without obtaining such permit, vote in favor of placing the association in voluntary liquidation or taking any other action pertaining to the voluntary liquidation of such association. Shareholders may vote by proxies duly authorized in writing; but no officer, clerk, teller, or

bookkeeper of such bank shall act as proxy; and no shareholder whose liability is past due and unpaid shall be allowed to vote. Whenever shares of stock cannot be voted by reason of being held by the bank as sole trustee, such shares shall be excluded in determining whether matters voted upon by the shareholders were adopted by the requisite percentage of shares."

(Note: Sections 310(a) and (b) of the bill amend the first paragraph of section 5144 of the Revised Statutes. In order to add three additional amendments thereto, the paragraph has been rewritten as set forth above. The first of the new amendments is contained in the clause numbered (1) in the rewritten section. This amendment is for the purpose of preserving the right which the Reconstruction Finance Corporation and other holders of preferred stock now have in certain cases to cast more than one vote on each share of preferred stock in the event of default. The new amendment contained in the clause numbered (2) enables a national bank to vote shares of its own stock held by it as sole trustee in cases where the bank does not in fact control the manner in which the stock is voted. The third of the new amendments adds to the provision in clause numbered (4) the following words at the end of such clause: "or taking any other action pertaining to the voluntary liquidation of such association". This amendment extends the authorization of a holding company affiliate to vote, without obtaining a voting permit, to place a national bank in voluntary liquidation so as to include the authority to vote in favor of taking any other action pertaining to such liquidation.)

Section 310(c). On page 57, line 10, substitute the letter b for the letter c in the parentheses.

(Note: Since section 310(b) has been combined with section 310(a), section 310(c) now becomes section 310(b).

Section 317. On page 61, line 20, strike out the words "to read as follows" and substitute the words "by striking out the semicolon and everything preceding it and substituting the following".

On page 62, line 5, change the period to a semicolon.

(Note: In drafting the proposed amendment to section 5243, the part following the semicolon, which provides for a penalty for violating this section, was inadvertently omitted; and the purpose of the above amendments is to preserve the penalty provision as it now exists in the law.)

Section 318. On page 62, line 7, substitute the word "three" for the word "two".

On page 62, after line 25, insert the following new paragraphs:

"Section 6 of the Federal Reserve Act, as amended, is amended by striking out the last paragraph thereof."

(Note: These amendments repeal the provisions of sections 5 and 6 of the Federal Reserve Act which require the board of directors of a Federal reserve bank to execute a certificate to the Comptroller of the Currency showing an increase or decrease in the capital stock of the Federal reserve bank. Inasmuch as every adjustment in Federal reserve bank stock is approved by the Federal Reserve Board before the stock is issued or cancelled, the filing of such certificates with the Comptroller of the Currency is a useless formality involving duplication of work.)

Section 321. On page 64, line 1, strike out "and/or" and substitute therefor the word "or".

(Note: This is merely for the purpose of improving the language of the section by eliminating the "and/or".)

Section 323(a). On page 64, line 22, change the period to a colon and insert before the quotations marks the following:

Provided, however, That, within the meaning of the provisions of this section regarding the reserves required of member banks, the term 'time deposits' shall include 'savings deposits'.

(Note: The provisions regarding reserves only require reserves against "demand deposits" and "time deposits", in view of the fact that the present statutory definition of time deposits includes savings accounts. The provisions regarding interest, however, make a distinction between time deposits and savings deposits in that they forbid the payment of any time deposit before maturity and forbid the waiver of any requirement of notice before payment of any savings deposit except as to all savings deposits having the same requirement. This amendment is for the purpose of making it clear that reserves are required against savings deposits as well as other time deposits.)

Section 323(b). On page 65, line 3, strike out everything after the parenthesis to the end of line 5 and substitute therefor the following: and cash items in process of collection payable immediately upon presentation in the United States, within the meaning of these terms as defined by the Federal Reserve Board.

(Note: This would bring the language of the section into conformity with the language recommended by the Federal Reserve System's committee on reserves and would leave with the Federal Reserve Board the right to determine within limitations what items may be deducted from gross demand deposits for the purpose of determining the amount of net demand deposits on which reserves are required.)

Section 323(d). On page 67, line 10, strike out the words "section 7 of"; in line 11, strike out the words "section 8 of"; in line 12, strike out the words "section 8 of".

(Note: This is merely to eliminate any doubt as to the correctness of the statutory references.)

Section 325(a). On page 68, line 11, insert a comma after the words "assistant examiner".

(Note: This is to make clear that the restrictive clause "who examines or has authority to examine such bank" applies to the words "bank examiner" as well as to the words "assistant examiner".)

Section 325(b). On page 69, line 3, insert before the word "section" the word "such".

On page 69, line 9, strike out everything in line 9 and substitute therefor the following: "as to a national bank, the Federal Reserve Board as to a State member bank, or the Federal Deposit Insurance Corporation as to any other insured bank,".

(Note: The first amendment is for the purpose of making clear that the section 22 referred to is section 22 of the Federal Reserve Act.

The purpose of the second amendment is to make it clear that the consent of the appropriate supervisory authority is to be obtained with respect to the disclosure of information relating to national banks, State member banks and other insured banks, and to eliminate doubt as to whose consent is necessary in a particular case.)

Section 326. On page 72, line 8, after the word "Government" strike out the comma and insert the following words: "or obligations fully guaranteed by the United States Government as to principal and interest,".

On page 72, line 26, strike out the period and the quotation marks and insert the following: or to loans secured by, extensions of credit against, or purchases under repurchase agreement of, obligations of the United States Government or obligations fully guaranteed

by the United States Government as to principal and interest."

(Note: The first of the above amendments extends the exemption of affiliates engaged solely in holding certain obligations to include affiliates engaged solely in holding obligations guaranteed by the United States Government.

The second amendment exempts from the limitations of the first paragraph of section 23A loans secured by, extensions of credit against, and purchases under repurchase agreement of United States Government obligations and obligations guaranteed by the United States Government and extends the exemption now contained in the second paragraph of section 23A to obligations guaranteed by the United States.)

Section 327. On page 73, line 4, substitute the word "established" for the word "establish".

(Note: This merely corrects a typographical error.)

ADDITIONAL SECTIONS.

It is suggested that the bill be amended by adding thereto the following new sections:

Sec. 333. Section 5143 of the Revised Statutes, as amended, is hereby amended by striking out everything following the words "Comptroller of the Currency", where such words last appear in such section, and substituting the following: "and no shareholder shall be entitled to any distribution of cash or other assets by reason of any reduction of the common capital of any association unless such distribution shall have been approved by the Comptroller of the Currency and by the affirmative vote of at least two-thirds of the shares of each class of stock outstanding, voting as classes."

(Note: In approving reductions of capital stock by national banks, the Comptroller of the Currency, in order to conserve the assets for the protection of the bank, frequently specifies that none of the assets of the bank shall be distributed to the shareholders. Some question has been raised as to whether a national bank has the right to reduce its capital without distributing a corresponding portion of its assets to its shareholders, even though such assets may be needed for the protection of the bank; and the purpose of this amendment is to remove any doubt on that point.)

The amendment would also strike out the words which make it necessary for capital stock reductions to be approved by the Federal Reserve Board, in addition to the Comptroller of the Currency, thus eliminating an unnecessary duplication of work.)

Sec. 334. Section 5139 of the Revised Statutes, as amended, is amended by adding at the end of the first paragraph the following new paragraph:

"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 certificate represents, (4) and, 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 certificates or shall be incorporated by a reference to the articles of association set forth on the front of the certificates. 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."

(Note: Some question has arisen as to whether State laws regulating the form of stock certificates issued by corporations are applicable to the form of stock certificates issued by national banks operating in such States. This amendment would result in uniformity of national bank stock certificates hereafter issued and would thus eliminate any question as to the applicability of such State laws.)

Sec. _____. The last sentence of section 301 of the Emergency Banking Act of March 9, 1933, as amended, is amended to read as follows:

"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 said 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."

(Note: In cases of increase of capital by the issuance of common stock, the Comptroller of the Currency issues a certificate of the type described above. Such certificate is held to be conclusive evidence that such common stock has been duly and validly issued. This amendment requires the issuance by the Comptroller of the Currency of the same type of certificate in cases of increase of capital by the issuance of preferred stock with the same conclusive effect.