Draft Statute

LAWS OF THE STATE OF MAINE

RELATING TO FINANCIAL INSTITUTIONS

Title 9-B

December 10, 1974

Including amendments accepted 1/24/75

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There is enclosed replacement pages for the draft statute that incorporate all vote changes and amendments through the January 6, 1975 meeting, including those that had to be ratified by a quorum at the January 24, 1975 meeting.

The draft statute, as amended, was accepted by the committee at the January 24 meeting. A renumbered and reparagraphed copy has been submitted to the Legislative Research Committee for final review and set-up by them and the filing as a bill by Representative Smith. It is expected that the bill will be out of print for committee reference in three to four weeks.

It is intended, through legislative cooperation, that the hearing on this bill will be scheduled so as to allow all concerned to receive sufficient advance notice in order to participate.

It should be noted that the voted change from "mutually owned" to simply "mutual" throughout the statutes is not covered by replacement pages. The copy to Legislative Research however was changed throughout. Further changes may be necessary in the process of preparation for print. However, these will be of a technical nature, mostly for proper reference or clarification.

The replacement pages including Sections 503, 602 and 703 have been changed to more properly reflect the vote of the committee relative to these sections at the January 6 meeting, as follows. (Pages 180, 206 and 229)

1. The word liquidity has been replaced by "cash" throughout the sections.

2. (b)(4) & (b)(5) delete phrases beginning with "provided".

3. Add as final sentence to (b) "The superintendent shall establish a maximum maturity period for investments in paragraphs 4 & 5 between 0 and 5 years, as he deems necessary and conditions warrant."

4. (c) delete last sentence beginning with "The superintendent".

Also, the definition of "satellite facilities" has been modified and clarified to more realistically reflect Federal supervisory agencies' interpretations and philosophies.

DRAFT STATUTE

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TITLE 9-B

FINANCIAL INSTITUTIONS

TITLE 9-B

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PART 1

GENERAL PROVISIONS

CHAPTER 10

POLICY

§100. Declaration of policy

By enactment of this Title, it is declared to be the policy of the State of Maine that the business of all financial institutions shall be supervised by the Bureau of Banking in a manner to assure reasonable and orderly competition, thereby encouraging the development and expansion of financial services advantageous to the public welfare; to maintain close cooperation with other supervisory authorities; and to assure the strength, stability and efficiency of all financial institutions.

See Recommendation 28

§101. Severability

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act shall be severable.

CHAPTER 11

ADMINISTRATION

Sec.

§110. Bureau of Banking

There is created under this Title a Bureau of Banking, which shall have the responsibility of administering the provisions of this Title.

CHAPTER 12

DEFINITIONS

Sec.

120. Definitions

§120. Definitions

In addition to the definitions set forth elsewhere in this Title, and subject to such definitions as the superintendent may promulgate pursuant to regulations hereafter, for purposes of this Title:

(1) "Agency" means a branch office of a financial institution at which all or part of the business of the institution is conducted, but the records pertaining to such business are maintained at another office of the institution and not at such agency office.

(2) "Authorized to do business in this State" means that a financial institution or credit union is:

(A) Organized under provisions of this Title;

(B) Organized under provisions of prior laws of this State, and subject to the provisions of this Title; or

(C) Organized under provisions of Federal law and maintains its principal office in this State.

(3) "Branch office" means any office or facility of a financial institution where the business of such financial institution is conducted other than the institution's main office.

(4) "Bureau" means the Bureau of Banking.

(5) "Capital account" or "total capital" for a stock financial institution means the sum of its paid-in capital stock, paid-in capital surplus, reduction surplus, if any, undivided profits, capital notes and debentures, and other capital reserves.

(6) "Commercial bank" means a trust and banking company or a national bank.

(7) "Commercial loan" means a loan to a person, the proceeds of which are used for business or industrial purposes and not primarily for personal, family or household purposes.

(8) "Commissioner" means the Commissioner of the Department of Business Regulation.

(9) "Consumer loan" means a loan defined as such pursuant to section 1.301(14) of Title 9-A of the laws of this State.

(10) "Credit card" means a credit device by which a cardholder obtains loans or otherwise obtains credit from the card issuer or other persons authorized to extend such credit by the card issuer or his agent.

(11) "Credit union" means a cooperative, nonprofit corporation organized pursuant to Part 8, or under corresponding provisions of any earlier law, and subject to the conditions and limitations as shall be set forth in Part 8.

(12) "Director" means a member of the board of directors of a financial institution; and, in the case of a savings bank organized under provisions of prior law relating to savings banks, a member of the board of trustees of said institution.

(13) "Electronic funds transfer system (EFTS)" means a computer payment system for transferring funds from one party to another.

(14) "Federal association" means a savings and loan association organized pursuant to the Act of Congress entitled "Home Owners' Loan Act of 1933", as amended, or any subsequent Act of Congress relating thereto.

(15) "Federally-chartered credit union" means a credit union organized pursuant to the Act of Congress entitled "Federal Credit Union Act", as amended, or any subsequent Act of Congress relating thereto.

(16) "Financial institution" means a trust company, savings bank, industrial bank or savings and loan association organized under the laws of this State; and each shall represent a type of institution. As the term "financial institution" is used in Parts 1 and 2 and in chapter 45, it shall include credit unions organized pursuant to the laws of this State.

(17) "Financial institution holding company" means any company which is deemed to be a holding company pursuant to the provisions contained in chapter 100.

(18) "Demand deposit" means a deposit in a financial institution which is payable on demand and subject to withdrawal by negotiable or transferable instruments for the purpose of making transfers to third parties, but upon which deposits no interest or dividends are paid by the financial institution accepting such deposits. Such deposits shall not be restricted as to the nature of the depositor, and shall include all checking deposits not included within "personal demand deposits" as defined herein.

(19) "His", as used in this Title, shall mean "his or her"; while "he" shall mean "he or she".

(20) "Indirect loan" means a loan made to an individual, partnership, joint venture, syndicate or corporation which is an agent of another individual, partnership, joint venture, syndicate or corporation, the proceeds of which are used by the party for which the borrower is an agent.

(21) "Industrial bank" means a company organized under chapter 90 or having the powers possessed by companies so organized.

(22) "Interested party" means a person having a substantial interest in, or who is or may be aggrieved by, any act or impending act, or any report, rule, regulation, amendment, decision or order of the superintendent.

(23) "Limited-time branch" means a branch of a financial institution established pursuant to this Title which is authorized to be open for the transaction of business only for specified hours or for specified days during a week, which periods shall be less than the hours which the main office or a full-time branch of the institution is open.

(24) "Making a loan" means a loan made to a borrower by a single financial institution, or the purchase of a loan as authorized in section 423; provided that such loan qualifies as a loan which the financial institution is otherwise authorized to make under the provisions of this Title.

(25) "Mobile branch" or "mobile facility" means any office or facility of a financial institution which is not permanent and which is capable of being moved or transferred from one location to another for periods of 30 days or less for the purpose of transacting business of the financial institution.

(26) "Mutual financial institution" means any financial institution organized pursuant to chapter 32, in which the earnings and net worth of the institution inure to the ultimate benefit of the depositors or members.

(27) "National bank" means a bank or bank and trust company organized pursuant to the Act of Congress entitled "The National Bank Act", as amended, or any subsequent Act of Congress relating thereto.

(28) "NOW account" means a deposit or account in a financial institution from which withdrawals may be made by negotiable or transferable instruments for the purpose of making transfers to third parties, and on which interest or dividends are paid by the institution to the holder of such deposit or account.

(29) "Person" means an individual, corporation, partnership, joint venture, trust, estate or unincorporated association.

(30) "Personal demand deposit" means a deposit in a financial institution made by individuals for non-business purposes, or by a non-profit organization operated primarily for religious, philanthropic, charitable, fraternal or other similar purposes, which is payable on demand and subject to withdrawal by negotiable or transferable instruments for the purpose of making transfers to third parties, but upon which no interest or dividends are paid by the institution to the depositor thereof.

(31) "Savings account" or "savings deposit" means a deposit or account in a financial institution:

(A) Which consists of funds deposited to the credit of one or more individuals, or of a corporation, association, or other organization operated primarily for religious, philanthropic, charitable, educational, fraternal, or other similar purposes and not operated for profit; or in which the entire beneficial interest is held by one or more individuals or by such a corporation, association, or other organization; and

(B) With respect to which the depositor is not required by the deposit contract but may at any time be required by the financial institution to give notice in writing of an intended withdrawal not less than 30 days before such

withdrawal is made and which is not payable on a specified date or at the expiration of a specified time after the date of deposit.

(C) In the case of a thrift institution, savings deposits shall include deposits meeting the requirements of (b) made by a public or private corporation.

(32) "Savings and loan association", "association" or "loan and building association" means a financial institution authorized by its articles of incorporation to exercise the powers set forth in Part 7, subject to such conditions and limitations on the exercise of said powers as shall be set forth therein.

(33) "Savings bank" or "institute for savings" means a financial institution authorized by its articles of incorporation to exercise the powers set forth in Part 7, subject to such conditions and limitations on the exercise of said powers as shall be set forth therein.

(34) "Satellite facility" means an unmanned facility at which transactions including, but not limited to, account transfers, payments, and instructions for deposits and withdrawals may be conducted and which is not part of a branch or the main office of a financial institution. Such a satellite facility may be part of an electronic funds transfer system.

(35) "Seasonal branch" means any branch of a financial institution established pursuant to this Title which is authorized to be open only during specified weeks of the year for the purpose of transacting business of the financial institution.

(36) "Service corporation" means a corporation substantially all the activities of which consist of originating, purchasing, selling and servicing loans and participation interests therein; or clerical, bookkeeping, accounting and statistical or similar functions related to a financial institution or real estate; or management, personnel, marketing or investment counseling related to a financial institution or real estate.

(37) "Sociological composition" means the reflection of broad social and economic characteristics of the communities in which a mutually-owned financial institution derives a substantial part of its deposit and loan business.

(38) "Stock financial institution" means any financial institution organized pursuant to chapter 30, in which the earnings and net worth of the institution inure to the benefit of its stockholders.

(39) "Superintendent" means the Superintendent of the Bureau of Banking.

(40) "Surplus account" or "total surplus" for a mutually-owned financial institution means the sum of its capital reserves, surplus funds, undivided profits, and capital notes and debentures.

(42) "Thrift institution" means a savings bank or a savings and loan association.

(43) "Time deposit" means "time certificate of deposit" and "time deposit, open account".

(44) "Time certificate of deposit" means a deposit evidenced by a negotiable or nonnegotiable instrument which provides on its face that the amount of such deposit is payable to bearer or to any specified person or to his order:

(A) On a certain date, specified in the instrument, not less than 30 days after the date of the deposit; or

(B) At the expiration of a certain specified time not less than 30 days after the date of the instrument; or

(C) Upon notice in writing which is actually required to be given not less than 30 days before the date of repayment; and

(D) In all cases only upon presentation and surrender of the instrument.

(45) "Time deposit, open account" means a deposit other than a "time certificate of deposit", with respect to which there is in force a written contract with the depositor that neither the whole nor any part of such deposit may be withdrawn, by check or otherwise, prior to the date of maturity, which shall be not less than 30 days after the date of the deposit; or prior to the expiration of the period of notice which must be given by the depositor in writing not less than 30 days in advance of withdrawal.

(46) "Trust company" or "trust and banking company" means any financial institution authorized by its articles of incorporation to exercise the powers set forth in Part 6, subject to such conditions and limitations on the exercise of said powers as shall be set forth therein.

CHAPTER 13

HOLIDAYS

Sec.

§130. Financial institution holidays established

(a) Any day of public thanksgiving, mourning or disaster, proclaimed or appointed by the Governor or by the President of the United States, the 1st day of January, Washington's Birthday, the 3rd Monday in February, Patroit's Day, the 3rd Monday in April, Memorial Day, the last Monday in May, the 4th day of July, Labor Day, the first Monday of September, Columbus Day, the 2nd Monday in October, Veterans Day, November 11th, and the 25th day of December are declared to be financial institution holidays. If the first day of January, the 4th day of July, the 11th day of November or the 25th day of December falls on Sunday, the following Monday shall be deemed a financial institution holiday for the purposes of this Title.

(b) Any financial institution or credit union under the supervision of the Bureau of Banking may close for part of any business day for good cause, on permission of the superintendent. Any such institution or credit union may close on permission of the superintendent when Federally-chartered financial institutions are permitted to close.

(c) Any such institution under the supervision of said Bureau or a Federal regulatory agency may close for all or part of any business day for good cause any of its offices, branches or facilities if, in the opinion of the institution's management, such action is required by emergency conditions and if it is impossible, in the case of an institution under the supervision of said Bureau, to communicate by ordinary means with the superintendent or his deputy.

(d) A financial institution closing any of its offices, branches or facilities pursuant to subsections 1, 2 or 3 for all or part of any business day, shall post a conspicuous notice of the closing at all points of public access to the closed offices, branches, or facilities. No closing shall become effective until such notice is posted at the office, branch or facility to be closed and posting of such notice shall relieve the institution from liability for failure to perform any of the business of the financial institution at such closed offices, branches or facilities. The superintendent may by regulations establish standards governing the form and content of the notice required hereunder and may require dissemination of the fact of closing by any other reasonable means.

(e) Any act authorized, required or permitted to be performed at or by, or with respect to, any such institution on a day on which the institution is closed under the terms of this section may be so performed on the next succeeding business day and no liability or loss of rights of any kind shall result from such delay.

See §131

§131. Saturday hours

(a) Any State-chartered financial institution or credit union, and any Federally-chartered financial institution or credit union authorized to do business in this State, may remain closed, open or may open for limited functions only, on such Saturdays as it may determine from time to time. Any Saturday on which such institution remains closed or open for limited functions only shall be, with respect to such institution, a holiday and not a business day.

(b) Any act authorized, required or permitted to be performed at or by, or with respect to, any such institution on a Saturday on which the institution is closed or open for limited functions only may be so performed on the next succeeding business day, and no liability or loss of rights of any kind shall result from such delay.

See §132

§132. Acts performed after noon Saturday

(a) Nothing in any law of this State shall in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification or acceptance of a check or other negotiable instrument, or any other transaction by a financial institution in this State because done or performed on any Saturday between 12 o'clock noon and midnight; provided that such payment, certification, acceptance or other transaction would be valid if done or performed before 12 o'clock noon on such Saturday.

(b) Nothing herein shall be construed to compel any financial institution doing business in this State which by law or custom is entitled to close at 12 o'clock noon on any Saturday, to keep open for the transaction of business or to perform any of the acts or transactions aforesaid on any Saturday after such hour, except at its own option.

See §133

CHAPTER 14

EMERGENCIES

Sec.

§140. Declaration of emergency by Governor

Whenever it shall appear to the Governor that the welfare and security of financial institutions and credit unions under the supervision of the superintendent, or their depositors, shareholders, staffs or customers, require, or that the welfare of the State, any section thereof, the inhabitants thereof, financial institutions, credit unions, their depositors, shareholders or staffs have been or may be adversely affected by actual or threatened national emergency, forces of the natural elements, fires, explosions, strikes, epidemics, civil strife or commotion, or any other circumstances hazardous or dangerous to life, limb or property, the Governor may proclaim that a banking emergency exists. The Governor may declare such banking holidays as in his judgment such emergency conditions may require and that any financial institution or institutions and credit union or credit unions shall be subject to special regulation as provided until the Governor, by a like proclamation, declares the period of such emergency to have terminated if he has not defined such period in the original proclamation.

See §223

§141. Superintendent powers during emergency

(a) During the period of any banking emergency declared, the superintendent, in addition to all other powers conferred upon him, shall have authority to order one or more financial institutions or credit unions to restrict all or any part of their business and to limit or postpone for any length of time the payment of any amount or proportion of deposits or shares in any of the departments thereof as he may deem necessary or expedient and may regulate further payments therefrom as to time and amount as the interest of the public or of such financial institutions or credit unions or depositors or shareholders thereof may require, and any order or orders made by him may be amended, changed, extended or revoked, in whole or in part, whenever in his judgment circumstances warrant or require. After the termination of any such banking emergency, any such order may be continued in effect as to any particular financial institution or credit union if in the judgment of the superintendent circumstances warrant or require and the Governor approves.

(b) The superintendent may by order authorize financial institutions or credit unions during such emergency and thereafter to receive new deposits or share funds, as the case may be, and such new funds shall be special deposits or shares, as the case may be, and so designated and segregated from all other such deposits or shares and may be invested only in assets approved by the superintendent as being sufficiently liquid to be available when needed to meet withdrawals on new deposits or shares, as the case may be. Such assets shall not be merged with other assets but shall be held in trust for the security and payment of new funds except that income from such assets may, to the extent authorized by the superintendent, be used for other purposes of the institution. Withdrawal of such new deposits or shares shall not be subject in any respect to restrictions or limitations made applicable to previously existing accounts under this section.

(c) In determing the action to be taken under this section, the superintendent may place such fair value on the assets of any financial institution or credit union as in his discretion seems proper under the conditions prevailing and circumstances relating thereto.

See §223.

PART 2

BUREAU OF BANKING

CHAPTER 20

ADMINISTRATION

§200. Superintendent

(a) Appointment; term; qualifications. The activities of the Bureau shall be directed by a superintendent who shall be appointed by the Commissioner of the Department of Business Regulation, with the advice and consent of the Governor and Council. The superintendent shall hold office for a term of five years, or until his successor is appointed and qualified; provided, however, that the superintendent may be removed from office by the Governor and Council for cause. Any person appointed as superintendent shall have knowledge of, or experience in, the theory or practice of banking.

(b) Salary. The superintendent shall receive a salary commensurate with his responsibilities in accordance with Title 5 of the laws of this State and shall receive all actual travel expenses incurred in the performance of official duties.

(c) Powers and duties. The superintendent shall have authority to organize the Bureau in such a manner as he deems necessary to carry out his responsibilities under Title 9-B of the laws of this State. Such organization shall take into account both the need for examination and surveillance of individual institutions to assure that each is financially sound and complies with State and applicable Federal law and regulations; and the need for promotion of reasonable and orderly competition among financial institutions and for promoting the provision of financial services consistent with the public interest.

(d) Vacancy. If the office of superintendent is vacant for any reason except the superintendent's illness or temporary absence from the State, appointment of a successor shall be made, as provided for in (a), within 6 months of the creation of such vacancy.

See §1; Recommendations 30, 33

§201. Deputy superintendents and other personnel

(a) Deputy superintendents.

(1) The superintendent may employ 2 or more deputy superintendents, subject to applicable Personnel laws and regulations.

(2) The superintendent shall designate one of the deputy superintendents to perform the duties of the superintendent whenever the latter shall be absent from the State, whenever the deputy superintendent shall be directed to do so by the superintendent, whenever there shall be a vacancy in the office of superintendent or whenever the superintendent shall be incapacitated by illness. In the event of a vacancy in the office of the superintendent, his incapacitating illness or absence from the State at a time when there is no deputy superintendent, the Commissioner of the Department of Business Regulation may designate a special deputy superintendent to perform the duties of the superintendent for a period not to exceed 6 months.

(b) Examiners and employees.

(1) The superintendent may employ as many examiners, other professional employees and clerical personnel as the business of the Bureau may require, subject to the commissioner's approval and in accordance with the Personnel laws of this State; provided that the qualifications of such personnel reflect the needs and responsibilities relating to the Bureau's regulatory functions pursuant to this Title.

(2) The superintendent may employ or engage such expert, professional or other assistance as may be necessary to assist the Bureau in carrying out its functions.

(3) In addition to salaries or wages, all employees of the Bureau shall receive their actual expenses incurred in the performance of their official duties.

(c) Training of Bureau personnel. At the expense of the Bureau, the superintendent may train the deputy superintendents and Bureau's employees, or have them trained, in such manner as the superintendent deems desirable; provided that training programs shall not place such undue emphasis upon safety and soundness of financial institutions that institutions would be inhibited by the Bureau from engaging in unusual activities or loans which are in the public interest.

See §1; Recommendations 30, 31, 32

§202. Prohibited relationships with supervised institutions

(a) Stockholder; payment from.

(1) Neither the superintendent nor any employee of the Bureau shall, during his term of office or while employed by the Bureau, be an officer, director, corporator, employee, attorney or stockholder in any financial institution or financial institution holding company subject to supervision or regulation by the Bureau.

(2) The superintendent and employees of the Bureau shall not, during their terms of office, receive directly or indirectly any payment or gratuity from any financial institution subject to supervision or regulation by the Bureau. The prohibitions contained in this paragraph shall not be construed as prohibiting such person from being a depositor or member in any such financial institution on the same terms as are available to the public generally.

(b) Loans from supervised institutions.

(1) If the superintendent, a deputy superintendent, examiner, or other professional personnel of the Bureau, or a member of such person's immediate family, obtains a loan from any financial institution subject to supervision or regulation by the Bureau, the fact of such loan, together with the terms and conditions thereof, shall be disclosed immediately to the superintendent in writing by the person obtaining the loan and by the institution making such loan. If the superintendent is the borrower, such written disclosure shall be made to the Commissioner of the Department of Business Regulation.

(2) A record of any indebtedness described in (1) shall be kept on file in the Bureau so long as such indebtedness is outstanding.

(3) The superintendent, or the commissioner if the superintendent is the borrower, may make an investigation of such loan to insure that its terms, conditions and amount are reasonable and proper under the circumstances, and that no preferential treatment has been given in the process of granting such loan.

See §1; Recommendation 35

§203. Revenues and expenses

(a) Examination expenses. The expenses of the Bureau necessarily incurred in the examination of financial institutions under its supervision shall be chargeable to such financial institutions as follows:

(1) Every financial institution shall be assessed for the actual expenses incurred by the Bureau in connection with any examination or investigation, whether regular or special, such assessments to include the proportionate part of the salaries of the examiners while engaged at such institutions and the board, room and travel expenses of such persons while away from home.

(2) Such assessment shall be made by the superintendent as soon as feasible after the close of such examination or investigation and notice thereof shall forthwith be sent to such institution.

(3) All assessments so made shall be paid to the Treasurer of State by such institutions within 30 days following such notice.

(b) Semiannual assessment on financial institutions.

(1) To provide for the balance of the reasonable expenses of the Bureau, including general regulatory costs, overhead, transportation, and general office and administrative expenses incurred by the Bureau in performing its duties under this Title, the superintendent shall assess semiannually each financial institution under his supervision at the annual rate of at least 7 cents for each $1,000 of average deposits or share accounts, excluding deposits of other financial institutions and deposits of the United States Government. The superintendent may raise or lower the minimum assessment rate of 7 cents per $1,000 of average deposits or share accounts by regulations issued pursuant to section 251 at such times as economic conditions warrant such an adjustment. In no event shall the semi-annual assessment be less than $25.

(2) For the period ending the last day of June in each year the assessment shall be made on or before the first day of August next following and for the period ending the last day of December in each year the assessment shall be made on or before the first day of February next following. The

superintendent shall forthwith notify said financial institution of such assessment. The assessment so made shall be paid semiannually to the Treasurer of State within 10 days next following the first days of August and February in each year.

(c) Operating fund. The aggregate of payments provided for by this section and elsewhere in this Title is appropriated for the use of the Bureau. Any balance of said funds shall not lapse but shall be carried forward to be expended for the same purposes in succeeding fiscal years.

(d) Penalty. Any financial institution which shall fail to make such payments within the time specified shall be subject to a penalty of not more than $100 per day for each day it is in violation of this section, which penalty, together with the amount due under foregoing provisions of this section, may be recovered in a civil action in the name of the State.

See §2

§204. Rules and regulations

The superintendent shall have the power to promulgate regulations governing the internal organization and procedures of the Bureau, the procedures governing administrative hearings and other matters not provided for by this Title.

See §6-1

§205. Advisory boards

(a) The superintendent may create advisory boards and appoint the members thereof in such manner, form and numbers as the superintendent deems necessary for the purposes of advising him on the regulation, supervision and structure of financial institutions. Membership on such boards shall not be limited to persons associated with financial institutions, and may include members of the general public.

(b) Advisory boards established pursuant to (a) shall not have veto power over the actions of the superintendent.

(c) Members of such advisory boards shall serve without pay; provided that such members shall be entitled to reimbursement for actual expenses incurred as members of such boards in the performance of official duties.

See §§3, 6-4; Recommendation 37

CHAPTER 21

EXAMINATIONS, RECORDS AND REPORTS

Sec.

§210. Examinations

(a) Requirement. The superintendent shall annually, or more frequently as he may determine, examine each financial institution subject to his supervision and regulation. He shall have full access to the vaults, books and papers of such institution; and may make such inquiries as are necessary to ascertain the condition of such institution, its safety and soundness, and its ability to fulfill all engagements; and to ascertain whether the institution examined has complied with applicable laws. The directors, corporators, officers, employees and agents of an institution being examined shall furnish statements and full information to the superintendent or his examiners related to the condition and standing of the institution and all matters pertaining to its business affairs and management.

(b) Exception. Notwithstanding the requirements set forth in (a) of this section, the superintendent may accept the examination report of a Federal regulatory agency as a method of satisfying such requirements in whole or in part.

See §§6-2, 402; Recommendation 45

§211. Reports and other information from supervised institutions

(a) General requirement. In addition to the reports required pursuant to this section, the superintendent shall have the power to require, from a financial institution subject to his supervision and regulation, reports and other information from such institutions at such times and in such form as he deems appropriate for the proper supervision and regulation of such institutions.

(b) Designation of chief executive officer. Every financial institution subject to this Title shall submit, within 10 days of the meeting of its directors at which officers are elected pursuant to sections 306(a) and 316(a), a statement to the superintendent setting forth the name and address of that officer or director who is to have primary responsibility for the operation and management of the institution under direction of the board of directors. Such person shall be designated in said statement as the chief executive officer. Any change in the person having such responsibilities shall be reported in writing to the superintendent within 10 days of such change.

(c) Condition and income reports.

(1) Condition report. Every financial institution subject to this Title shall make semiannually, and at such other times as the superintendent may direct, a report of condition to the superintendent. Such report shall exhibit in detail and under appropriate headings the assets, liabilities and capital of the institution as of such date as the superintendent may specify. Each such report shall contain a declaration that the report is true and correct signed by an officer designated by the board of directors to make such declaration and to so act on the board's behalf. The correctness of the report shall be attested by the signatures of at least three of the institution's directors other than the officer making such declaration, together with a declaration that the report has been examined by them and to the best of their knowledge and belief is true and correct. The report required hereunder shall be transmitted to the superintendent within 10 days after a request therefor.

(2) Income reports. Every financial institution subject to this Title shall make, within 30 days of the close of each calendar year, a report of income for that calendar year, which report shall contain a statement of the institution's income and expenses for that calendar year. Income reports required hereunder shall be signed and sworn to in the same manner as condition reports required in (1).

(d) Use of reports prepared for Federal agencies. The reporting requirements imposed by this section may be complied with by submitting to the superintendent copies of reports prepared for Federal regulatory agencies by the institution which contain the information requested, unless the superintendent shall otherwise require.

(e) Penalties. Any financial institution which shall fail to furnish reports and information required pursuant to this section, within the time specified, shall be subject to a penalty of not more than $100 for each day it is in violation of this section, which penalty may be recovered in a civil action brought in the name of the State.

See §6-3; Recommendation 45

§212. Publication and posting of reports

(a) Condition and income reports. Within 10 days after submission to the superintendent of the reports required pursuant to section 211(c), a financial institution shall cause such condition and income reports to be published, in such form as the superintendent may direct, in a newspaper of general circulation in the county where the institution's main office is located, or in such other newspapers as the superintendent may direct. Proof of such publication shall be furnished to the superintendent as he may require.

(b) Reports posted in offices. Every financial institution shall make available in all of its offices at least 10 days, but not more than 30 days, prior to the annual meeting of its stockholders,

corporators or members, its latest condition report or a condition report for its most recently completed fiscal year, and a report of income for the institution's most recently completed fiscal year.

§213. Records to be kept by supervised institutions

(a) Records for superintendent. A financial institution shall keep within this State such books, accounts and records relating to all transactions as will enable the superintendent to insure full compliance with the laws of this State. The superintendent may authorize such records to be maintained outside of this State for good cause.

(b) Loans and investments.

(1) The directors or executive committee of a financial institution subject to the provisions of this Title shall keep or cause to be kept in a book or books appropriate therefor a record of all loans and investments of every description made by such institution, substantially in the order of time when such loans or investments are made.

(2) Such record shall show that such loans or investments have been made with the approval of or ratified by the directors or executive committee of said institution, and shall indicate such particulars respecting such loans and investments as the superintendent may direct; and such loans or investments shall be classified in said book or books of records as the superintendent may direct.

(3) Whenever requested, such record shall be submitted to the superintendent, and, if requested for the purpose of reviewing the financial responsibility of management by a vote of the directors, corporators, members or stockholders of the institution at a duly constituted meeting thereof, such record shall be submitted to such persons. Any person breaching the confidentiality of the records so submitted shall be subject to subsection 4 of section 226.

(c) Arrangements with directors, officers and corporators. A financial institution shall maintain records of all arrangements between the institution and its directors, officers and corporators and all persons acting on behalf of such persons, including, but not limited to, all loans and other contracts.

See §§1052, 472-4

§214. Retention of financial institution records

(a) All records of financial institutions and of Federally-chartered financial institutions, insofar as this section does not contravene paramount Federal law, shall be retained for such minimum periods as the superintendent may prescribe.

(b) The superintendent may from time to time issue regulations classifying all records kept by these institutions and prescribing the minimum period for which these records shall be retained. Such periods may be permanent or for a lesser term. Such regulations may be amended or repealed from time to time; provided that any amendment or repeal shall not affect any action taken prior to such amendment or repeal.

(c) Prior to issuing regulations pursuant to (b), the superintendent shall consider:

(1) Court and administrative proceedings in which the production of these records might be necessary or desirable;

(2) State and Federal statutes of limitation applicable to such proceedings;

(3) The availability of information from other sources; and

(4) Such other matters as the superintendent shall deem pertinent in order that the regulations will require retention of records for such reasonable period as is commensurate with the interests of customers, depositors, stockholders and the people of this State in having such records available.

(d) Reproductions, as defined by section 456 of Title 16 of the laws of this State shall be deemed acceptable, in lieu of the originals, for purposes of the prescribed periods for which such records shall be retained.

(e) Institutions may dispose of any record which has been retained for the minimum period prescribed by the superintendent.

See §45

§215. Confidentiality

(a) Except as provided in (b) and (c) hereof, information derived by or communicated to the superintendent or to any employee of the Bureau shall not be disclosed or made public.

(b) The superintendent may disclose such information to the Governor or to the Attorney General of this State at such times and under such circumstances as the superintendent deems necessary and appropriate to the proper discharge of his duties and responsibilities under this Title; and the superintendent shall disclose such information upon written request of the Governor or Attorney General.

(c) The superintendent may disclose such information to the persons or entities set forth below; provided that the recipients thereof shall not disclose or make public information so communicated, except as authorized by the superintendent or pursuant to other provisions of this Title:

(1) The Treasurer of State and the Commissioner of the Department of Business Regulation;

(2) Advisory boards established pursuant to section 205;

(3) State departments which, in the opinion of the superintendent, require such information;

(4) Other persons, including Federal regulatory officials, who, in the opinion of the superintendent, require such information to facilitate the general conduct of supervisory activities of the Bureau;

(5) A court of law or equity and then only with the written consent of the superintendent or pursuant to a special order of the court; and

(6) To comply with provisions of this Title relating to disclosure or publication of certain applications, reports, statistics and information.

(d) Whoever violates this section shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 6 months, or by both.

§216. Subpoena powers

The superintendent shall have the power and authority to summon persons and subpoena witnesses, compel their attendance, require production of evidence, administer oaths and examine any person under oath in connection with any subject related to the supervision and regulation of financial institutions. Any summons or subpoena may be served by registered mail with return receipt. Powers granted under this section may be enforced by the Superior Court.

See §6-5

§217. Report of violations

(a) If, in the opinion of the superintendent, any financial institution authorized to do business in this State, or its officers, corporators, directors, employees or agents have persistently violated any provision of this Title or regulation promulgated thereunder, the superintendent shall forthwith report the same, with such remarks as he deems appropriate, to the Attorney General who shall forthwith institute a prosecution therefore on behalf of the State.

(b) The penalty for such violation, unless otherwise prescribed, shall be not less than $500 nor more than $1000.

See §403

CHAPTER 22

CEASE AND DESIST ORDERS; REMOVAL
OF OFFICER OR DIRECTOR

Sec.

§220. Cease and desist orders

(a) Authority.

(1) If, in the opinion of the superintendent, a financial institution or financial institution holding company subject to the provisions of this Title is engaging in or has engaged in, or he has reasonable cause to believe that said institution or company is about to engage, in any of the following:

(A) An unsafe or unsound practice in conducting the business of such financial institution or company;

(B) Violation of a law, rule or regulation governing the affairs of such institution or company;

(C) Violation of any condition, imposed in writing, in connection with the approval of any application by the superintendent;

(D) Violation of any written agreement entered into with the superintendent; or

(E) An anticompetitive or deceptive practice, or one which is otherwise injurious to the public interest under chapter 23 or otherwise,

the superintendent shall have the power and authority to issue and serve an order upon such institution or company requiring the institution or company to cease and desist from such violation or practice.

(2) Where, in the opinion of the superintendent, extraordinary circumstances make such action necessary and appropriate for the protection of depositors, shareholders or the public, the superintendent may restrict the withdrawal of funds from one or more financial institutions in the order.

(3) Such order may require the officers or directors of the institution or company to take affirmative action to correct any violation or practice.

(b) Notice; hearing.

(1) Prior to the issuance of any order to cease and desist in accordance with (a), notice shall be given to the institution by the superintendent. Such notice shall contain a statement of the facts upon which the order is to be issued, and the date upon which such order is to take effect.

(2) Upon petition of any interested party, a hearing conducted pursuant to section 243 shall be provided prior to the effective date of any order issued pursuant to (a), except as provided in (c).

(c) Temporary cease and desist order.

(1) Whenever, in the opinion of the superintendent, the violation or practice set forth in (a) requires immediate action for the protection of depositors, shareholders or the public, or where such violation or practice, or the continuation thereof, is likely to cause insolvency or substantial dissipation of the assets or earnings of the institution, the superintendent may issue orders pursuant to (a) which shall become effective upon service thereof, without prior notice or hearing.

(2) If an order is issued by the superintendent pursuant to (1), the superintendent shall afford an opportunity for a hearing to rescind the order and action taken promptly thereafter, upon application by an interested party.

(d) Power as additional. The power and authority granted to the superintendent by this section shall be in addition to any enforcement or regulatory powers granted elsewhere in this Title.

§221. Removal of officer or director

The superintendent shall have the power to remove any officer or director of a financial institution organized pursuant to this Title, in accordance with the procedures and subject to the conditions and limitations set forth in this section.

(a) Grounds for removal.

(1) Acts relating to the financial institution. The superintendent may serve written notice of intent to remove an officer or director from office and/or to prohibit his further participation in any manner in the conduct of the affairs of the financial institution if, in the opinion of the superintendent, such officer or director has:

(A) Violated a law, rule, regulation or cease and desist order which has become final;

(B) Engaged in or participated in any unsafe or unsound practice; or

(C) Committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duties as such officer or director;

and the superintendent determines that as a result of such actions by the officer or director the financial institution has suffered or probably will suffer substantial financial loss or other damage, or that the interests of depositors or shareholders could be seriously prejudiced by reason of such violation, practice or breach of fiduciary duty; provided that such violation, practice or breach of fiduciary duty must be found by the superintendent to be one involving personal dishonesty on the part of such officer or director.

(2) Acts relating to other business entities. The superintendent may serve written notice of intent to remove an officer or director from office and/or to prohibit his further participation in any manner in the conduct of the affairs of the financial institution if, in the opinion of the superintendent, such officer or director has, by conduct with respect to any other business entity which resulted, or is likely to result, in substantial financial loss or other damage, evidenced his personal dishonesty and unfitness to continue as an officer or director.

(b) Notice of intent to remove.

(1) Contents. The written notice required in (a) shall set forth the following:

(A) A statement of the facts constituting the grounds for such removal and/or prohibition;

(B) The time and place at which a hearing shall be held thereon, which date shall be not less than 30 nor more than 60 days after the service of the notice, unless such officer or director shall request an earlier or later hearing for good cause shown.

(2) Parties to be served with notice. The superintendent shall serve such written notice upon the officer or director involved and copies of such notice shall be served upon the financial institution of which he is an officer or director or in the conduct of whose affairs he has participated.

(c) Effect of notice.

(1) If the superintendent deems it necessary for the protection of the institution or the interests of its depositors or shareholders, such written notice may suspend the officer or director from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the institution.

(2) Such suspension and/or prohibition shall become effective upon service of said notice and, unless stayed by the Superior Court pursuant to (d), shall remain in effect pending completion of administrative proceedings pursuant to this section and until such time as the superintendent shall dismiss the charges specified in such notice or, if an order of removal and/or prohibition is issued against the officer or director, until the effective date of any such order.

(d) Stay of suspension or prohibition. Any officer or director adversely affected by a suspension and/or prohibition contained in a written notice pursuant to (c) may apply to the Superior Court in the county where the financial institution of which he is an officer or director has its main office or in the Superior Court of Kennebec County for a stay of such suspension or prohibition pending completion of administrative proceedings required under this section, and such court shall have jurisdiction to stay such suspension or prohibition.

(e) Hearing.

(1) The superintendent shall hold a hearing at the time and place specified in the notice required under (b), such hearing to be conducted in accordance with section 243.

(2) Unless the officer or director affected shall appear at such hearing, he shall be deemed to have consented to the issuance of an order for such removal and/or prohibition.

(3) In the event of consent pursuant to (2), or if upon the record made at any such hearing the superintendent shall find that any of the grounds specified in the notice have been established, he may issue such orders of suspension or removal from office and/or prohibition from participation in the conduct of the affairs of the financial institution, as he may deem appropriate.

(4) Notwithstanding any provision to the contrary in section 243, such orders shall be issued not later than 30 days after the close of the hearing if any, held pursuant to this section.

(f) Effective date.

(1) Any order issued pursuant to (e) shall become effective at the expiration of 30 days after service upon the officer or director and the financial institution concerned; provided that an order issued upon consent shall become effective within the time specified therein.

(2) Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated or set aside by action of the superintendent or a court having jurisdiction relating thereto.

(g) Participation in a felony.

(1) The superintendent may issue written notice, pursuant to (b) and (c), to any officer or director charged in any information, complaint, or indictment with commission of or participation in a felony involving dishonesty or breach of trust, pursuant to laws of the State of Maine or of the United States. Such suspension or prohibition shall remain in effect until terminated by the superintendent or said information, complaint, or indictment is finally disposed of.

(2) At such time as a judgment of conviction with respect to such offense is entered against such officer or director, and such judgment is not subject to further appellate review, the superintendent may issue and serve upon such officer or director an order removing him from such office and/or prohibiting him from further participation in the conduct of the affairs of the institution except with the written consent of the superintendent. Such order shall become effective after service upon the officer or director and the financial institution.

(3) A finding of not guilty or other disposition of the charge in (1) shall not preclude the superintendent from instituting proceedings pursuant to this section 221 on the grounds set forth in (a) hereof.

See §2032-4; Recommendation 40

§222. Enforcement by Superior Court

Orders issued by the superintendent pursuant to sections 220 and 221 shall be enforced by the Superior Court, subject to the following conditions and limitations:

(a) Appeal of order.

(1) Any person aggrieved and directly affected by an order of the superintendent issued pursuant to sections 220 and 221 may appeal to the Superior Court within 30 days after the issuance of such order pursuant to Rule 80B of the Maine Rules of Civil Procedure.

(2) The filing of an appeal pursuant to (1) shall not stay the enforcement of an order, but the court may order a stay on such terms as it deems proper.

(3) The court may affirm, modify, terminate or set aside, in whole or in part, the order of the superintendent if such order was issued pursuant to an invalid statute or regulation, in excess of statutory authority, or not supported by substantial evidence in the record.

(4) The judgment and decree of the court shall be final, except that it shall be subject to review by the Supreme Judicial Court.

(b) Limitation on liability. No person shall be subjected to any civil or criminal liability for any act or omission to act in good faith in reliance upon a subsisting order, regulation or definition of the superintendent, notwithstanding a subsequent decision by any court invalidating the order, regulation or definition.

See §7

§223. Notice to Federal authorities

(a) In connection with any proceeding under this chapter involving a financial institution under the concurrent supervision of a Federal agency and the Bureau, the superintendent shall provide the appropriate Federal agency with notice of any such proceeding and the grounds therefor. Such proceeding may then be continued jointly or by either the Federal agency or the superintendent.

(b) Failure of the superintendent to give such notice shall not constitute a ground for attacking the validity of the order.

CHAPTER 23

ANTICOMPETITIVE OR DECEPTIVE PRACTICES

Sec.

§230. Anticompetitive or unfair practices

(a) Rules and regulations.

(1) The superintendent shall have the power to promulgate rules and regulations, in accordance with section 240, defining, limiting or proscribing acts and practices which, when engaged in by a financial institution or its subsidiaries, or by a financial institution holding company or its subsidiaries, are deemed to be anticompetitive, unfair, deceptive, or otherwise injurious to the public interest.

(2) Such rules and regulations may be promulgated by the superintendent upon complaint of interested parties, or in rule-making proceedings initiated by the Bureau.

(3) The authority granted to the superintendent herein shall be in addition to the cease and desist powers granted in section 220; and the fact that rules and regulations have not been promulgated hereunder shall not affect the validity of any cease and desist order issued pursuant to section 220(a).

(b) Prices of financial services.

(1) The authority granted to the superintendent in (a) of this section shall not be construed as authorizing the superintendent to establish the price at which financial services may be offered to the public, except that the superintendent may establish prices for such services upon a showing that the manner and method of actual pricing of a particular service, and the offering of such to the public, is anticompetitive or deceptive.

(2) An interested party affected by the exercise of the superintendent's authority in (1) shall have the right to appeal such decision or order pursuant to section 222(a), and shall also be entitled to rights specified in section 222(b).

See Recommendation 38

§231. Deceptive advertising; regulation

(a) Rules and regulations. The superintendent shall have authority to promulgate rules and regulations, pursuant to section 240, defining, limiting or proscribing advertising of any kind by a financial institution, an association of such financial institutions, or a financial institution holding company, or representations made thereby, which is false, misleading or deceptive.

(b) Orders against deceptive advertising.

(1) The superintendent may issue an order in accordance with section 220 upon determining that any entity or entities described in (a) has issued or is about to issue an advertisement or make a representation which is false, misleading, or deceptive in any way.

(2) If an entity has already issued or published such an advertisement or representation, the superintendent may order the entity to take such affirmative corrective action as he deems necessary and appropriate under the circumstances for the purpose of informing and protecting the public and other interested parties.

(3) The fact that rules and regulations have not been promulgated pursuant to this section shall not affect the validity of any order issued hereunder.

(c) Appeal. An interested party affected by the exercise of the superintendent's authority in (b)(1) or (2) shall have the right to appeal such decision or order pursuant to section 222(a), and shall also be entitled to rights specified in section 222(b).

§232. Tie-in arrangements

(a) Prohibition. A financial institution authorized to do business in this State shall not in any manner extend credit, lease or sell property, or furnish any service, or fix or vary the consideration for any of the foregoing on the condition, agreement, requirement or understanding:

(1) That the customer shall obtain some additional or other credit, property, or service from such financial institution other than a loan, discount, deposit or trust service;

(2) That the customer shall obtain some additional or other credit, property, or service from a subsidiary of such financial institution, a financial institution holding company of such financial institution, or from any other subsidiary of such financial institution holding company;

(3) That the customer provide some additional or other credit, property, or service to such financial institution, other than those related to and usually provided in connection with a loan, discount, deposit, or trust service;

(4) That the customer provide some additional or other credit, property or service to a subsidiary of such financial institution, a financial institution holding company of such financial institution, or from any other subsidiary of such financial institution holding company;

(5) That the customer shall not obtain some additional or other credit, property, or service from a competitor of such financial institution, a subsidiary of a competitor financial institution, a financial institution holding company of a competitor financial institution, or any other subsidiary of such competitor financial institution holding company, other than a condition or requirement that such financial institution shall reasonably impose in a credit transaction to assure the soundness of the credit.

(b) Exceptions. The superintendent may, pursuant to regulations issued in accordance with section 251, permit such exceptions to the prohibitions in subsection 1 as he considers will not be contrary to the public interest and the purposes of this section.

CHAPTER 24

ADMINISTRATIVE PROCEDURES

Sec.

§240. Rule-making

Promulgation of rules or regulations of the Bureau, and amendments thereto, shall conform to the requirements of this section.

(a) Definitions.

(1) A "rule" or "regulation" of the Bureau means the whole or any part of a Bureau statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy, or issued to describe the organization or procedure of the Bureau, pursuant to an express or implied grant of authority contained in this Title.

(2) "Rule-making" is the process for formulating, amending, repealing or promulgating a rule, regulation or amendment of and by the Bureau.

(b) Notice.

(1) The superintendent shall give notice of any rule-making proceeding undertaken by the Bureau to all persons or organizations determined by him to be interested parties and to the public. Notice to an interested party shall be given by mailing said notice to the party at its last known address and shall be given to all other persons by publications in such newspapers or such other publications as the superintendent deems appropriate under the circumstances.

(2) Notice of a rule-making proceeding shall include:

(A) A reference to the legal authority under which the rule, regulation or amendment is proposed;

(B) The terms or substance of the proposed rule, regulation or amendment, or a description of the subjects and issues involved in the promulgation of such;

(C) The period during which written comments on the proposed rule, regulation or amendment shall be received by the superintendent, which shall not be less than 30 days after said notice; and

(D) A statement that a hearing will be held upon a bona fide and reasonable request of any interested party; provided that such party presents a written request for such hearing to the superintendent within 3 weeks of the first publication of the notice.

(c) Submission of written comments.

(1) During the comment period set forth in the notice, an interested party or member of the public may submit written comments on the proposed rule, regulation or amendment.

(2) Such comments shall be maintained in the public files of the Bureau and copies shall be available to the public at cost.

(3) The superintendent may, but shall not be compelled to, receive written comments after the close of the written comment period.

(d) Hearing.

(1) If the superintendent has received a bona fide and reasonable request for a hearing from an interested party, he shall schedule such a hearing, which shall take place not more than 45 days following the close of the written comment period. Notice of such hearing shall be given after the close of the comment period in the same manner as notice was given pursuant to (b)(1) and shall set forth the time and place of said hearing. The notice shall be given not less than 15 days prior to the date set for such hearing.

(2) The manner of acting on requests for hearings and the procedures for conducting a hearing shall be as set forth in section 254.

(e) Promulgation of final regulations.

(1) After consideration of all relevant matters presented in written comments and at the hearing, if any, the superintendent shall, within 30 days of the close of the comment period or within 30 days of the conclusion of the hearing, if such was held, whichever period is greater, promulgate the final rule, regulation or amendment.

(2) Copies of all rules, regulations or amendments promulgated hereunder shall be made available to the public, at cost, at the office of the Bureau, and the Bureau shall maintain at its offices a central registry of all rules, regulations or amendments.

(3) Within 5 days of promulgation, notice of the rule, regulation or amendment adopted by the superintendent setting forth a concise general statement of the content, purpose and origin of the rule, regulation or amendment, together with a statement that copies of the rule, regulation or amendment are available to the public at cost, shall be published by the superintendent in those newspapers in which the notice required in (b)(1) was published. The superintendent may mail such notice and a copy of the rule, regulation or amendment to interested parties receiving notice pursuant to (b)(1).

(4) If, after the comment period and hearing, if any, the superintendent determines that the proposed rule, regulation or amendment is not to be adopted, notice of withdrawal thereof shall be published within the period set forth in (3).

(f) Effective date. The effective date of any rule, regulation or amendment shall be 30 days after its promulgation pursuant to (e)(1), unless the superintendent shall specify a later date in the final notice relating thereto.

See Recommendation 41

§241. Decision-making

Decision-making of the Bureau shall conform to the requirements of this section.

(a) Definition. "Decision-making" is that process by which the superintendent determines whether an application for a charter, branch, merger, acquisition, subsidiary formation, change of name or other similar request submitted to the Bureau should be approved or disapproved, but shall not include applications for a change in a financial institution's articles of incorporation or bylaws, changes in the capital structure of any institution, or such other matters of a similar nature as the superintendent may determine, unless otherwise provided in this Title.

(b) Notice.

(1) Upon receipt and acceptance of an application subject to this section as being complete, the superintendent shall instruct the applicant to publish a notice, in such form as the superintendent may prescribe, in a newspaper of general circulation in the county where the institution's main office is located, or in such other newspapers as the superintendent may designate. Such notice shall be published once a week for 2 successive weeks. Within 3 days of the first publication of such notice, the applicant shall notify the superintendent of said publication.

(2) In addition to published notice required in (1), the superintendent shall give personal notice of the application to those persons or organizations determined by him to be interested parties by mailing such notice to the party's last known address.

(3) Notice of decision-making proceedings shall include:

(A) A statement containing the name of the applicant and the nature of the application.

(B) A reference to the legal authority under which the decision-making proceeding is undertaken;

(C) The period during which written comments on the application shall be received by the superintendent, which shall not be less than 30 days after the first publication of notice in (b)(1).

(D) A statement that a hearing will be held upon a bona fide and reasonable request of an interested party; provided that such party presents a written request to the superintendent for such hearing within 3 weeks of the first publication of the notice.

(c) Application on file. Applications accepted by the superintendent shall be placed on public file at the office of the Bureau, and shall be made available for public inspection or copying, at cost; provided that the superintendent shall delete from the public file copy of an application all confidential information, materials and statements regarding the applicant.

(d) Submission of written comments.

(1) During the comment period set forth in the notice, an interested party or member of the public may submit written comments on the proposed application.

(2) Such comments shall be maintained in the public files of the Bureau, and copies shall be available to the public at cost.

(3) The superintendent may, but shall not be compelled to, receive written comments after the close of the written comment period.

(e) Hearing.

(1) If the superintendent has received a bona fide and reasonable request for a hearing from an interested party, he shall schedule such a hearing, which shall take place not more than 45 days following the close of the written comment period. Notice of such hearing shall be given after the close of the comment period by one publication in the newspapers in which notice was published pursuant to (b)(1) and shall set forth the time and place of said hearing. The notice shall be given not less than 15 days prior to the date set for such hearing.

(2) The manner of acting on requests for hearings and the procedures for conducting a hearing shall be as set forth in section 254.

(f) Decision.

(1) After consideration of all relevant matter presented in the application, in any written comments, and at the hearing, if any, the superintendent shall, within 30 days after the close of the comment period or within 30 days of the conclusion of the hearing if such was held, whichever period is greater, promulgate the final order either approving or disapproving such application.

(2) The final order of the superintendent shall set forth the reasons for his decision, including specific findings of fact to support such decision in accordance with section 242; and any conditions pertaining to the grant of approval which the superintendent deems necessary and appropriate under this Title.

(3) Within 5 days of promulgation, notice of the final order setting forth the name of the applicant, the nature of the application and the superintendent's action thereon, together with a statement that copies of such order are available to the public at cost, shall be published by the superintendent in those newspapers in which the notice required in (b)(1) was published. The superintendent may mail such notice and a copy of the final order to any persons or organization receiving notice of the application pursuant to (b)(2).

(4) The final order of the superintendent shall take effect 30 days after publication thereof, unless a later date has been specified in such order.

(g) Time periods. The time periods set forth in this section shall not commence to run until the superintendent certifies that the application is complete and the first publication of notice pursuant to (b)(1) has been made by the applicant. The superintendent shall have the power to request modifications in, and additional information relating to, any application prior to certifying its completeness.

See Recommendation 42

§242. Criteria for decision-making

The superintendent shall take into account, but shall not be limited to, the criteria set forth in this section in considering applications to change name, branch, merge, consolidate or consummate an acquisition; or to engage in any closely-related or incidental activity; or to obtain a charter, or to convert from an existing to a different charter; or to invest in a subsidiary corporation.

(a) Public convenience and advantage.

(1) The superintendent shall not approve an application unless he determines that the proposed transaction contributes to the financial strength and success of the financial institution or institutions concerned, and promotes the convenience and advantage of the public.

(2) Public convenience and advantage shall exist if the superintendent determines, based on all relevant evidence, information and materials, that public benefits, such as increased competition or gains in efficiency, outweigh possible adverse effects, such as decreased or unfair competition, undue concentration of resources, conflicts of interest, or unsafe or unsound practices.

(b) Basis for decision. In addition to the standards set forth in subsection 1, the superintendent shall consider the following factors in determining whether the standard of public convenience and advantage has been met:

(1) The character, ability and overall sufficiency of the management, including directors, or organizers, corporators and incorporators of a new financial institution;

(2) The adequacy of capital and financial resources of the institution or institutions concerned;

(3) The competitive abilities and future prospects of the institution or institutions concerned;

(4) The convenience and needs of the market area or areas to be served;

(5) The competitive effect of the proposed transaction on the price, availability and quality of services in the market area or areas to be served;

(6) The likely impact of the proposed transaction on other financial institutions in the market area or areas to be served; and

(7) The fairness and equities involved in any merger consolidation, conversion or acquisition.

(c) Burden of proof. In all cases, the burden of proving that public convenience and advantage will be promoted, and that the proposed transaction contributes to the financial strength and success of the institution or institutions concerned, shall rest with the applicant.

See Recommendation 44

§243. Hearings by superintendent

The provisions of this section shall apply whenever a hearing is provided for pursuant to the provisions of this Title, or the superintendent otherwise determines that a hearing is necessary and appropriate.

(a) Request for a hearing.

(1) Any person or organization entitled to request a hearing pursuant to sections 240, 241 or 244 shall submit a request to the superintendent within the time periods set forth therein, if any.

(2) A request for hearing shall contain the following:

(A) The name of the person or organization requesting a hearing; and, in the case of an individual, the organization or group, if any, that the individual is representing;

(B) The subject matter, including the rule, regulation, amendment, order or application which is the basis for said request;

(C) Whether the person or organization making such request supports or opposes the subject matter set forth in (B);

(D) A statement of the contentions, facts, decision-making criteria or other matters which the person or organization requesting a hearing seeks to put at issue in the hearing;

(E) A brief and concise statement of the grounds for placing those matters set forth in (D) at issue.

The superintendent may require such a request to be signed and sworn to.

(b) Grant or denial of request.

(1) The superintendent shall, either prior to or at the close of the comment periods specified in sections 240 and 241, or within 3 weeks of a request for a hearing under any other provision of this Title, grant or deny a request for a hearing; provided that nothing contained herein shall require the superintendent to act upon any request which is not bona fide and reasonable, or which is improperly made or filed in an untimely manner.

(2) If the superintendent denies a request for a hearing, he shall notify promptly the person or organization making the request of said denial; and said notice shall contain a statement of the grounds for such action.

(c) Notice of hearing.

(1) If the superintendent grants a request for a hearing, he shall publish notice of the hearing in such manner as is required under sections 240 or 241, or as he deems necessary for hearings held pursuant to any other provision of this Title; provided that notice shall be published at least 15 days prior to the date set for such hearing.

(2) Notice of such hearing shall be given to:

(A) All persons requesting a hearing;

(B) All interested parties as determined by the superintendent, whether they requested a hearing or not; and

(C) Any other person or organization the superintendent believes may be affected by the hearing.

(d) Conduct of hearings.

(1) The superintendent, a deputy superintendent or a hearing examiner appointed by the superintendent shall preside at all hearings, and shall act in a quasi-judicial capacity.

(2) The superintendent shall allow reasonable time for oral argument, but unless waived by the persons or organizations involved, not less than one hour shall be allowed for oral argument in favor of the rule, regulation, amendment, order or application which is the subject matter of the hearing, and not less than one hour shall be allowed for oral argument in opposition to the subject matter of the hearing. In any event, both sides shall be allotted an equal amount of time for oral argument.

(3) If more than one person or organization is appearing in support of, or in opposition to, the subject matter of the hearing, those arguing on the same side shall allocate the allotted time among themselves, to be divided as they deem appropriate; provided that in the event agreement is not reached among such parties, the time shall be shared equally.

(4) Within the allotted time, a party to the hearing may present testimony and evidence, and may cross-examine the testimony and evidence presented by the other parties to the proceeding.

(5) The official conducting the hearing shall have the authority and power to question any party to the proceeding regarding the testimony and evidence presented by such party.

(6) The official conducting the hearing shall limit the testimony and evidence presented to matters which are relevant and material to the issues upon which the hearing was requested;

(7) A party to the hearing may be represented by counsel or a spokesman, and such representative may present the party's testimony and evidence.

(e) Written evidence. A party may submit written evidence at the hearing which is relevant and material to the issues upon which the hearing was requested, and said evidence shall become a part of the record.

(f) Transcript. A transcript shall be made of any oral argument or testimony and shall be included in the record. Copies of the transcript shall be made available to the public at cost.

(g) Decision.

(1) The superintendent shall, within the time limits set forth in sections 240 and 241, or within 30 days of the close of a hearing which is held pursuant to any other provision of this Title, issue a decision.

(2) A decision on matters arising under sections 240 and 241 shall conform with the requirements set forth therein. Any other decision shall clearly set forth the reasons for the superintendent's decision.

(3) If the superintendent intends to rely on any report, recommendation or other material not presented at the hearing or during any written comment period, other than a report or recommendation prepared by employees of the Bureau at the request of the superintendent, the superintendent shall either furnish such materials to all parties to the hearing for comment at least 15 days prior to the decision or reopen the hearing. All such materials relied on by the superintendent in making a decision shall become part of the public record and the source of such materials shall be clearly indicated in such record and in the decision.

(4) Notice of the decision shall be given to all participants in the hearing and shall be published in the manner provided for in section 240(b)(1).

(h) Effective date. A decision by the superintendent after a hearing shall take effect 30 days after publication of notice of the decision, unless a later date is specified therein.

See §8

§244. Hearings on petition of 25 persons

(a) A group of 25 or more persons may join together and petition the superintendent to hold a hearing if such group submits to the superintendent a written petition alleging facts tending to show that a financial institution subject to the laws of this State is not complying with the standards set for by law in this Title for meeting public convenience and advantage in its operations, or that such financial institution has violated or is violating any provision of this Title or regulation issued pursuant thereto.

(b) A group as defined in (a) may also petition the superintendent to hold a rule-making proceeding for the purpose of promulgating such rules, regulations, or amendments as may be proposed in their petition, and may petition for a hearing as an interested party under sections 240 and 241.

(c) A petition for a hearing pursuant to this section shall be made in accordance with section 243(a).

(d) Unless the superintendent shall, in a writing setting forth the reasons therefor, deem the petition frivolous or not bona fide, he shall designate the group as an interested party and hold a hearing pursuant to section 243 for the purpose set forth in the petition. Such decision shall be made within 3 weeks of the receipt of any such petition.

(e) A group whose petition is granted by the superintendent shall be treated as a single interested party for all purposes of this chapter, unless otherwise determined by the superintendent.

See Recommendations 42, 43

§245. Judicial review of superintendent's action

Any person or organization affected adversely by a rule, regulation, amendment, order, or decision on an application promulgated by the superintendent, or affected adversely by the denial of a request for a hearing, may appeal from such action. An appeal shall be taken to the Superior Court, in accordance with Rule 80B of the Maine Rules of Civil Procedure, subject to the requirements of this section.

(a) When appeal may be taken.

(1) An appeal from a rule, regulation, amendment, order or decision made by the superintendent pursuant to sections 240 or 241 may be taken only after the superintendent has promulgated a final rule, regulation, amendment, order or decision in accordance with the provisions contained therein.

(2) An appeal from the denial of a request for hearing pursuant to section 244, or an appeal from any other order or decision of the superintendent issued pursuant to this Title, may not be taken until 15 days after such denial or issuance of such order, unless a provision of this Title sets forth a shorter period.

(b) Time period for filing appeal.

(1) An appeal shall be taken within 30 days of the time from which it can be taken by filing a complaint in the Superior Court.

(2) Copies of the complaint shall be filed with the superintendent, and if the appeal is being taken from a rule, regulation, amendment, order or decision which was preceded by a hearing, additional copies of the complaint for the parties to such a hearing shall be filed with the superintendent, which copies the superintendent shall make available to such parties.

(c) Record. Upon receiving the appellate complaint, the superintendent shall prepare an official record which shall contain copies of all proceedings, including documents, transcripts of testimony, and reports on which the rule, regulation, amendment, order or decision by the superintendent was based. Such record shall be certified by the superintendent and filed with the court within 30 days of service of the complaint upon the superintendent.

(d) Jurisdiction of the court.

(1) Upon filing the appellate complaint, the court shall have full jurisdiction of the proceeding; provided that the filing of the complaint shall not stay enforcement of the superintendent's action which is being appealed, unless such is stayed by order of the court.

(2) The court may issue a preliminary order to settle any questions concerning the completeness and accuracy of the superintendent's official record.

(e) Intervention. Parties not named in the appellate complaint may intervene in the proceedings pursuant to Rule 24(a) or Rule 24 (b) of the Maine Rules of Civil Procedure.

(f) Scope of judicial review.

(1) The court reviewing the action of the superintendent on appeal shall, to the extent necessary, decide all relevant questions of law, interpret constitutional and statutory provisions and determine the meaning and applicability of the terms of Bureau action.

(2) The reviewing court shall compel action by the superintendent if such action has been withheld unlawfully or delayed unreasonably;

(3) The reviewing court shall hold unlawful, and set aside or modify actions, findings and conclusions of the superintendent if such are found to be:

(A) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;

(B) Contrary to constitutional right, power, privilege or immunity;

(C) In excess of statutory jurisdiction, authority or limitations, or short of statutory right;

(D) Without observance of a procedure required by law, or not in accordance with valid regulations;

(E) Unsupported by substantial evidence in accordance with the criteria of this Title; or

(F) Unwarranted by the facts as set forth in the record.

(4) The court may remand the case to the superintendent for further proceedings in accordance with its decision.

(g) New material. No evidence not appearing in the record, unless the failure to include such is a ground for the appeal or if such bears on the question of abuse of discretion, shall be introduced on appeal.

See §11

§246. Existing regulations

All regulations issued by the Bureau prior to the effective date of this Title shall be valid and effective after said date until amended or withdrawn, notwithstanding the fact that the promulgation of such regulations was not in accordance with this chapter.

PART 3

ORGANIZATION AND STRUCTURE OF FINANCIAL INSTITUTIONS

CHAPTER 30

ORGANIZATION AND MANAGEMENT OF STOCK INSTITUTIONS

Sec.

§300. Applicability of chapter

The provisions of this chapter shall govern the organization and management of trust companies, savings banks and savings and loan associations operating as stock financial institutions.

§301. Permission to organize

(a) Incorporators. Five or more persons, a majority of whom shall be residents of this State, may agree in writing to associate themselves for the purpose of forming a stock financial institution pursuant to this chapter.

(b) Application to organize. The subscribers to the agreement of association or the incorporators shall file with the superintendent an application for permission to organize a stock financial institution, which application shall contain the following information:

(1) The name by which the institution shall be known.

(2) The purpose for which it is to be formed, including whether the incorporators seek a certificate of public convenience and advantage to conduct business as a trust company, savings bank or savings and loan association in stock form.

(3) The city or town within this State where the institution's principal office is to be located.

(4) The amount of its capital stock, the classes and types of stock, and the number of shares into which same is to be divided. The minimum amount of said capital stock shall be determined by the superintendent in accordance with (e) of this section.

(5) The names, addresses and occupations of the directors of the institution who are to serve until the initial meeting of the stockholders or until their successors are elected and qualified, and the names, addresses and occupations of the directors who shall be voted on by the stockholders at the initial meeting.

(6) Subscription agreements for at least 1/3 of the capital stock set forth in (4) of this section, such subscriptions to contain the name, address and occupation of the subscriber, and the amount of such subscription. Each subscriber shall sign the subscription agreement if he is not an incorporator.

(7) Such additional information, including the reasons why an institution of the type specified in (2) is needed in the proposed location, as the superintendent may require by regulation.

No application for a permission to organize shall be deemed complete unless accompanied by an application fee of $1,000, payable to the Treasurer of State, to be credited and used as provided in section 203.

(c) Publication of notice. After determining that the application required in (b) is complete, the superintendent shall advise the incorporators to publish, within 15 days of such advice, a notice in such form as the superintendent may prescribe. Such notice shall appear at least once a week for 3 successive weeks in one or more newspapers of general circulation in the county where the financial institution is to be established, or in such other newspapers as the superintendent may designate. Such published notice shall specify the names, addresses and occupations of the incorporators and directors, the type of financial institution to be organized, and the name of the institution and its location as set forth in the application for permission to organize. The superintendent may require individual notice to any person or corporation, and may require that one of such publications contain the information required under section 241(b).

(d) Permission from superintendent.

(1) Within 10 days after the first publication of the notice required in (c), the incorporators shall apply to the superintendent for a certificate that public convenience and advantage will be promoted by the establishment of a financial institution of the type set forth in their application; and such request shall be deemed as completing the application for purposes of section 241(g).

(2) In determining whether public convenience and advantage will be promoted by granting permission to organize the type of institution requested, the superintendent shall make his decision in accordance with the requirements of section 242, pursuant to the procedures set forth in section 241.

(3) A grant of a certificate of public convenience and advantage and permission to organize may include such terms and conditions as the superintendent may deem necessary including, but not limited to, an increase in the minimum capital stock pursuant to (e) of this section.

(e) Minimum capital stock required.

(1) The certificate of public convenience and advantage and permission to organize, granted in writing by the superintendent, shall set forth the minimum amount of paid-in capital stock which a stock financial institution shall have to begin business.

(2) The minimum amount of paid-in capital stock shall be determined by the superintendent, but in no event shall it be less than $100,000.

(3) In determining the minimum paid-in capital stock required, the superintendent may set different requirements for trust companies, savings banks and savings and loan associations, and may consider such factors as the population of the city or town where the proposed institution is to be located, competition among financial institutions in that locale, and the need to protect depositors and other creditors of the institution.

(f) Effect of denial. If the superintendent denies permission to organize or refuses to issue a certificate of public convenience and advantage, the application may be renewed in the manner provided in this section after one year from the date of such denial.

See §§991, 992, 993, 998, 999; Recommendation 44

§302. Organization

Upon receipt of a certificate of public convenience and advantage and permission to organize pursuant to section 301, the incorporators shall comply with the following requirements:

(a) Franchise during organization. The incorporators and subscribers to stock in the institution as set forth in the application for permission to organize, and who subsequently receive permission from the superintendent, shall hold the institution's franchise until such time as the requirements of this section are met, or the superintendent determines that said requirements have not been complied with.

(b) First meeting: adoption of articles and bylaws; elections.

(1) Within 30 days after receipt of a certificate of public convenience and advantage and permission to organize pursuant to section 301, the first meeting of the incorporators and subscribers to stock in the institution shall be called by a notice signed by that incorporator or subscriber who was designated in the application for that purpose, or by a majority of the incorporators and subscribers. Such notice shall state the time, place and purposes of the meeting. A copy of the notice shall, at least 3 days before the date appointed for the meeting, be given to each incorporator and subscriber, or left at his residence or usual place of business, or deposited in the post office addressed to him at his residence or usual place of business, and another copy thereof, together with an affidavit of one of the incorporators or subscribers that the notice has been duly served, shall be recorded with the records of the institution. If all the incorporators and subscribers shall, in writing indorsed upon the application to organize, waive such notice and fix the time and place of the meeting, no notice shall be required.

(2) At such first meeting or at any adjournment thereof, the incorporators and subscribers shall by ballot select a temporary clerk, adopt articles of incorporation and bylaws and, in such manner as the bylaws may determine, elect directors, a president, a clerk and such other officers as the bylaws may prescribe. All the officers so elected shall be sworn to the faithful performance of their duties.

(3) The temporary clerk shall make and attest a record of the proceedings until the clerk has been chosen and sworn, including a record of such choice and qualification.

(4) Within 10 days after adoption of the articles of incorporation and bylaws, the clerk shall file with the superintendent copies thereof; and, within 15 days after receipt, the superintendent shall, after examining such articles and bylaws for conformance with the requirements of this Title, approve or disapprove of such articles and bylaws.

(c) Submission to Secretary of State. Following the meeting required under (b) hereof, the directors so elected shall submit an attested copy of the institution's articles of incorporation to the Secretary of State, who shall determine whether such articles satisfy the requirements of Title 13-A of the laws of this State. If such requirements are met, and the superintendent has approved said articles, the Secretary of State shall file the articles of incorporation pursuant to chapter 4 of Title 13-A. The filing of the articles of incorporation by the Secretary of State shall not authorize the transaction of business by the financial institution until all conditions of this section are satisfied.

(d) Issuance of shares.

(1) A financial institution organized under this chapter shall not issue any shares of stock until the par value of such shares, together with 50 percent additional as a surplus, shall have been actually paid in, in cash or an equivalent, as determined by the superintendent.

(2) At such time as the financial institution has issued minimum capital stock required under section 301(e), a complete list of the stockholders, with the name, address, occupation and the number of shares held by each, shall be filed with the superintendent, which list shall be verified by the president and the clerk of the institution.

(e) Certificate to commence business.

(1) Upon receipt of the statement required in (d) of this section, the superintendent shall cause an examination to be made to determine if the minimum amount of capital stock and surplus has been paid in, in cash or an equivalent as he may determine, and that all requirements of this section and other provisions of law have been complied with.

(2) Upon completion of his examination, and if the requirements of (1) are met, the superintendent shall issue a certificate authorizing the financial institution to begin transacting the business of a financial institution of the type as set forth in its articles of incorporation. Such certificate shall be conclusive of the facts stated therein and it shall be unlawful for any such stock financial institution to begin transacting business until such a certificate has been granted.

(f) Failure to commence business.

(1) Any stock financial institution which fails to commence business as a financial institution within one year after receiving a permission to organize shall forfeit said permission and any certificate to commence business so obtained; and shall cease all activities, which fact shall be certified to the Secretary of State by the superintendent so that said institution's articles of incorporation may be terminated by said Secretary of State.

(2) Upon any such forfeiture, the subscribers to the stock of such institution shall be entitled to return of any amounts which they have paid to the institution as consideration for its shares, and all expenses incurred in the organization shall be borne by the original incorporators.

(3) Upon failure to commence business within one year, and forfeiture of permission to organize and any certificate to commence business so obtained, the incorporators may not submit another application for permission to organize a financial institution under sections 301 or 311 for at least one year from the date of such forfeiture.

(4) Notwithstanding the time limitation in (1), the superintendent may extend the period in which business shall be commenced for a period not to exceed 6 months, upon written application by the institution setting forth the reasons for such extension. If an extension is granted by the superintendent, the Secretary of State shall be so notified by the superintendent.

See §§994, 995, 997, 1002; Title 13-A, Chapter 4

§303. Corporate finance

(a) Applicability of Maine Business Corporation Act. Except as set forth in this section and in section 302, the provisions of Title 13-A of the laws of this State shall control questions concerning the issuance of shares and rights relating to the financing of a financial institution organized under this chapter.

(b) Par value. The par value of shares of a stock financial institution, whether common or preferred, shall not be less than $1 each nor more than $100, and may be changed at any time by a vote of all the stockholders of the institution, subject to approval of the superintendent.

(c) Preferred stock. Notwithstanding any provision in Title 13-A to the contrary, preferred stock issued by a financial institution organized under this chapter shall be subject to the following conditions and limitations:

(1) The superintendent shall approve the issuance of, the amount, the par value and the dividend rate of any such preferred stock to be issued;

(2) Holders of such preferred stock shall be entitled to receive cumulative dividends on such stock;

(3) Preferred stock shall have the same voting rights, including that of cumulative voting, which may be granted to holders of common stock; provided that, except for election of directors, the articles of incorporation may specify that preferred shares shall vote as a class;

(4) Holders of preferred stock shall not be held individually responsible as such holders for any debts, contracts or engagements of the institution, and preferred stockholders shall not be liable for assessments to restore impairments in the capital stock of such institution as provided for in section 304(d), nor shall such shares be subject to assessment with reference to common stock and the holders thereof;

(5) In the event of voluntary liquidation, or appointment of a conservator or receiver for the institution, the holders of the common stock shall receive no payments until the holders of preferred stock shall have been paid in full such amount as may be provided in the articles of incorporation or bylaws, such amount not to exceed the purchase price of such preferred stock plus all accumulated dividends; and

(6) Preferred stock may be convertible into any other class of stock having a liquidation or dividend preference less than that of the stock converted.

(d) Retirement of preferred stock; dividend on common.

(1) Preferred stock shall be subject to retirement in such manner and under such conditions as may be provided for in the articles of incorporation or bylaws; provided that the retirement price shall not be in excess of the purchase price thereof plus all accumulated dividends thereon.

(2) Prior to or simultaneously with the retirement of preferred stock, the institution may declare without further action on the part of the holders of stock of any class or on the part of the superintendent if the articles of incorporation or amendments thereto so provide, and to the extent necessary to maintain the institution's capital at the minimum required under section 301 the institution shall declare, a dividend:

(A) On the common stock pro rata to the holders thereof, out of its surplus or undivided profits;

(B) In an amount equal to the par value of the preferred stock to be retired; and

(C) Payable in common stock at the time of, or in connection with, such retirement.

(e) Provisions affecting shares. The designations, preferences, powers, restrictions, qualifications, terms and provisions affecting shares or classes of stock issued by any institution which shall create 2 or more kinds or classes of stock, as set forth in its articles of incorporation or amendments thereto, shall control in all cases where any vote, consent of stockholders or other action is now or hereafter required or authorized by statute, unless such statute shall expressly provide to the contrary.

See §§999, 1001, 1051; Title 13-A

§304. Stockholders

(a) Meetings, voting rights and powers. Except as otherwise provided in this Title, meetings, voting rights and powers of the stockholders in a financial institution organized pursuant to this chapter shall be as set forth in Title 13-A of the laws of this State.

(b) Articles of incorporation. The stockholders shall have the right to amend the institution's articles of incorporation in any manner not inconsistent with this Title; provided that such amendments are submitted to the superintendent for written approval prior to their taking effect.

(c) Bylaws. Bylaws may be amended and added to by the stockholders, except to the extent limited by the articles of incorporation or unless such power has been reserved to the board of directors. Amendments to the bylaws shall be submitted to the superintendent and shall become effective 10 days after such submission unless the superintendent shall otherwise indicate to the institution.

(d) Proceedings when capital stock impaired; assessments on common stock. Notwithstanding any provision in Title 13-A of the laws of this State to the contrary, the following provisions shall operate when the capital stock of a financial institution is impaired:

(1) When the capital stock shall become impaired by losses or otherwise, the superintendent may ascertain and determine the facts and give notice in writing to such institution to restore the deficiency so appearing within such time as he may order.

(2) The directors of such institution shall, unless they determine otherwise by proper vote, forthwith levy a requisition upon the common stock thereof sufficient to restore such deficiency; and shall forthwith notify each common stockholder of such requisition by giving him in hand or mailing to him at his last known address, a written or printed notice which shall state the amount of requisition to be paid by him and the time within which it shall be paid, which time shall not be less than 60 days from the date of such notice.

(3) Such requisition shall be due and payable by each stockholder within the time specified in said notice.

(4) If the stockholder shall fail to pay the requisition specified in said notice within the time fixed therein, the directors of said financial institution shall have the right to sell at public auction to the highest bidder the common stock of each delinquent stockholder in the manner set forth below:

(A) Notice of such sale shall be published in a newspaper of general circulation in the county where the principal office of said financial institution is located or in such other newspapers as the superintendent may designate, at least once a week for 3 successive weeks; and

(B) A copy of such notice of sale shall be given in hand to such delinquent stockholder or mailed to him at his last known address, at least 10 days before the date fixed for said sale.

(5) In lieu of public auction pursuant to (4), the common stock may be sold at private sale in the manner set forth below:

(A) An offer in writing to purchase said stock shall first be obtained and a copy thereof served upon the owner of record of the stock sought to be sold, either personally by giving him in hand a copy of such offer or by mailing the same to him at his last known address; and

(B) If after service of such offer, such owner shall still refuse or neglect to pay such requisition within 2 weeks from the time of the service of such offer, said directors may accept such offer and sell such stock to the person making such offer or to any other person or persons making a larger offer than the amount named in the offer submitted to the stockholder.

(6) Stock sold pursuant to (4) and (5) shall in no event be sold for a smaller sum than the valuation put on it by the superintendent in his determination and requisition, nor for less than the amount of said requisition and the expense of the sale.

(7) Out of proceeds from the sale of the stock, the directors shall pay the amount of requisition levied thereon and the necessary costs of sale. The balance, if any, shall be paid to the person or persons whose stock has been thus sold. A sale of stock shall effect an absolute cancellation of the outstanding certificate or certificates evidencing the stock so sold, and shall make the same null and void, and a new certificate shall be issued by the institution to the purchaser thereof.

(8) Any stockholder aggrieved by any action of the superintendent or the directors of such institution under the foregoing provisions may, within 15 days after receiving notice thereof, apply by appropriate proceedings to the Superior Court whose decision, after due hearing, shall be final in the matters complained of.

(9) In the event that the directors of any financial institution, upon notification by the superintendent, shall not vote within 10 days after receipt of said notification to make a requisition upon the stock under the foregoing provisions, or shall determine not to make a requisition on such stock, the superintendent or any of the directors of such institution may file a complaint in the Superior Court, setting forth the fact that such capital stock is impaired and asking said court to order a requisition upon the capital stock sufficient to meet the impairment and make the institution solvent. After giving due notice and hearing to all interested parties, the court shall, if it finds the capital stock to be impaired, take the following actions:

(A) Order a requisition to be made upon such stock;

(B) Such requisition when made shall be due and payable by each stockholder to the treasurer of said institution on order of said court within 30 days from the time such order is made;

(C) If any stockholder or stockholders of said institution shall neglect or refuse, after due notice, to pay the requisition ordered within the time specified, a sufficient amount of the capital stock of such stockholder or stockholders may, after due notice given, be sold under the direction of the court to pay such requisition and the costs of sale;

(D) After paying the requisition and costs from the proceeds of such sale, the balance, if any, shall be returned to the delinquent stockholder or stockholders;

(E) If no bidder can be found who will pay for such stock the amount of the requisition due thereon and the costs of the advertisement and sale, the amount previously paid by such stockholder or stockholders and said stock shall be forfeited to the institution; and such stock shall be sold by said institution as the directors shall order, within 6 months from the time of said forfeiture.

(10) Nothing contained in this section or in section 604 shall be construed to take away the general rights of creditors to enforce the liability of stockholders in such financial institution, in any manner provided by statute; or the right to proceed against the institution under chapter 35.

See §1052; Title 13-A

§305. Board of directors

Except as provided in this section, the management and operations of a financial institution organized under this chapter shall be pursuant to Title 13-A of the laws of this State.

(a) Directors: number, election, qualifications and term.

(1) The number of directors on the board of a stock financial institution shall not be less than 5.

(2) At least 2/3 of the directors provided for shall be residents of this State and any director removing himself from this State shall immediately be replaced if such removal results in a reduction of the number of resident directors below 2/3.

(3) The initial board of directors shall be elected at the first meeting of the incorporators and subscribers provided for in section 302, and by a vote of the stockholders at each annual meeting thereafter; provided that the articles of incorporation may provide for classification of directors in accordance with section 705 of Title 13-A of the laws of this State.

(4) No person shall be eligible to serve as a director of any stock financial institution unless he is the actual owner of stock in such institution with a par value of at least $1,000, or is a nominee of a financial institution holding company which holds stock in such institution in such an amount. Qualifying shares may not be encumbered.

(5) Directors shall be sworn annually to the proper discharge of their duties, and they shall take an oath that the qualifying shares of stock required in (4) are unencumbered and that said shares will remain unencumbered during the term of office. Such a director's oath shall be taken within 60 days of election to office, or such office shall become vacant.

(6) The stockholders, at any annual meeting, may elect from the full board of directors an executive committee of not less than 5 members, 2/3 of whom shall be residents of this State and may delegate to such committee the powers of the directors in regard to the ordinary operations of the business of the institution.

(b) Directors: powers and duties.

(1) All corporate powers shall be exercised by the board;

(2) Directors shall hold regular meetings at least once each month; and

(3) The powers of the board may be exercised by the executive committee established pursuant to (a)(6) of this section at all times when the board of directors is not in session, subject always to any specific vote of the board. The executive committee shall keep full minutes of all business transacted by them and shall make such reports of their transactions at each monthly meeting of the board as the board or the superintendent may require.

(c) Amendment of articles of incorporation and bylaws; superintendent approval. The articles of incorporation and the bylaws of a stock financial institution may be amended and modified in the manner set forth in Title 13-A of the laws of this State, except that prior to amendment of the articles becoming effective, the superintendent's written approval of such amendments must be obtained by the institution. Amendments to the bylaws shall be submitted to the superintendent and shall become effective 10 days after such submission unless the superintendent shall indicate otherwise to the institution.

See §§1041, 1043; Title 13-A

§306. Officers and employees

Except as provided in this section, the powers and duties of officers and directors of a financial institution organized under this chapter shall be pursuant to Title 13-A of the laws of this State.

(a) Election. Unless another manner for election is provided in the bylaws, the board of directors shall elect annually from its members a chairman and, from its members or otherwise, a president, one or more vice presidents, a clerk or secretary, a treasurer and such other officers as it may deem advisable. Any two offices may be held by the same person. Officers so elected shall serve for a term of not more than one year, but shall continue in office until their successors are elected and qualified. If any office becomes vacant during the year, the board may immediately fill the same for the period remaining until the next annual meeting for election of officers.

(b) Compensation. The compensation of officers shall be fixed by the board of directors.

(c) Powers of officers. Each officer shall have such powers as the bylaws may provide or as may be delegated by the board. In addition, an officer may exercise the powers set forth below:

(1) Chairman. The chairman of the board shall preside at all meetings of the stockholders and the board of directors, unless otherwise provided in the bylaws.

(2) President. The president shall preside, in the absence of a chairman of the board of directors, at all meetings of the stockholders and the board of directors, unless otherwise provided in the bylaws.

(3) Clerk or secretary.

(A) The clerk or secretary shall record or cause to be recorded the proceedings and actions of all meetings of the stockholders or directors, and give or cause to be given all notices required by law or action of the directors for which no other provision is made. If no person is elected to this office, the treasurer or in his absence another officer of the institution designated by the directors, shall be ex officio clerk of the institution and of the directors.

(B) Within 30 days after the annual meeting of the board for election of officers, the clerk shall cause to be published in a local newspaper of general circulation in the county where the institution's principal office is located, or in such other newspapers as the superintendent may designate, a list of the officers and directors thereof. He shall return a copy of such list of officers and directors to the superintendent within said 30 days which shall be kept on file in the superintendent's office for public inspection.

(C) The clerk or secretary, in the absence of a provision in the bylaws to the contrary, shall perform the functions of clerk in accordance with section 304 of Title 13-A of the laws of this State.

(4) Written instruments. All conveyances, leases, assignments, releases, transfers of stock certificates and registered bonds, and all other written instruments authorized or required by law or vote of the directors, may be executed by the president or treasurer, or by any other official authorized and empowered by the bylaws of the institution or duly recorded vote of the directors.

(d) Oath of office. Each officer, upon taking office, shall take and subscribe to an oath that he will faithfully and impartially discharge the duties of his office, and that he will not knowingly violate, or permit to be violated, any provisions of law applicable to such institution. If an officer shall fail to take such oath, the board may declare his office vacant. If an officer shall violate his oath, the board, after affording him opportunity to be heard, may declare his office vacant by a vote of 2/3 of the directors present at any meeting of the board; provided that each director has been given notice of such meeting.

(e) Bonds. The directors shall require security for the fidelity and faithful performance of duties by its officers, employees and agents, in such amount as the directors shall deem necessary or as the superintendent may require. Such security shall consist of a bond executed by one or more surety companies authorized to transact business in this State. The superintendent may increase such amount from time to time as circumstances may require. The expense of such bond shall be assumed by the institution.

(f) Removal of officers or employees. Any officer or employee may be removed by the board of directors whenever in its judgment the best interests of the institution will be served thereby, but the removal shall be without prejudice to the contract rights, if any, of the person so removed.

CHAPTER 31

ORGANIZATION AND MANAGEMENT OF MUTUAL INSTITUTIONS

Sec.

§310. Applicability of chapter

The provisions of this chapter shall govern the organization and management of trust companies, savings banks and savings and loan associations operating as mutually-owned financial institutions.

§311. Permission to organize

(a) Organizers. Any number of persons, but not less than 20, all of whom shall be residents of this State, may agree in writing to associate themselves for the purpose of forming a mutually-owned financial institution pursuant to this chapter.

(b) Application to organize. The organizers set forth in (a) shall file with the superintendent an application for permission to organize a mutually-owned financial institution, which application shall contain the following:

(1) The name by which the institution shall be known;

(2) The purpose for which it is to be formed, including whether the organizers seek a certificate of public convenience and advantage to conduct business as a trust company, savings bank or savings and loan association in mutual form;

(3) The city or town within this State where the institution's principal office is to be located;

(4) The proposed minimum amount of initial capital contributions to be deposited;

(5) The names, addresses and occupations of the directors of the institution who are to serve until the initial meeting of the members or corporators or until their successors are elected and qualified, and the names, addresses and occupations of the directors who shall be voted on by the members or corporators at the initial meeting;

(6) A statement setting forth the name, address, and occupation of each organizer, together with the amount of initial capital which such organizer shall deposit, subscribed to by said organizer; and

(7) Such additional information, including the reasons why an institution of the type specified in (2) is needed in the proposed location, as the superintendent may require by regulation.

No application for permission to organize a mutually-owned institution shall be deemed complete unless accompanied by an application fee of $1,000, payable to the Treasurer of State, to be credited and used as provided in section 203.

(c) Publication of notice. After determining that the application required in (b) is complete, the superintendent shall advise the organizers to publish within 15 days of such advice, a notice in such form as the superintendent may prescribe. Such notice shall appear at least once a week for

3 successive weeks in one or more newspapers of general circulation in the county where the financial institution is to be established, or in such other newspapers as the superintendent may designate. Such published notice shall specify the names, addresses and occupations of the organizers and directors, the type of institution to be organized, and the name of the institution and its location, as set forth in the application for permission to organize. The superintendent may require individual notice to any person or corporation, and may require that one of such publications contain the information required under section 241(b).

(d) Permission from superintendent.

(1) Within 10 days after first publication of the notice required in (c), the organizers shall apply to the superintendent for a certificate that public convenience and advantage will be promoted by the establishment of a financial institution of the type set forth in their application.

(2) In determining whether public convenience and advantage will be promoted by granting permission to organize the type of institution requested, the superintendent shall make his decision in accordance with section 242, pursuant to the procedures set forth in section 241.

(3) A grant of a certificate of public convenience and advantage and permission to organize may include such terms and conditions as the superintendent deems necessary including, but not limited to, an increase in the amount of minimum capital deposits, pursuant to (e) of this section.

(e) Minimum initial capital contribution deposits.

(1) The certificate of public convenience and advantage and the permission to organize, granted in writing by the superintendent, shall set forth the minimum amount of capital deposits which the mutually-owned institution shall have to begin business.

(2) The minumum amount of capital deposits shall be determined by the superintendent, but in no event shall it be less than $100,000.

(3) In determining the minimum amount of capital deposits, the superintendent may set different requirements for trust companies, savings banks and savings and loan associations, and may consider such factors as the population of the city or town where the proposed institution is to be located, competition among financial institutions in that locale, and the need to protect depositors and other creditors of the institution.

(f) Effect of denial. If the superintendent denies permission to organize or refuses to issue a certificate of public convenience and advantage, the application may be renewed in the manner provided in this section after one year from the date of such denial.

See §§441, 1591, 1592, 1593; Recommendation 44

§312. Organization

Upon receipt of a certificate of public convenience and advantage and permission to organize pursuant to section 311, the organizers shall comply with the following requirements:

(a) Franchise during organization. The organizers set forth in the application for permission to organize, and who subsequently receive permission from the superintendent, shall hold the institution's franchise until such time as the requirements of this section are met or the superintendent determines that said requirements have not been complied with.

(b) First meeting: adoption of articles and bylaws.

(1) Within 30 days after receipt of a certificate of public convenience and advantage and permission to organize pursuant to section 311, the first meeting of the organizers of the financial institution shall be called by a notice signed by that organizer who was designated in the application for that purpose, or by a majority of the organizers. Such notice shall state the time, place and purposes of the meeting. A copy of the notice shall be given to each organizer at least 3 days before the date appointed for the

meeting, or left at his residence or usual place of business, or deposited in the post office and addressed to him at his residence or usual place of business, and another copy thereof, together with an affidavit of one of the organizers that the notice has been duly served, shall be recorded with the records of the institution. If all the organizers shall, in writing indorsed upon the application to organize, waive such notice and fix the time and place of the meeting, no notice shall be required.

(2) At the first meeting and thereafter, the organizers of a mutual trust company and a mutual savings bank shall be known as the "corporators" and the organizers of a mutual savings and loan association shall be known as the "incorporators".

(3) At such meeting or at any adjournment thereof, the corporators or incorporators shall by ballot select a temporary clerk, adopt the articles of incorporation and bylaws of the institution and, in such manner as the bylaws may determine, elect directors, a president, a clerk and such other officers as the bylaws may prescribe. All persons so elected shall qualify for their offices as provided in sections 315 and 316.

(4) The temporary clerk shall make and attest a record of the proceedings until the clerk has been chosen and sworn, including a record of such choice and qualification.

(5) Within 10 days after adoption of the articles of incorporation and bylaws, the clerk shall file with the superintendent copies thereof; and, within 15 days after receipt, the superintendent shall, after examining such articles and bylaws for conformance with the requirements of this Title, approve or disapprove of such articles and bylaws.

(c) Submission to Secretary of State. Following the meeting required under (b) hereof, the directors so elected shall submit an attested copy of the institution's articles of incorporation to the Secretary of State, who shall determine whether such articles satisfy the requirements of Title 13-A of the laws of this State. If such requirements are met and the superintendent has approved said articles, the Secretary of State shall file the

articles of incorporation pursuant to chapter 4 of Title 13-A. The filing of the articles of incorporation by the Secretary of State shall not authorize the transaction of business by the financial institution until all conditions of this section are satisfied.

(d) Payment of capital deposits.

(1) A financial institution organized under this chapter shall not commence business until the minimum capital deposits required in its permission to organize have been deposited to the credit of the financial institution in a depository designated by the directors;

(2) At such time as the institution has received to its credit the minimum capital deposits required in section 311(e), a complete list of the capital depositors, with the name, address, occupation and the amount of capital deposited by each shall be filed with the superintendent, which list shall be verified by the president and clerk of the institution. Such deposits shall be handled by the institution in accordance with section 313.

(e) Certificate to commence business.

(1) Upon receipt of the statement required in (d) of this section, the superintendent shall cause an examination to be made to determine if the minimum capital deposits have been credited to the account of the institution as he may determine and that all requirements of this section and other provisions of law have been complied with.

(2) Upon completion of his examination, and if the requirements of (1) are met, the superintendent shall issue a certificate authorizing the financial institution to begin transacting the business of a financial institution of the type as set forth in its articles of incorporation. Such certificate shall be conclusive of the facts stated therein and it shall be unlawful for any such mutually-owned financial institution to begin transacting business until such a certificate has been granted.

(f) Failure to commence business.

(1) Any mutually-owned financial institution which fails to commence business as a financial institution within one year after receiving permission to organize shall forfeit said permission and any certificate to commence business so obtained and shall cease all activities, which fact shall be certified to the Secretary of State by the superintendent so that the institution's articles of incorporation may be terminated by said Secretary of State.

(2) Upon any such forfeiture, the contributors of initial capital deposits of such institution shall be entitled to return of any amounts which they have paid to the institution and all expenses incurred in the organization shall be borne by the original organizers who were named in the application for permission to organize.

(3) Upon failure to commence business within one year and forfeiture of permission to organize and any certificate to commence business so obtained, the organizers may not submit another application for permission to organize a financial institution under sections 301 or 311 for at least one year from the date of such forfeiture.

(4) Notwithstanding the time limitation in (1), the superintendent may extend the period in which business shall be commenced for a period not to exceed 6 months upon written application by the institution setting forth the reasons for such extension. If an extension is granted by the superintendent, the Secretary of State shall be so notified by the superintendent.

See §§441, 1594

§313. Corporate finance

(a) Initial capital deposits.

(1) The initial capital deposits required under section 312(d) for commencing business shall be paid into an account of the institution known as the "capital reserve" account.

(2) The institution shall record on its books the amount which each capital depositor has contributed to such capital reserve and such amounts shall be evidenced by a certificate issued to the contributor thereof.

(3) Dividends or interest may be paid upon the amounts standing to the credit of each owner of a proportionate interest in the capital reserve, in accordance with the terms of the deposit agreement, but in no event shall such dividends or interest be in excess of the maximum rate paid on shares or accounts of the institution for the same period.

(4) The capital reserve established pursuant to this section shall be used as a guarantee against losses, contingencies and impairments of capital, and all losses and expenses not otherwise absorbed shall be charged against it until such time as the conditions in (b) of this section are met; provided that the amount credited to each contributor shall be reduced only by its proportionate share of such losses or expenses.

(5) The capital reserve shall be subordinate to all other deposits or share accounts of the institution.

(6) The capital contribution standing to the credit of each capital depositor in the capital reserve of the institution shall be transferable, together with any interest or dividends credited thereon, subject to the conditions and restrictions of this section.

(b) Return of initial capital deposit. The initial capital deposits, together with any dividends or interest credited thereon, may be returned, pro rata, to the contributors, or their heirs, executors, administrators or assigns, subject to the following conditions and limitations:

(1) Prior to return of all or part of the initial capital reserve, the institution shall obtain the superintendent's approval for such return;

(2) A return of all or part of the capital reserve shall not reduce the institution's guaranty fund, established pursuant to sections 502, 601, or 702, below the greater of the total initial capital contributions or an amount equal to 5 percent of the institution's deposits or accounts;

(3) Upon release and return, the contributor's proportionate share of the amount to be returned shall be credited in his name to a share account or deposit in such institution, and the contributor shall then be entitled to all rights and privileges, and shall be subject to all duties and liabilities, connected with such share account or deposit;

(4) In the event of the liquidation of an institution before such contributions have been repaid in full, any portion of such contributions not required for the repayment of the expenses and the payment of creditors and other depositors in full, pursuant to section 354, may be repaid pro rata to the initial capital depositors.

(c) Capital debentures as capital reserve. Subject to prior approval of the superintendent, a financial institution may issue capital notes or debentures, the proceeds from the sale of which may be used in lieu of capital deposits to establish part of the capital reserve required in (a) of this section, provided that:

(1) Such capital notes or debentures are issued pursuant to section 402;

(2) Such notes or debentures are subject to conditions governing the repayment of principal and interest which are comparable to the requirements governing return of initial capital deposits as set forth in (b) of this section; and

(3) Repayment of the principal amount of such capital notes or debentures issued pursuant to this section shall have priority over the return of any initial capital deposits in the capital reserve account pursuant to (b) of this section.

See §§1593, 441, 476

§314. Corporators and members

(a) Corporators of trust companies and savings banks.

(1) The persons named in the articles of incorporation shall constitute the original board of corporators of a mutual trust company or mutual savings bank.

Membership on such board shall continue until terminated by death, resignation or disqualification as provided herein.

(2) Corporators shall retire from membership on the board of corporators upon reaching 72 years of age. This provision shall become effective 2 years after the effective date of this section, and any corporator who is 72 years of age or older shall retire from such board on said effective date.

(3) All corporators shall be residents of this State, and no person shall continue as a corporator of a mutual trust company or mutual savings bank after ceasing to be a resident of this State.

(4) Any corporator failing to attend the annual meeting of the board of corporators for 2 successive years shall cease to be a member of the board unless re-elected by a vote of the remaining corporators.

(5) The number of corporators may be fixed or altered by the bylaws of the institution, and vacancies may be filled by election at any annual meeting.

(6) The superintendent shall have the power to comment upon the sociological composition of the board of corporators of any mutual trust company or mutual savings bank, such comment to be made in such form and manner as the superintendent deems appropriate.

(b) Members of a savings and loan association; qualifications and voting rights.

(1) The members of a savings and loan association organized pursuant to this chapter shall be those in whose names accounts are established, and persons borrowing from or assuming or obligated upon a loan held by such institution or purchasing property and assuming the secured loan held by such institution.

(2) A single membership in an association may be held by 2 or more persons, and a joint and survivorship relationship and successor relationship, whether investors or borrowers, shall constitute a single membership.

(3) Each member 18 years of age or over shall be entitled to one vote at any meeting of the association, regardless of the number of shares or accounts standing

in his name; provided that only one vote shall be allowed on an account held by 2 or more persons. No member shall vote by proxy at any meeting, unless otherwise provided in this Title. The bylaws may prohibit voting by persons who have become members within 6 months of the date when the vote is cast. When accounts or shares are pledged, the pledgor may vote thereon.

(4) Membership shall terminate when the amount of a member's shares or accounts has been paid in full to him, or when the transfer of his membership to another person has been recorded on the books of the institution, or when his status as a borrower from the institution terminates.

(c) Powers and duties of corporators and members.

(1) Annual meetings. Corporators or members shall hold regular annual meetings, at a time fixed in the bylaws of the institution, for the purpose of electing directors of the institution and for the transaction of any other business which may properly be brought before such meeting.

(2) Special meetings. Special meetings of the corporators or members may be called at any time by the president of the institution, or in any other manner provided for in the bylaws.

(3) Notice. At least 7 days' notice of the annual meeting shall be given by public advertisement in a newspaper of general circulation in the county where the principal office of the institution is located, or in such other newspapers as the superintendent may designate; provided that corporators or members shall also be sent notice by mail at their last known address. Notice of any special meeting, stating therein the purpose for which such meeting is called, shall be mailed to each corporator or member at his last known address, at least 7 days prior to such special meeting.

(4) Quorum. The bylaws may prescribe the number of corporators or members which shall constitute a quorum at any annual or special meeting. In the absence of such provision, any number of corporators or members, but not less than 6, shall constitute a quorum.

(5) Place. Meetings of the corporators or members shall be held at the institution's principal office, or at such other place in the area of this State served by the institution as the notice shall designate.

(d) Articles of incorporation. The corporators or members shall have the right to amend the institution's articles of incorporation in any manner not inconsistent with this Title; provided that such amendments are submitted to the superintendent for his written approval prior to their taking effect.

(e) Bylaws. Bylaws may be amended and added to by the corporators or members of the institution except to the extent limited by the articles of incorporation or unless such power has been reserved to the board of directors. Amendments to the bylaws shall be submitted to the superintendent and shall become effective 10 days after such submission unless the superintendent shall otherwise indicate to the institution.

See §§471, 1701, 1709, 1794, 1713, 1791, 1792, 1793, 1596; Recommendations 19, 20

§315. Board of directors

Except as provided in this section and section 316, the management and operations of a financial institution organized under this chapter shall be pursuant to Title 13-A of the laws of this State.

(a) Directors: number, election, qualifications and term.

(1) The number of directors on the board of a mutually-owned financial institution shall not be less than 5, all of whom must be residents of this State.

(2) The initial board of directors shall be elected at the first meeting of the corporators or the incorporators as provided for in section 312, and by a vote of the corporators or members at each annual meeting thereafter; provided that the articles of incorporation may provide for classification of directors in accordance with section 705 of Title 13-A of the laws of this State.

(3) Vacancies on the board occurring during the year may be filled by the board until the next annual meeting of the corporators or members, who shall elect a director at such time to fill such position for the remainder of the term. Any vacancy which causes the number of directors to fall below the minimum required in (1) or in the institution's bylaws shall be filled immediately.

(4) Each director, upon taking office, shall take and subscribe to an oath that he will faithfully and impartially discharge the duties of his office and that he will not knowingly violate, or permit to be violated, any provisions of law applicable to such institution. If a director shall fail to take such oath, the board may declare his office vacant. If a director shall violate his oath, the board, after affording him opportunity to be heard, may declare his office vacant by a vote of 2/3 of the other directors present at any meeting of the board; provided that each director has been given notice of such meeting.

(5) The compensation of directors, which may include provision for payment of medical, surgical and hospital expenses due to accident or illness in the same manner as provided for officers and employees, may be fixed by the corporators or members at any legal meeting thereof, or, subject to the written approval of the superintendent, such may be fixed by the board of directors.

(6) Directors of all mutually-owned financial institutions shall retire from membership on the board of directors upon reaching 72 years of age. This provision shall become effective 2 years after the effective date of this section, and any director who is 72 years of age or older shall immediately retire from such board on said effective date.

(7) The superintendent shall have the power to comment upon the sociological composition of the board of directors of any financial institution organized under this chapter, such comment to be made in such form and manner as the superintendent deems appropriate.

(b) Meetings of the directors.

(1) The directors shall hold regular monthly meetings at a time fixed in the bylaws.

(2) A quorum at any meeting shall consist of not less than a majority of the board, but less than a quorum shall have power to adjourn from time to time until the next regular meeting.

(3) Full and complete records of all meetings of the board shall be kept and maintained.

(c) Powers and duties of the board.

(1) The board of directors may exercise any and all powers of an institution not expressly reserved to the corporators or members by this Title or by the institution's articles or bylaws.

(2) The directors shall see that all funds of the institution are invested only in accordance with the sections of this Title governing the type of institutions of which they are directors.

(3) The board of directors may, in its discretion and so far as is consistent with its duties, appoint an executive committee composed of its members, such committee to conduct the business of the institution between meetings of the board; provided that all transactions of such executive committee shall be reported to the directors at their next regular meeting and incorporated into the records of such meetings.

(4) The board may employ, or authorize any officer to employ, any persons necessary to conduct the business of the institution.

(5) Bylaws, rules, and regulations not inconsistent with this Title governing the management and operations of the institution may be adopted by the board of directors; provided that a copy of such and any amendments thereto shall be submitted by the institution to the supperintendent, and shall become effective 10 days after such submission unless the superintendent shall indicate otherwise to the institution.

See §§472, 1661, 1665, 1596; Recommendations 19, 20

§316. Officers and employees

Except as provided in this section, the powers and duties of officers and directors of a financial institution organized under this chapter shall be pursuant to Title 13-A of the laws of this State.

(a) Election. Unless another manner for election is provided in the bylaws, the board of directors shall elect annually from its members a chairman and, from its members or otherwise, a president, one or more vice presidents, a clerk or secretary, a treasurer and such other officers as it may deem advisable. Any two offices may be held by the same person. Officers so elected shall serve for a term of not more than one year, but shall continue in office until their successors are elected and qualified. If any office becomes vacant during the year, the board may immediately fill the same for the period remaining until the next annual meeting for election of officers.

(b) Compensation. The compensation of officers shall be fixed by the board of directors.

(c) Powers of officers. Each officer shall have such powers as the bylaws may provide or as may be delegated by the board. In addition, an officer may exercise the powers set forth below:

(1) Chairman. The chairman of the board shall preside at all meetings of the corporators or members and the board of directors, unless otherwise provided in the bylaws.

(2) President. The president shall preside, in the absence of a chairman of the board of directors, at all meetings of the corporators or members and the board of directors, unless otherwise provided in the bylaws.

(3) Clerk or secretary.

(A) The clerk or secretary shall record or cause to be recorded the proceedings and actions of all meetings of the corporators, members or directors, and give or cause to be given all notices required by law or action of the directors for which no other provision is made. If no person is elected to this office, the treasurer, or in his absence another officer of the institution designated by the directors, shall be ex officio clerk of the institution and of the directors.

(B) Within 30 days after the annual meeting of the board for election of officers, the clerk shall cause to be published in a local newspaper of general circulation in the county where the institution's principal office is located, or in such other newspapers as the superintendent may designate, a list of the officers and directors thereof. He shall return a copy of such list of officers and directors to the superintendent within said 30 days which shall be kept on file in the superintendent's office for public inspection.

(C) The clerk or secretary, in the absence of a provision in the bylaws to the contrary, shall perform the functions of clerk in accordance with section 304 of Title 13-A of the laws of this State.

(4) Written instruments. All conveyances, leases, assignments, releases, transfers of stock certificates and registered bonds, and all other written instruments authorized or required by law or vote of the directors, may be executed by the president or treasurer, or by any other official authorized and empowered by the bylaws of the institution or duly recorded vote of the directors.

(d) Oath of office. Each officer, upon taking office, shall take and subscribe to an oath that he will faithfully and impartially discharge the duties of his office, and that he will not knowingly violate, or permit to be violated, any provisions of law applicable to such institution. If an officer shall fail to take such oath, the board may declare his office vacant. If an officer shall violate his oath, the board, after affording him opportunity to be heard, may declare his office vacant by a vote of 2/3 of the directors present at any meeting of the board; provided that each director has been given notice of such meeting.

(e) Bonds. The directors shall require security for the fidelity and faithful performance of duties by its officers, employees and agents, in such amount as the directors shall deem necessary or as the superintendent may require. Such security shall consist of a bond executed by one or more surety companies authorized to transact business in this State. The superintendent may increase such amount from time to time as circumstances may require. The expense of such bond shall be assumed by the institution.

(f) Removal of officers or employees. Any officer or employee may be removed by the board of directors whenever in its judgment the best interests of the institution will be served thereby, but the removal shall be without prejudice to the contract rights, if any, of the person so removed.

CHAPTER 32

OFFICES AND BRANCHES

Sec.

§320. Applicability of chapter; statewide branching

(a) The provisions of this chapter shall govern the establishment of an office, branch, facility or agency by a financial institution subject to the laws of this State.

(b) Subject to the conditions and limitations contained in this chapter, a financial institution may establish an office, branch, facility, or agency anywhere within this State.

See Recommendation 5

§321. Branch offices

(a) All or any part of the business of a financial institution authorized pursuant to the provisions of this Title may be transacted in a branch office, as defined in section 120, if the board of directors of such institution decides accordingly.

(b) No such financial institution shall establish a branch office without prior approval of the superintendent, such approval to be obtained pursuant to section 325.

See §§1003, 442, 1595

§322. Limited-time or seasonal branch offices

(a) A financial institution may transact all or any part of its business in a limited-time or seasonal branch, as defined in section 120, if the board of directors decides accordingly.

(b) No financial institution shall establish a limited-time or seasonal branch without prior approval of the superintendent, such approval to be obtained pursuant to section 325.

(c) A limited-time or seasonal branch of a financial institution shall not be established in any location served by a full-time branch, office or facility of such financial institution, or of another financial institution of the same type; provided that the existence of a limited-time or seasonal branch shall not preclude the establishment of a full-time branch, office or facility in the same area, nor shall the establishment of such full-time office preclude the continuing operation of a previously established limited-time or seasonal branch.

(d) A limited-time or seasonal branch may become a full-time branch, office, or facility with the prior approval of the superintendent pursuant to section 325. A full-time branch, office or facility may become a limited-time or seasonal branch with the prior approval of the superintendent pursuant to section 325; provided that the conditions set forth in (c) hereof shall be applicable to such change in the type of a branch, office or facility.

See Recommendation 7

§323. Satellite facilities

(a) A financial institution may establish or participate in the establishment of a satellite facility, as defined in section 120; provided that no such facility shall be established without prior approval of the superintendent, pursuant to section 325.

(b) The superintendent may take into account the existence of branch offices and limited-time or seasonal facilities in the area where such satellite office is to be established in determining whether the criteria set forth in section 242 have been satisfied.

(c) Such facility may be wholly or partly owned by the institution; or may be owned by 2 or more such financial institutions; provided that the superintendent shall approve such joint ownership.

(d) Any satellite facility established by a trust company shall be made available for use by other trust companies, and a satellite facility established by a thrift instiution shall be made available for use by other thrift institutions; provided that any institution seeking to use a satellite facility established by another institution shall obtain the prior approval of the superintendent, pursuant to section 325, for such use; and provided further that any institution receiving permission to use such satellite facility shall share in the cost thereof. A satellite facility established by a trust company or thrift institution may be used by the other type of institution; provided that prior approval of the superintendent for such use has been obtained pursuant to section 325.

§324. Change of office location; closing of an office

(a) No main office, branch office, facility or agency of a financial institution may be moved to a new location without the prior written approval of the superintendent, pursuant to section 325.

(b) Any branch office, facility or agency may be closed or discontinued with the prior written approval of the superintendent pursuant to section 325, after such public notice of the closing as the superintendent deems necessary.

See §§442, 1004, 1597

§325. Approval powers of superintendent

(a) Approval for the establishment, moving or closing of an office, branch, facility or agency authorized by this chapter shall be requested by the board of

directors of an institution by filing an application for permission relating thereto with the superintendent in such form and manner and containing such information as the superintendent may prescribe.

(b) The superintendent may establish different application requirements according to the type of office, branch facility or agency involved and the operations conducted there at, and may permit joining of applications for the same types of facilities; provided that the same requirements shall be applied to each application for the same type of facility. No action shall be taken on an application unless it is accompanied by a fee of $500, to be credited and used as provided in section 203.

(c) The superintendent shall approve or disapprove an application under this chapter in accordance with the requirements of section 241; and the superintendent may condition approval of such application, as necessary, to conform with the criteria set forth in section 242.

(d) If the superintendent approves an application to establish and operate an office, branch, facility or agency, copies of the grant of authority shall be filed with the Secretary of State and shall be furnished to the applicant institution. Such grant of authority shall lapse if, within one year of its issuance, the facility authorized thereunder has not opened and business has not begun in good faith, unless the superintendent has granted in writing an extension of time, not to exceed 6 months. Additional extensions may be granted by the superintendent for good cause shown, and no fee shall be required for such extensions.

(e) Within 5 days after an approved facility has opened for business, a certificate of such opening signed by the president and the clerk or secretary of the institution shall be filed with the superintendent and the Secretary of State.

§326. Real estate for offices and facilities

(a) A financial institution may invest in improved or unimproved real estate, and in the erection or improvement of buildings thereon, together with

fixtures for the purpose of providing offices or facilities for transaction of the institution's authorized business; and such buildings may include space for rental purposes.

(b) Real estate investments pursuant to (a) shall not exceed 50 percent of its total capital and reserves in the case of an institution organized pursuant to chapter 30, or 50 percent of its surplus account in the case of an institution organized pursuant to chapter 31; provided that the superintendent may approve in writing, upon application by an institution and for good cause shown, a greater percentage.

See §§1835, 443

§327. Operating hours: branches and facilities

(a) A financial institution authorized to do business in the State may permit any of its branches, facilities, or walk-up or drive-up windows of its main office or branches to remain open, or open for limited functions only, during such hours as it may determine from time to time, after its main office is closed. Any hours in which said branch, facility, or walk-up or drive-up window of its main office or branch is open for limited functions only after its main office is closed shall be, with respect to such institution, a holiday and not a business day.

(b) Any act authorized, required or permitted to be performed at or by, or with respect to, any such institution during hours at which said branch, facility, or walk-up or drive-up window of its main office or branch is open for limited functions only after its main office is closed may be so performed on the next succeeding business day, and no liability or loss of rights of any kind shall result from such delay.

(c) Nothing in any law of this State shall in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification or acceptance of a check or other negotiable instrument or any

other transaction by a financial institution in this State because done or performed during such hours in which a branch, facility, or walk-up or drive-up window of its main office of branch is open for limited functions only after its main office is closed.

See §134

§328. Prohibited branches and offices

(a) Mobile facilities. Nothing contained in this Title shall be construed as permitting a financial institution to establish or operate a mobile branch or facility, as defined in section 120, and operation of such a facility by a financial institution is expressly prohibited by this section.

(b) Branches and facilities in other States.

(1) Nothing contained in this Title shall be construed as permitting a financial institution to establish a branch office, facility or agency in any State other than the State of Maine, and no financial institution not authorized to do business in this State shall establish or operate an office, branch, facility or agency in the State of Maine.

(2) The operation of such an office, branch, facility or agency by such financial institution or institutions is expressly prohibited by this section.

See Recommendation 8

CHAPTER 33

CHANGES IN CHARTER AND OWNERSHIP FORM

Sec.

§330. Applicability of chapter; fees

(a) The provisions of this chapter shall apply whenever a financial institution subject to the laws of this State seeks to convert or amend its charter in order to change its chartering authority, adopt the powers granted by this Title to another type of institution, change to a different form of ownership, or adopt a new corporate name for the institution.

(b) No application made pursuant to subsections 1, 2, or 5 of section 342, or sections 343, 344, 345 or 346, shall be deemed complete by the Superintendent unless accompanied by an application fee of $1,000 payable to the Treasurer of State, to be credited and used as provided in section 214.

§331. Conversion to new charter: Federal to State; State to Federal; other conversions

(a) Federal savings and loan to State thrift institution. Any Federally-chartered savings and loan association

may convert to a savings bank or savings and loan association organized under the laws of this State in the following manner:

(1) At an annual meeting, or a special meeting called for that purpose, 51 percent or more of the members or shareholders present and voting must approve of such conversion. Notice of such meeting shall be mailed to each member or shareholder not less than 20 nor more than 30 days prior to such meeting at his last known address as shown on the books of the institution.

(2) At the meeting required in (1), the members or shareholders shall vote upon directors who shall be the directors of the State-chartered institution after conversion becomes effective, and also vote upon corporators if the State-chartered institution is to be a mutual savings bank.

(3) Within 10 days after such meeting, a copy of the minutes of such meeting, verified by affidavit of the clerk or secretary, together with such additional information as the superintendent may require, shall be submitted to the superintendent for his approval or disapproval in writing of the proposed conversion pursuant to the procedures and requirements of section 252. The verified copies of the minutes of the meeting when so filed shall be presumptive evidence of the holding and action of such meeting.

(4) Copies of the minutes of such meeting of members or shareholders, verified by affidavit of the clerk or secretary, and copies of the superintendent's written approval shall be mailed to the Federal Home Loan Bank Board within 10 days after such approval.

(5) Following compliance with all applicable requirements of Federal law, if any, the directors elected pursuant to (2) shall execute 3 copies of the articles of incorporation upon which the superintendent shall endorse his approval and such articles shall be filed in accordance with the provisions of sections 302 or 312. Each director shall sign and acknowledge the articles, as a subscriber thereto; and

(6) So far as applicable, the provisions of this Title shall apply to the resulting institution.

(b) National bank to trust company. A national bank authorized to do business in this State may convert to a trust company organized under the laws of this State in the following manner:

(1) Such national bank must comply with the conditions and limitations imposed by the laws of the United States governing such conversion;

(2) Such converting national bank may apply for a State charter by filing with the superintendent an application signed by its president and by a majority of its board of directors setting forth the corporate action taken in compliance with the laws of the United States in (1), and affixing thereto the articles of incorporation, approved by the stockholders, governing the bank as a trust company;

(3) The superintendent shall approve or disapprove such conversion to a State-chartered trust company pursuant to the procedures and requirements of section 241.

(4) The rights of dissenting stockholders of a converting national bank shall be governed by Federal law.

(c) Thrift institution to Federal savings and loan. A savings bank or savings and loan association organized under the laws of this State may convert to a Federal institution pursuant to section 5 of the Home Owners' Loan Act of 1933, as amended, in the following manner:

(1) At an annual meeting, or a special meeting called for that purpose, 51 percent or more of the votes of members, corporators or shareholders present and voting must approve such conversion. Notice of such meeting shall be mailed to each member, corporator or shareholder not less than 20 nor more than 30 days prior to such meeting at his last known address as shown on the books of the institution.

(2) Within 10 days after such meeting, a copy of the minutes of such meeting, verified by affidavit of the clerk or secretary, shall be filed with the superintendent, and when so filed shall be presumptive evidence of the holding and action of such meeting.

(3) Within 3 months after the date of such meeting, the institution shall take such action in the manner prescribed and authorized by the laws of the United States as shall make it a Federal savings and loan association.

(4) Upon the grant to an institution of a charter by the Federal Home Loan Bank Board, the institution receiving such charter shall cease to be an institution organized pursuant to this Title and shall no longer be subject to supervision and regulation by the superintendent, except as authorized under Federal law or regulations or as otherwise provided herein.

(5) A copy of the charter issued to such Federal savings and loan association by the Federal Home Loan Bank Board, or a certificate showing the organization of such institution as a Federal association, certified by the secretary or assistant secretary of the Federal Home Loan Bank, shall be filed immediately with the superintendent and with the Secretary of State. The superintendent shall notify the Secretary of State that such conversion has been effected.

(d) Trust company to national bank.

(1) Nothing contained in the laws of this State shall restrict the right of a trust company to convert to a national bank. The action to be taken by a converting trust company and its rights and liabilities and those of its stockholders shall be the same as those prescribed for national banks at the time of such action by the laws of the United States and not by the laws of this State, except that a vote of the holders of 2/3 of each class of voting stock of a trust company shall be required for the conversion, and that, on conversion to a national bank, the rights of dissenting stockholders shall be those specified in section 341(e);

(2) Upon completion of the conversion, the trust company shall certify, in writing, that such conversion has been completed under applicable Federal law. At such time as the superintendent receives such writing, the franchise of the converting trust company shall terminate automatically, which fact shall be certified by the superintendent to the Secretary of State.

(e) Other conversions. The superintendent is authorized to promulgate regulations permitting the conversion of savings banks from State to Federal charter, and from Federal to State charter at such time as Federally-chartered savings banks are authorized to do so pursuant to the laws of the United States.

See §§1961, 1962, 1221, 1222

§332. Change in type of institutional charter

With the superintendent's approval, and in accordance with the provisions of this section and regulations promulgated hereunder, a financial institution may convert its charter to do business as one type of financial institution to another, in the following manner:

(a) Adoption of a plan. The institution's board of directors shall adopt by a 2/3 vote of all members, a conversion plan which shall include:

(1) The name of the institution and its location;

(2) The type of the institution which the resulting institution is to be;

(3) A method and schedule for terminating any non-conforming activities which would result from such conversion;

(4) A statement of the competitive impact resulting from such conversion, including the loss of particular financial services in the market area resulting from such conversion;

(5) A statement that the conversion is subject to approval of the superintendent and the institution's stockholders, corporators or members; and

(6) Such additional information as the superintendent may require, pursuant to regulations or otherwise.

(b) Superintendent's approval. Following approval by the board of directors, the conversion plan, together with a certified copy of the authorizing resolution adopted by the board of directors, shall be forwarded to the superintendent for his approval or disapproval pursuant to section 241. If the superintendent disapproves the plan, the reasons for such disapproval shall be stated in writing and furnished by the superintendent to the institution, which shall be given an opportunity to amend the plan to obviate such reasons for disapproval.

(c) Vote of stockholders, corporators or members. The conversion plan, as approved by the superintendent, shall be submitted to the stockholders, corporators, or members for their approval at an annual meeting, or at a special meeting, called for that purpose, pursuant to the requirements of sections 341(c) or 342(c). Approval shall require a 2/3 vote of those entitled to vote thereon.

(d) Executed plan; certificate; and effective date.

(1) Upon approval by the stockholders, corporators or members of the institution, the president or vice president and the clerk or secretary shall submit the executed conversion plan to the superintendent, together with all necessary amendments to the institution's articles of incorporation and bylaws, each certified by such officers;

(2) The superintendent shall file one copy of the items set forth in (1) with the Secretary of State for record, and issue to the resulting institution a certificate specifying the name of the converting institution and the name of the resulting institution. Such certificate shall be conclusive evidence of the conversion, and of the correctness of all proceedings relating thereto, in all courts and places. The certificate may be filed in any office for the recording of deeds to evidence the new name in which property of the converting institution is to be held.

(3) Unless a later date is specified in the conversion plan, the action shall become effective upon the issuance of the certificate in (2), and the former charter of the converting institution shall terminate automatically.

(e) Effect of disapproval. If the superintendent disapproves the plan, and any modifications thereof, the plan shall not be resubmitted for at least one year following the date of such disapproval.

See Recommendation 17

§333. Conversion: mutual to stock ownership

With the superintendent's approval, and in accordance with the provisions of this section and regulations promulgated hereunder, a mutually-owned financial institution may convert to a stock financial institution of the same type charter; provided that such conversion is conducted in a manner equitable to all parties thereto, in the following manner:

(a) Adoption of a plan. The institution's board of directors shall adopt, by a 2/3 vote of all members of the board, a conversion plan, the provisions of which shall comply with the requirements set forth in regulations promulgated by the superintendent and which shall insure that the interests of depositors and account holders in the net worth of the institution are equitably provided for and that such conversion will not have an adverse impact on the stability of any other financial institution.

(b) Superintendent's approval.

(1) Following approval by the board of directors, the conversion plan, together with a certified copy of the authorizing resolution adopted by the board of directors, shall be forwarded to the superintendent for his approval or disapproval pursuant to section 241, and the requirements set forth in regulations promulgated under this section.

(2) Public hearings on the conversion plan may be conducted by the superintendent in the community where the institution has its principal office. Such hearings shall be for the purpose of determining whether the plan provides fair and equitable treatment to the depositors and to the institution. Hearings pursuant to this paragraph may be combined with any hearing on the application that may be scheduled pursuant to section 252.

(3) If the superintendent disapproves the plan, the reasons for such disapproval shall be stated in writing and furnished to the institution, which shall be given the opportunity to obviate such reasons for disapproval.

(c) Account holder approval. The conversion plan, as approved by the superintendent, shall be submitted to the members or eligible account holders of the institution for their approval at an annual meeting or at a special meeting called for that purpose, pursuant to the requirements of section 342(c), with such information in the notice as the superintendent may prescribe. Approval shall require a 2/3 vote of all those entitled to vote thereon, and voting at such meeting may be in person, by mail or by proxy. The voting rights of account holders in a mutually-owned savings bank or trust company shall be same as granted to members of a mutually-owned savings and loan association.

(d) Executed plan, certificate and effective date. Upon approval of the plan of conversion by the members or eligible account holders, the institution shall comply with section 332(d) for the conversion to become effective; provided that the superintendent shall determine as a condition precedent to issuing a certificate that all applicable requirements of Federal law, if any, have been complied with by the converting institution.

(e) Effect of disapproval. If the superintendent disapproves the plan and any modifications thereof, the plan shall not be resubmitted for at least one year following the date of such disapproval.

(f) Superintendent's authority. In implementing this section, the superintendent is hereby authorized to issue any and all rules, regulations and orders necessary to insure that conversion to a stock institution shall be conducted in a fair and equitable manner, so as to insure the safety and soundness of the institution and the protection of the institution's net worth including, but not limited to, restrictions on the transfer or disposition of shares in the resulting institution, or mergers or consolidations by the resulting institution.

See Recommendation 18

§334. Conversion: stock to mutual ownership

With the superintendent's approval, and in accordance with the provisions of this section and regulations promulgated hereunder, a stock financial institution may convert to a mutually-owned financial institution of the same type charter; provided that such conversion is conducted in a manner fair and equitable to its depositors and stockholders, in the following manner:

(a) Procedure. The method of adopting and approving a plan for a conversion under this section shall be as set forth in section 332, except that a conversion plan authorized pursuant to this section shall make adequate provision for the surplus account of the resulting institution.

(b) Dissenting stockholders. The rights of any stockholders not voting for the plan of conversion shall be as set forth in section 341(e).

See Recommendation 18

§335. Change of institutional name

(a) Any financial institution may change its corporate name to another name; provided that such name is not in violation of the restrictions contained in sections 561, 662 and 700; and provided further that the name selected is not the same or deceptively similar to the name of any other financial institution authorized to do business in this State.

(b) A change in the name of a financial institution shall require that the following requirements be complied with:

(1) An affirmative vote of its stockholders, corporators or members to amend the name set forth in the institution's articles of incorporation;

(2) Duplicate certificates containing the former name and new name, and a copy of the vote to change names signed by the president and clerk or secretary, shall be submitted to the superintendent within 10 days of the vote for his approval or disapproval in accordance with section 241; and

(3) The superintendent shall notify forthwith the institution of his decision; and, if he approves the name change, he shall file a certificate with the Secretary of State indicating his approval.

(c) The name change shall become effective from the time of filing with the Secretary of State, or upon a date subsequent thereto if such date is fixed in the certificate, and shall become the corporate title of the institution thereafter.

(d) The adoption of a new name shall not affect the validity of any acts, transactions or documents wherein the former name was used. All deeds, mortgages, contracts, judgments, proceedings and records made, received, entered into, carried on, or done by an institution before adoption of the change of name, but wherein the institution is called by the name so subsequently adopted, shall be as valid as if the institution was called therein by the name set forth in its original articles of incorporation.

See §§1598, 441-8

§336. Effect of conversion or amendment; nonconforming activities

The financial institution resulting from any action taken pursuant to the authority granted in this chapter shall be subject to the provisions of sections 345, 346 and 347 and shall comply with the requirements thereof and regulations promulgated thereunder.

CHAPTER 34

MERGERS, CONSOLIDATIONS AND ACQUISITIONS

Sec.

§340. Applicability of chapter; fees

(a) The provisions of this chapter shall govern mergers and consolidations undertaken by savings banks, trust companies, savings and loan associations and industrial banks subject to the laws of this State, and shall set forth the procedures for, and limitations on, the acquisition of all or substantially all of the assets of such institutions by another institution.

(b) No application made pursuant to section 352, 353, 354 and 355, shall be deemed complete by the superintendent unless accompanied by an application fee of $1,500, payable to the Treasurer of State, to be credited and used as provided in section 214.

§341. Mergers and consolidations: stock institutions

Any two or more stock financial institutions authorized to do business in this State may merge or consolidate into one stock financial institution organized under the laws of this State in accordance with the procedures, and subject to the conditions and limitations, set forth in this section.

(a) Adoption of a plan. The board of directors of each participating institution shall adopt, by a majority vote, a plan of merger or consolidation on such terms as shall be mutually agreed upon. The plan shall include:

(1) The names of the participating institutions and their locations;

(2) The type of institution which the resulting institution is to be;

(3) With respect to the resulting institution: the name and location of its principal office and other branch offices, facilities and agencies; the name, address and occupation of each director who is to serve until the next annual meeting of the stockholders; the name and address of each officer; the amount of capital, the number of shares and the par value of each share; whether preferred stock is to be issued and the amount, terms and preferences relating thereto; and the amendments required to its articles of incorporation and bylaws;

(4) Provisions governing the manner of converting the shares of the participating institutions into shares of the resulting institution;

(5) A statement that the agreement is subject to approval of the superintendent and of the stockholders of each participating institution;

(6) Provisions governing the manner of disposing of shares of the resulting institution not taken by dissenting stockholders of the participating institutions; and

(7) The anticipated effective date of such merger or consolidation; and such other provisions and details as may be necessary to perfect the merger or consolidation, or as may be required by the superintendent.

(b) Superintendent's approval. Following approval by the board of directors of each participating institution, the plan of merger or consolidation, together with certified copies of the authorizing resolutions adopted by the board of directors of each participating institution, shall be forwarded

to the superintendent for his approval or disapproval pursuant to section 241. If the superintendent disapproves the plan, the reasons for such disapproval shall be stated in writing and furnished by the superintendent to the participating institutions, which shall be given an opportunity to amend the plan to obviate such reasons for disapproval.

(c) Vote of stockholders. The plan of merger or consolidation, as approved by the superintendent, shall be submitted to the stockholders of the participating institutions for their approval at an annual meeting, or at a special meeting called for that purpose, in the following manner:

(1) Notice of such meeting shall be published at least once a week for 4 successive weeks in a newspaper or newspapers of general circulation in the county or counties where each participating institution's principal office is located, or in such other newspapers as the superintendent may designate; and the notice shall be mailed to each stockholder of record at his address on the books of each participating institution at least 15 days prior to the date of said meeting. Notice required hereunder shall state that dissenting stockholders will be entitled to payment only for the value of those shares which are voted against approval of the plan. Published notice may be waived if written waivers are received from the holders of 2/3 of the outstanding voting shares of each class stock of each participating institution.

(2) A 2/3 vote of the outstanding voting shares of each class of each participating institution shall be necessary to approve the plan of merger or consolidation at the meeting called for such purpose, which vote shall constitute the adoption of the articles of incorporation and bylaws of the resulting institution, including amendments, contained in the merger or consolidation agreement.

(d) Executed plan; certificate; and effective date.

(1) Upon approval by the stockholders of the participating institutions, the president or vice president and the clerk or secretary of each institution shall submit the executed plan of

merger or consolidation to the superintendent, together with the resolutions of the stockholders approving it, each certified by such officers.

(2) Upon receipt of the items in (1) and evidence that the participating institutions have complied with all applicable Federal law and regulations, the superintendent shall issue to the resulting institution a certificate specifying the name of the resulting institution and shall file a copy of the certificate and the certified votes with the Secretary of State for record. Such certificate shall be conclusive evidence of the merger or consolidation and of the correctness of all proceedings relating thereto in all courts and places. The certificate may be filed in any office for the recording of deeds to evidence the new name in which property of the participating institutions is to be held.

(3) Unless a later date is specified in the certificate, the merger or consolidation shall be effective upon issuance of the certificate in (2), and the franchises of all but the resulting institution shall terminate automatically.

(e) Rights of dissenting stockholders.

(1) The owners of shares of a financial institution which were voted against a merger or consolidation shall be entitled to receive their value in cash if and when the merger or consolidation becomes effective, upon written demand made to the resulting institution at any time within 30 days after the effective date of the merger or consolidation, accompanied by surrender of the stock certificates.

(2) The value of such shares shall be determined, as of the date of the stockholders' meeting approving the merger or consolidation, by 3 appraisers, one to be selected by the owners of 2/3 of the shares involved, one by the board of directors of the resulting institution and the third by the 2 so chosen. The valuation agreed upon by any 2 appraisers shall govern. If the appraisal is not completed within 90 days after the merger or consolidation becomes effective, the superintendent shall cause an appraisal to be made. The expenses of appraisal shall be paid by the resulting institution.

(3) The resulting institution may fix an amount which it considers to be not more than the fair market value of the shares of the participating institution at the time of the stockholders' meeting approving the merger or consolidation, which amount it will pay to dissenting stockholders of that institution entitled to payment in cash. Acceptance of such offer by a dissenting stockholder shall terminate the rights granted to the accepting stockholder in paragraphs A and B.

(4) The amount due under the appraisal or the accepted offer shall constitute a debt of the resulting institution.

(f) Federally-chartered institution as a participant. If one of the parties to a merger or consolidation is a Federally-chartered stock institution, the participants shall comply with all requirements imposed by Federal law for such merger or consolidation in addition to the requirements contained in this Title, and shall provide evidence of such compliance to the superintendent as a condition precedent to the issuance of a certificate in (d)(2) relating to such merger or consolidation. The rights of dissenting stockholders in such Federally-chartered institutions shall be governed by Federal law.

(g) Merger of trust company with national bank.

(1) Nothing contained in the law of this State shall restrict the right of a trust company to merge or consolidate into a resulting national bank. The action to be taken by the trust company and its rights and liabilities and those of its stockholders shall be the same as those prescribed for national banks at the time of the action by the law of the United States and not by the law of this State, except that a vote of the holders of 2/3 of each class of voting stock of a trust company shall be required for such merger or consolidation and that on merger or consolidation into a national bank, the rights of dissenting stockholders shall be those specified in Federal law for national banks.

(2) Upon the completion of the merger or consolidation, the franchise of the participating trust company shall terminate automatically.

See §§1225, 1226, 1227, 1230, 1222, 1221, 1223

§342. Mergers and consolidations: mutual institutions

Any two or more mutually-owned financial institutions authorized to do business in this State may merge or consolidate into one mutually-owned financial institution organized under the laws of this State in accordance with the procedures, and subject to the conditions and limitations, set forth in this section

(a) Adoption of a plan. The board of directors of each participating institution shall adopt, by a majority vote, a plan of merger or consolidation on such terms as shall be mutually agreed upon. The plan shall include:

(1) The names of the participating institutions and their locations;

(2) The type of institution which the resulting institution is to be;

(3) With respect to the resulting institution: the name and location of its principal office and other branch offices, facilities and agencies; the name, address and occupation of each director who is to serve until the next annual meeting of the corporators or members; and the name and address of each officer;

(4) The mode for carrying the plan into effect, and the proposed effective date;

(5) The manner of converting deposits, accounts, or shares of such institutions into deposits, accounts or shares of the resulting institution;

(6) A statement that the agreement is subject to the approval of the superintendent and of the corporators or members of each participating institution; and

(7) Such other provisions and details as may be necessary to perfect the merger or consolidation, or as may be required by the superintendent.

(b) Superintendent's approval. Following approval by the board of directors of each participating institution, the plan of merger or consolidation, together with certified copies of the authorizing resolutions adopted by the board of directors of each participating institution, shall be forwarded to the superintendent for his approval or disapproval pursuant to section 241. If the superintendent disapproves the plan, the reasons for such disapproval shall be stated in writing and furnished by the superintendent to the participating institutions, which shall be given an opportunity to amend the plan to obviate such reasons for disapproval.

(c) Vote of corporators or members. The plan of merger or consolidation, as approved by the superintendent, shall be submitted to the corporators or members of the participating institutions for their approval at an annual meeting, or at a special meeting called for that purpose, in the following manner:

(1) Notice of such meeting shall be published at least once a week for 4 successive weeks in a newspaper or newspapers of general circulation in the county or counties where each participating institution's principal office is located, or in such other newspapers as the superintendent may designate, the last of which notices shall be published at least 15 days prior to the meeting. Copies of said notice shall be mailed to each corporator or member at his last known address, and shall also be posted in a conspicuous place in all offices of the participating institutions, at least 15 days prior to the meeting.

(2) A 2/3 vote of the corporators or members of each participating institution shall be necessary to approve the plan of merger or consolidation presented by its board of directors. Any corporator or member not present at such meeting in person shall be regarded as having affirmatively voted for the merger or consolidation, and shall be counted among the required 2/3 vote; provided that notice of this fact shall have been contained in the published and mailed notices; and provided further that such notice was mailed to the corporator or member as required in (1).

(3) The vote of the corporators or members shall constitute the adoption of the articles of incorporation and bylaws of the resulting institution, including amendments, contained in the merger or consolidation agreement.

(d) Executed plan; certificate; and effective date.

(1) Upon approval by the corporators or members of the participating institutions, the president or vice president and the clerk or secretary of each institution shall submit the executed plan of merger of consolidation to the superintendent, together with the resolutions of the corporators or members approving it, each certified by such officers.

(2) Upon receipt of the items in (1) and evidence that the participating institutions have complied with all applicable Federal law and regulations, the superintendent shall issue to the resulting institution a certificate specifying the name of each participating institution and the name of the resulting institution; and shall file a copy of the certificate and certified votes with the Secretary of State for record. Such certificate shall be conclusive evidence of the merger or consolidation, and of the correctness of all proceedings relating thereto in all courts and places. The certificate may be filed in any office for the recording of deeds to evidence the new name in which property of the participating institutions is to be held.

(3) Unless a later date is specified in the certificate, the merger or consolidation shall be effective upon issuance of the certificate in (2), and the franchises of all but the resulting institution shall terminate automatically.

(e) Federally-chartered institution as a participant. If one of the parties to a merger or consolidation is a Federally-chartered mutual institution, the participants shall comply with all requirements imposed by Federal law for such merger or consolidation and provide evidence of such compliance to the superintendent as a condition precedent to the issuance of a certificate in (d)(2) relating to such merger or consolidation.

See §§731, 732, 1871, 1872

§343. Mergers and consolidations: stock and mutual institutions

(a) Resulting mutual institution. A stock financial institution may be merged into or consolidated with a mutually-owned financial institution organized under the laws of this State, in accordance with the procedures and subject to the conditions and limitations set forth below:

(1) The acquiring mutually-owned institution shall comply with the requirements of subsections (a) through (c) of section 342, except that the plan of merger or consolidation shall state the amount which such institution will pay for the shares of stock in the stock institution to be acquired and such additional information as the superintendent may deem appropriate.

(2) After approval of such plan by both the superintendent and the corporators or members of the acquiring institution, the board of directors of such institution shall cause to be published, as it deems necessary, a tender offer to the shareholders of the stock institution to be acquired. Such tender offer shall contain the following information:

(A) The price to be paid for the shares;

(B) A statement that the acquiring institution seeks to acquire a minimum of 90 percent of the outstanding shares of each class of stock of the institution to be acquired;

(C) The period during which the offer shall remain open;

(D) A statement that in the event 90 percent of such shares are not tendered to the acquiring institution, all shares previously tendered shall be returned to the parties who tendered such shares;

(E) A provision that if the price offered for any shares is increased, all parties who previously tendered shares of the same class shall receive such increase;

(F) A provision requiring the escrow of such shares until the acquiring institution's purchase is consummated or the tender offer is terminated;

(G) A provision for withdrawal of tendered shares until 60 days prior to the close of the offer; and

(H) Such other provisions as the superintendent may deem necessary to insure the fairness of the transaction.

(3) If the institution receives 90 percent or more of the stock of each class in the institution to be acquired as a result of its tender offer, it shall upon the close of the offer merge the institution so acquired into itself, pursuant to section 904 of Title 13-A of the laws of this State.

(4) Upon completion of the merger in (3), the acquiring institution shall comply with the requirements set forth in subsections (d) and (e) of section 342, and all other requirements of this chapter applicable to such mergers and consolidations.

(b) Resulting stock institution. Except as the superintendent may authorize pursuant to section 356(g), a mutually-owned institution shall not merge into a stock institution organized under the laws of this State without prior compliance with section 333 and all regulations promulgated thereunder.

§344. Acquisition of assets; assumption of liabilities

A financial institution organized under the laws of this State may acquire all or substantially all of the assets of, or assume the liabilities of, any other financial institution authorized to do business in this State, in accordance with the procedures and subject to the conditions and limitations set forth below:

(a) Adoption of a plan. The board of directors of the acquiring or assuming institution and the board of directors of the transferring institution shall adopt, by majority vote, a plan for such acquisition, assumption or sale on such terms as shall be mutually agreed upon. The plan shall include:

(1) The names and types of the institutions involved;

(2) A statement setting forth the material terms of the proposed acquisition, assumption or sale, including the plan for disposition of all assets and liabilities not subject to the plan;

(3) A statement of the plan governing liquidation of the transferring institution pursuant to section 353 upon execution of the plan, with said liquidation being a required provision of the plan;

(4) A statement that the entire transaction is subject to written approval of the superintendent, and approval of the transferring institution's stockholders, corporators, or members;

(5) If a stock institution is the transferring institution and the proposed sale is not to be for cash, a clear and concise statement that stockholders of said institution voting against the proposed sale are entitled to rights set forth in section 341(e); and

(6) The proposed effective date of such acquisition, assumption or sale and such other information and provisions as may be necessary to execute the transaction, or as may be required by the superintendent.

(b) Superintendent's approval. Following approval by the respective board of directors of each participating institution, the plan, together with certified copies of the authorizing resolutions adopted by the board of directors of each participating institution, shall be forwarded to the superintendent for his approval or disapproval pursuant to section 241. If the superintendent disapproves the plan, the reasons for such disapproval shall be stated in writing and furnished by the superintendent to the participating institutions, which shall be given an opportunity to amend the plan to obviate such reasons for disapproval.

(c) Vote of stockholders, corporators or members. The plan of acquisition, assumption or sale shall be presented to the stockholders, corporators, or members of the transferring institution for their approval. If the transferring institution is a stock institution, such approval shall be obtained in accordance with section 341(c); and, if the transferring institution is a mutual institution, approval shall be obtained in accordance with section 342(c).

(d) Executed plan; certificate; and effective date.

(1) If the plan is approved by the stockholders, corporators or members of the transferring institution, the president or vice president and the clerk or secretary of such institution shall submit the executed plan to the superintendent, together with a copy of the resolution of the stockholders, corporators, or members approving it, each certified by such officers.

(2) Upon receipt of the items set forth in (1) and evidence that the participating institutions have complied with all applicable Federal law and regulations, the superintendent shall certify, in writing, to the participants that the plan has been approved and is in compliance with the provisions of this Title.

(3) Notwithstanding approval of the stockholders, corporators or members, or certification by the superintendent, the transferring institution's board of directors may, in its discretion, abandon such a transaction without further action or approval by stockholders, corporators, or members, subject to the rights of third parties under any contracts relating thereto.

(e) Federally-chartered institution as a participant. If one of the participants in a transaction under this section is a Federally-chartered institution, all participants shall comply with such requirements as may be imposed by Federal law for such an acquisition, assumption or sale and provide evidence of such compliance to the superintendent as a condition precedent to the issuance of a certificate in (d)(2) relating to such acquistion, assumption or sale; provided that if the purchasing or assuming institution is a Federally-chartered institution, no approval of the superintendent shall be required.

(f) Stock institution acquiring mutual institution. Except as the Superior Court may authorize pursuant to section 356(g), a mutual institution shall not sell all or substantially all of its assets to a stock institution without prior compliance with section 333 and all regulations promulgated thereunder.

(g) Other sections. Sections 346 and 347 shall apply to acquisitions, assumptions and sales made pursuant to this section.

§345. Book value of assets

Upon the effective date of a merger, consolidation or conversion pursuant to this Title, no asset shall be carried on the books of the resulting institution at a valuation higher than that at which it was carried on the books of a participating or converting institution at the time of its last examination by a State or Federal examiner before the effective date of such merger, consolidation or conversion, without written approval from the superintendent.

See §1232

§346. Effect of merger, consolidation, conversion or acquisition

From and after the effective date of a merger, consolidation, conversion or acquisition, the resulting institution may conduct business in accordance with the terms of the plan as approved; provided that:

(a) Even though the charter of any participating or converting institution has been terminated, the resulting institution shall be deemed to be a continuation of the entity of the participating or converting institution such that all property of the participating or converting institution, including rights, titles and interests in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest and asset of any conceivable value or benefit then existing, or pertaining to it, or which would inure to it, shall immediately by act of law and without any conveyance or transfer and without further act or deed be vested in and continue to be that property of the resulting institution; and such institution shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held and enjoyed by the participating or converting institution and such resulting institution as of the time of the taking effect of such merger, consolidation, conversion or acquisition shall continue to have and succeed to all the rights, obligations and relations of the participating or converting institution.

(b) All pending actions and other judicial proceedings to which the participating or converting institution is a party shall not be deemed to have been abated or to have been discontinued by reason of such merger, consolidation, conversion or acquisition, but may be prosecuted to final judgment, order or decree in the same manner as if such action had not been taken; and such institution resulting from such merger, consolidation, conversion or acquisition may continue such action in its new name, and any judgment, order or decree may be rendered for or against it which might have been rendered for or against the participating or converting institution theretofore involved in such judicial proceedings.

(c) The resulting institution in a merger, consolidation, conversion or acquisition shall be liable for all obligations of the participating or converting institution which existed prior to such action, and the action taken shall not prejudice the right of a creditor of the participating or converting institution to have his debts paid out of the assets thereof, nor shall such creditor be deprived of, or prejudiced in, any action against the officers, directors, corporators or members of a participating or converting institution for any neglect or misconduct.

(d) In the event of an acquisition of assets pursuant to section 344, the provisions of (a) through (c) of this section shall apply only to the assets acquired and the liabilities assumed by the resulting institution; provided that sufficient assets to satisfy all liabilities not assumed by the resulting institution are retained by the transferring institution.

See §§1961, 1962, 731, 732

§347. Nonconforming activities: cessation

If, as a result of a merger, consolidation, conversion or acquisition pursuant to this Title, the resulting institution is to be of a different type or of a different character than

any one or all of the participating or converting institutions, such resulting institution shall be subject to the following conditions and limitations:

(a) The plan of merger, consolidation, conversion or acquisition shall set forth the method and schedule for terminating those activities not permitted by the laws of this State for the resulting institution, but which were authorized for any of the participating or converting institutions.

(b) The plan of merger, consolidation, conversion or acquisition shall state that from the effective date of such action, the resulting institution shall not engage in any nonconforming activities, except to the extent necessary to fulfill obligations existing prior to merger, consolidation, conversion or acquisiton, pursuant to (d).

(c) If, as a result of such merger, consolidation, conversion or acquisition, the resulting institution exceeds any lending, investment or other limitations imposed by this Title, it shall conform to such limitations within such period of time as shall be established by the superintendent.

(d) The superintendent may, as a condition to such merger, consolidation, conversion or acquisition, require a nonconforming activity to be divested in accordance with such additional requirements as he may deem appropriate under the circumstances.

See §1231

CHAPTER 35

CONSERVATION, LIQUIDATION AND INSOLVENCY

Sec.

§350. Applicability of chapter

The provisions of this chapter shall apply to savings banks, trust companies, savings and loan associations, and industrial banks organized under the laws of this State.

§351. Payments restrained to preserve assets or protect depositors

(a) Whenever it may become necessary to preserve the assets or protect depositors in a financial institution, the Superior Court may, on application by the superintendent, the directors of such institution, or 3/4 of its depositors, members or stockholders, after due notice, issue an order restraining the institution from paying out its funds or any portion thereof or from declaring or paying any dividends or deposits for such time as the court shall deem advisable.

(b) The court may at any time revoke or modify the original order and authorize the institution to pay dividends upon its deposits, or pay any portion of its deposits to such as may desire to withdraw the same or make any other or further order that may be necessary to protect the depositors or members of such institution.

(c) Nothing in this section shall be construed to take away the rights of the parties in interest to proceed under sections 354 or 355(a).

See §698

§352. Conservation of assets

(a) Appointment of a conservator.

(1) Whenever, in the judgment of the superintendent, or in the judgment of a majority of the board of directors, corporators, stockholders or members of a financial institution, it shall be necessary to conserve or revalue the assets of said institution or to reorganize and put into sound condition such institution for the benefit of depositors, creditors or the public, the Superior Court shall, on a complaint by any of the aforementioned parties setting forth the facts, appoint a time for the examination of the affairs of said institution and cause notice thereof to be given to all interested parties in such manner as may be prescribed. In such examination there shall be included the liability of stockholders to assessment with respect to all institutions organized pursuant to chapter 30.

(2) Following an examination pursuant to (1), the court may appoint one or more conservators for such financial institution who shall endeavor promptly to remedy the situation complained of in the petition for his appointment; require such bond as it may deem proper; and issue such decrees as may be necessary to carry out the provisions of this chapter. The superintendent, his deputy, or another person, including the corporation insuring the institution's accounts pursuant to section 411, may be appointed by the court as conservator, and a certified copy of the order of the court making such appointment shall be evidence thereof.

(3) A conservator, in addition to the powers set forth elsewhere in this chapter and such power and authority as may be expressed in an order of the court, shall have all the rights, powers, privileges and authority possessed by the officers, board of directors, corporators, members and stockholders of the institution, including the power to remove any officer or director; provided that the order of removal is approved in writing by the court.

(4) If the superintendent or his deputy is appointed conservator, he shall receive no additional compensation, but his reasonable and necessary expenses as conservator shall be paid to him by the institution. If another person is so appointed, then the compensation of the conservator, as determined by the court, shall be paid by said institution.

(5) In the event that the Federal corporation insuring the institution's deposits or accounts pursuant to section 411 accepts an appointment as conservator, such corporation shall acquire both legal and equitable title to all assets, rights or claims and to all real or personal property of the institution, to the extent necessary for such corporation to perform its duties as conservator or as may be necessary under applicable Federal law to effectuate such appointment. If such corporation pays or makes available for payment the insured deposit liabilities of an institution by reason of actions taken pursuant to this section, such corporation shall be subrogated to the rights of all the depositors of the institution, whether or not it has become conservator thereof, in the same manner and to the same extent as it would be subrogated in the conservation of a financial institution operating under a Federal charter and insured by such corporation.

(b) Segregation of assets.

(1) The conservator appointed in (a) may order that there be segregated and set aside investments which in his judgment are of slow or doubtful value or which, on account of unusual conditions, cannot be converted into cash at their full fair value.

(2) Pursuant to the conservator's segregation order, the clerk or treasurer of such financial institution shall withdraw all investments so segregated, and the then book value thereof, from his list of investments and book values of assets as shown on the books of the institution.

(3) The clerk or treasurer of said institution shall make and keep a complete and accurate list of the investments segregated as provided for in (1) at said book values, and such other records in respect thereof as the superintendent or conservator may from time to time prescribe.

(c) Deposit reductions and shareholder assessments. Simultaneously with the actions taken pursuant to (b) of this section, the following actions shall be taken by the institution:

(1) In the case of a mutually-owned financial institution, each and every deposit then standing therein shall be reduced so as to divide pro rata among the depositors or members the aggregate book value of all investments segregated in (b). After such order has been delivered, no depositor or member shall demand or receive on account of such deposit more than the amount remaining to the credit thereof after said reduction has been made, and dividends shall be computed only on the amounts so remaining, except as otherwise provided in this section. The treasurer or clerk of the institution shall withdraw the sum of any deposit reductions from his statements of the amounts due to depositors or members, and enter the reduction on individual passbooks as they are presented. The investments and amounts due depositors or members then remaining with changes thereafter made in a usual course of business shall be deemed to be the investments held by and deposits standing in said institution for the purpose of taxation and all other purposes, except as elsewhere provided in this chapter.

(2) In the case of a stock institution, if the liabilities of such institution, excluding the outstanding capital stock, exceed its assets after making assessment on the stockholders pursuant to section 304(d), the deficit, after making due allowances for priorities, shall be divided pro rata among the depositors and each account shall be charged with its proportionate share thereof. The depositor will be entitled to

withdraw the amount of his account as thus fixed and determined in such amounts and at such times as the court directs. Such institution shall issue to each depositor a certificate showing the amount of the deficit charged to his account. The certificate shall be negotiable and shall bear no interest. No dividend or profit shall be made thereafter in liquidation of common stock until such certificates have been paid in full with interest compounded at the rate of 3 percent per year; otherwise, said certificates shall not be deemed to be a liability of the institution.

(3) Nothing contained in this subsection shall be construed as permitting a court, conservator, or the superintendent to reduce deposits or accounts insured by a Federal corporation pursuant to section 411, without written approval of such corporation.

(d) Sale of segregated investments. Investments segregated in (b) may be sold or exchanged for other securities or investments by a vote of the directors, and shall be sold when so ordered by the conservator, the superintendent or the court. All moneys received from such sales or as income from such securities or investments shall be entered into a special account and shall be deemed to be held by the institution for the benefit of the depositors or members whose deposits were so reduced in (c), to be disposed of as provided in (e) of this section.

(e) Repayment of reduction.

(1) The directors of a financial institution from time to time may, and when so directed by the superintendent shall, declare pro rata dividends of moneys received as provided in (d) among the depositors or members whose deposits were reduced, payable to those who would then have been entitled to receive the sums so deducted if said sums had continued to be included in the deposits so reduced, and payable as other dividends are paid.

(2) Any depositor or member whose deposit was reduced, any holder of a certificate issued pursuant to (c)(2), the superintendent, or the institution shall be entitled to file a complaint with the court, after one year from the date of said reduction, for an order of distribution whenever the condition of the institution, taking into account the rights of creditors and of preferred stockholders, if any, warrants such payment.

(3) The court may, at any time and in its discretion, declare any such repayment to be final.

(f) Conservator continuing business. The conservator may continue to operate such financial institution in accordance with the following conditions and limitations:

(1) All depositors, members, and stockholders of such institution shall continue to make payments to the institution in accordance with the terms and conditions of their contracts.

(2) The conservator may set aside and make available for withdrawal by depositors or members and payment to other creditors on a ratable basis such amounts as in the opinion of the court may safely be used for such purpose.

(3) The conservator shall have the power to receive deposits, but deposits so received shall not be subject to any limitation as to payment or withdrawal, and shall be segregated and shall not be used to liquidate any indebtedness of the institution existing at the time that the conservator was appointed or any subsequent indebtedness incurred for the purpose of liquidating the indebtedness of such institution existing at the time the conservator was appointed. Such deposits, received while the institution is in the hands of a conservator, shall be kept in cash or invested in direct obligations of the United States, or deposited with another financial institution pursuant to section 403.

(g) Definition of investments. The words "investment" or "investments", as used in this section, shall be deemed to include all assets of the institution, whether real or personal.

(h) Termination of conservatorship.

(1) The powers and duties of the conservator appointed pursuant to (a) shall cease and such conservatorship shall be terminated at such time as the court may order; provided that any interested party may petition the court for termination of such conservatorship 6 months following appointment of the conservator.

(2) Upon termination of the conservatorship, the institution shall be returned to its board of directors and thereafter shall be managed and operated as if no conservator had been appointed,

or a receiver shall be appointed as hereinafter provided in section 354. A certified copy of any court order discharging such conservator and returning said institution to its board directors shall be sufficient evidence thereof.

(i) Conservator's liability limited. The conservator or the superintendent shall be under no liability whatsoever for anything done or omitted to be done under this chapter; provided that his action or omission to act be in good faith.

(j) Appeal.

(1) Any person affected adversely by anything done or omitted to be done under this section may appeal by filing a complaint in the Superior Court seeking an order annulling, altering or modifying such act, or enjoining the performance thereof, or requiring action to be taken under any provision of this section.

(2) Such appeal shall be filed within 10 days after such person shall have had notice of such act or failure to act, in person or by publication of a certificate thereof signed by the conservator, the superintendent or by the president, treasurer or clerk of the institution in a newspaper of general circulation in the county where such institution has its principal office.

(3) Notwithstanding the period established in (2) for taking such an appeal, no such appeal shall be permitted to be taken more than 30 days after the order of the court provided for in (h) hereof.

See §§1171, 2032, 651, 652, 1172, 1173, 654, 655, 659, 697, 1174, 657, 658

§353. Voluntary liquidation

(a) Whenever, in the opinion of the superintendent and a majority of the directors of any financial institution, or in the opinion of 3/4 of its depositors, members or stockholders, it is inexpedient for any reason for said institution to continue the further prosecution of its business, the directors may join with the superin-

tendent in an application to the Superior Court for liquidation of the affairs of said institution, or such depositors, members or stockholders may file such application.

(b) Upon presentation of such application, the court may issue an injunction wholly or partially restraining further payment of deposits until further order of court.

(c) If, after notice and hearing on said application, such court is of the opinion that it is inexpedient for said institution to continue the further prosecution of its business, it may make such orders and decrees as seem proper for liquidation of the institution's affairs, distribution of its assets, protection of its depositors, members and stockholders, if any, and the welfare of the community.

(d) Further proceedings on such application may be in the manner provided for liquidation of an insolvent financial institution, or the court may authorize the president and directors of such institution then in office to liquidate its affairs under direction of the court.

(e) Section 351 is made applicable to such applications.

See §§691, 2031

§354. Insolvency liquidation

(a) Injunction against insolvent institution.

(1) If, upon examination of any financial institution, the superintendent is of the opinion that it is insolvent or that its condition is such as to render its further proceedings hazardous to the public or to those having funds in its custody, he may apply to the Superior Court for an injunction to restrain such institution, in whole or in part, from proceeding further with its business until a hearing can be had.

(2) The court may forthwith issue process for such purpose and, after a full hearing of the institution, may dissolve or modify the injunction or make the same permanent, and make such orders or decrees to suspend, restrain, or prohibit the further prosecution of the institution's business as may be necessary according to the course of proceedings in which equitable relief is sought.

(3) The court may appoint one or more receivers or trustees to take possession of the institution's property and effects, subject to such rules and orders as are from time to time prescribed by the Superior Court.

(b) Appointment of a receiver.

(1) The person appointed by the Superior Court as a receiver may be the superintendent, his deputy, or such other person, including the corporation insuring the institution's accounts pursuant to section 411, as the court may choose; and a certified copy of the court order making such appointment shall be evidence thereof. A receiver shall have the power and authority provided in this Title, and such other powers and authority as may be expressed in the order of the court.

(2) If the superintendent or his deputy is appointed receiver, he shall receive no additional compensation, but his reasonable and necessary expenses as a receiver shall be paid to him by the institution. If another person is so appointed, then the compensation of the receiver, as determined by the court, shall be paid from the assets of said institution.

(3) In the event that the Federal corporation insuring the institution's deposits or accounts pursuant to section 411 accepts an appointment as receiver, such corporation shall acquire both legal and equitable title to all assets, rights or claims and to all real or personal property of the institution, to the extent necessary for such corporation to perform its duties as receiver or as may be necessary under applicable Federal law to effectuate such appointment.

(c) Specific powers of receivers. Upon taking possession of the property and business of a financial institution under this section, the receiver shall have the following powers:

(1) He may collect moneys due to the institution and do all acts necessary to conserve its assets and business, and shall proceed to liquidate its affairs.

(2) He shall collect all debts due and claims belonging to the institution and, upon the order or decree of the Superior Court, may sell or compound all bad or doubtful debts.

(3) On order or decree of the court, the receiver may sell, for cash or other consideration or as provided by law, all or any part of the real and personal property of the institution on such terms as the court shall direct.

(4) In the name of such institution, the receiver may take a mortgage on such real property from a bona fide purchaser to secure the whole or part of the purchase price, upon such terms and for such periods as the court shall direct.

(5) On order or decree of the court, the receiver may borrow money and issue evidence of indebtedness therefor. To secure the repayment of same, the receiver may mortgage, pledge, transfer in trust or hypothecate any or all of the property of such institution, whether real, personal or mixed, superior to any charge thereon for expenses of liquidation.

(6) The receiver shall have all rights and powers given to conservators by section 352.

(7) Whenever the Federal corporation insuring the institution's deposits or accounts pursuant to section 411 pays or makes available for payment the insured deposit liabilities of an institution, such corporation shall become subrogated to the rights of all depositors of the institution, whether or not it has become receiver thereof, in the same manner and to the same extent as it would be subrogated in the liquidation of a financial institution operating under a Federal charter and insured by such corporation.

(d) Reports of receiver; legal advice.

(1) In May of each year, and at such other time as the superintendent requires, the receiver shall make a report to the superintendent of the progress made in the settlement of affairs of said institution. The superintendent shall

give reasonable notice of the time and furnish blanks for such report.

(2) The Attorney General shall render such legal services in connection with such receivership as the superintendent or deputy superintendent may require, without additional compensation.

(e) Distribution of assets: stock institution. In the case of an insolvent stock institution, the distribution of assets after payment of all claims of creditors and depositors shall be made under order of the court by the receiver except as provided in (c)(7).

(f) Distribution of assets: mutually-owned institution.

(1) After a decree of sequestration is issued pursuant to (a), the court shall appoint commissioners who shall give such notice of the times and places of their sessions as the court orders.

(2) Such commissioners shall receive and decide upon all claims against the institution and make reports to the court, at such time as the court orders, of the claims allowed and disallowed and of the amount due each depositor, which shall be subject to such objections and amendments as the court may permit. On application of any interested party, the court may extend the time for hearing claims by the commissioners, as justice may require.

(3) When the amount due each person is established, the court shall cause others than depositors to be paid in full, and after deducting expenses of receivership and liquidation, the balance shall be ratably distributed among depositors except as provided in (c)(7).

(4) Except as provided in section 355(b), the owners of all classes of shares and accounts of such mutual institution shall have the same status as to the assets of the institution; and, in the case of liquidation, one class of shares or accounts shall not have preference over any other class of shares or accounts.

(g) Attachments dissolved; actions discontinued; judgment recovered added to claims.

(1) All attachments of property of the financial institution shall be dissolved by the decree of sequestration, and all pending actions dis-

continued and the claim presented to the commissioners or to the court, unless the Superior Court, upon application of the plaintiff within 3 months from said decree, passes an order allowing the receiver to be made a party to the action and that the claim may be prosecuted to a final judgment.

(2) After a decree of sequestration, no action shall be maintained on any claim against the financial institution unless the court, on application therefor within the time named, authorizes it; and, in such cases, the receiver shall be made a party.

(3) Any judgment recovered shall be added to the claims against the institution.

(h) Untimely claims barred. All claims not presented to the commissioners or the court within the time fixed by the court, or litigated as provided, are forever barred.

(i) Unknown depositors.

(1) When it appears upon the settlement of the account of the receiver of a financial institution pursuant to this section that there is remaining in his hands funds due depositors who cannot be found and whose heirs or legal representatives are unknown, the Superior Court may order such unclaimed funds to be paid into the State Treasury, together with a statement giving the names of such depositors and the amount due each, the same to be held in trust for 20 years thereafter, to be paid to the person or persons having established a lawful right thereto when made to appear upon proper proceedings instituted in the court ordering such disposition of such unclaimed funds.

(2) Whenever any such unclaimed fund is in an amount less than $200, the claimant thereto may make application to the Superior Court which may, after identification satisfactory to it, issue an order under the seal of the Superior Court directing the Treasurer of State to pay said fund to the claimant therein named; and said fund shall be paid as directed.

(3) Any income earned on such funds shall be paid into the General Fund as compensation for administration.

See §§692-697, 2033, 2035

§355. Mutually-owned institutions: insolvency; bylaws

(a) Reduction of deposit accounts: elimination of insolvency.

(1) Whenever a mutually-owned financial institution is insolvent by reason of loss on, or depreciation in the value of, any of its assets without the fault of its directors, the Superior Court shall, on complaint in writing of a majority of the directors and the superintendent setting forth the facts, appoint a time for the examination of the affairs of such institution, and cause notice thereof to be given to all interested parties, in such manner as may be prescribed.

(2) If upon examination of its assets and liabilities and from other evidence, the court is satisfied of the facts set forth in said complaint and that the institution has not exceeded its powers nor failed to comply with any of the rules, restrictions and conditions provided by law, the court may, if deemed in the interest of the depositors or members and the public, by proper decree, reduce the deposit account of each depositor or member so as to divide such loss pro rata among the depositors or members thereby rendering the institution solvent so that its further proceedings will not be hazardous to the public or those having and placing funds in its custody. The depositors or members shall not draw from such institution a larger sum than is thus fixed by the court, except as authorized.

(3) The institution's clerk or treasurer shall keep an accurate account of all sums received for such assets of the institution held by it at the time of filing such complaint. If a larger sum is realized therefrom than the value estimated by the court, he shall, at such times as the court prescribes, render to the court a true account thereof, and thereupon the court, after due notice to all

interested parties, shall declare a pro rata dividend of such excess among the depositors or members at the time of filing the complaint. Such dividend may be declared by the court whenever the court deems it for the interest of the depositors or members and the public, whether all or only a portion of such assets has been reduced to money. Any such dividend may at any time, in the discretion of the court, be declared to be a final one.

(4) No deposit shall be paid or received by such institution after the filing of the complaint until the decree of the court reducing the deposits. If the complaint is denied, the superintendent shall proceed to wind up the affairs of the institution as provided in section 354.

(5) Nothing contained in this subsection shall be construed as permitting the court to reduce deposits or accounts insured by a Federal corporation pursuant to section 411 without the prior written approval of such corporation.

(b) Optional bylaw. A mutually-owned financial institution may provide in its bylaws that in the event of voluntary or involuntary liquidation, dissolution or winding up of the affairs of the institution, or in the event of any other situation in which the priority of savings accounts or deposits is in controversy, all savings accounts and deposits shall, to the extent of their withdrawal value, have the same priority as the claims of general creditors of the institution not having priority over other general creditors of the institution, other than any priority arising or resulting from consensual subordination; and, in addition, that savings accounts and deposits shall have the right to share in the remaining assets of the institution; provided that such bylaw shall not contravene the regulations of the Federal corporation insuring the deposits or accounts of the institution pursuant to section 411.

See §§697, 2036

§356. Additional authority in conservation and liquidation

(a) Participation by government units. The Treasurer of State, by written direction of the Governor and Council and with approval of a Justice of the Supreme Judicial Court; the treasurer of any county, by written direction of the county commissioners of such county and with approval of a Justice of the Supreme Judicial Court; the treasurer of any city, town or village corporation or other municipal corporation, including any district organized by law for any public purpose, by written direction, in case of cities of the city government thereof, in case of towns of the selectmen thereof, in case of village corporations of the assessors, overseers or other similar governing board thereof, in case of other municipal corporations and districts of their respective trustees, commissioners, directors or other similar governing board, and in each case with approval of a Justice of the Supreme Judicial Court, may for and in behalf and in the name of his respective governmental unit participate in any plan of reorganization, management or continuation of any financial institution organized under the laws of this State or of the United States in which his governmental unit has moneys on deposit including trust funds, sinking funds and all other forms of deposit, or may enter into any agreement concerning such deposits for the public benefit and for the benefit of the institution and its depositors or members.

(b) Injunctions restraining proceedings. Whenever proceedings are instituted under any provisions of this chapter, injunctions may be issued restraining all persons from proceeding against said financial institution described in sections 352 and 354 until final decree, including trustee processes.

(c) Dissolution of attachments. The Superior Court may dissolve all attachments on the property of a financial institution made within 4 months before the filing of the complaint or application in sections 352 and 354; cancel leases, contracts and all other claims as in receivership proceedings; discontinue all actions pending against said financial institution; and fix the rights of said claimants, and adjudicate and fix the time and mode of payment of all claims, accounts and deposits having priority.

(d) Court protection of creditors rights. The relief sought in the complaint described in sections 352 or 354 filed by the superintendent shall not be granted without a hearing. It shall not be granted if objected to in writing by the time and demand depositors of said financial institution who are credited with the majority in amount of the time and demand deposits. The court shall appoint immediately upon the filing of such complaint a conservator with authority to act pending a hearing. Any depositor may be permitted to intervene as party plaintiff in any complaint filed hereunder and may be heard thereon. Any depositor or party in interest may present in writing a plan of reorganization; and the superintendent may file his plan of reorganization. The depositors who are credited with the majority in amount of the time and demand deposits may present in writing to said court a plan or reorganization and if said plan is the most feasible, it shall be adopted. Final decree of reorganization shall be made by said court after submission of plans and hearing thereon. The right of appeal is granted.

(e) Preferred stock. Any stock institution described in sections 352 or 354 may issue preferred stock as provided in section 303 on a petition filed for that purpose only.

(f) Power of courts and superintendent.

(1) The court may do all other and further things necessary to carry out the terms and provisions of this chapter.

(2) All powers conferred under this chapter on the superintendent are in addition to the powers otherwise conferred upon him by law.

(3) The superintendent shall have the power to promulgate regulations for the purpose of carrying out provisions of this chapter; provided that such regulations are not inconsistent herewith.

(g) Court-ordered mergers. The court may order the merger or consolidation of any financial institution that is within sections 352 or 354, with any other financial institution, State or Federal, with the consent of such other financial institution; and may prescribe the mode or procedure for said merger or consolidation, and the terms and conditions thereof.

(h) Expenses. All expenses of the superintendent or his assistants incurred in carrying out this chapter shall be paid out of the assets of the financial institution in connection with which such expenses were incurred.

See §§1053, 1175, 1176, 1178, 1183, 1179, 1182, 1184

PART 4

POWERS AND DUTIES OF
FINANCIAL INSTITUTIONS

CHAPTER 40

GENERAL POWERS

§400. Applicability of chapter

The provisions of this chapter shall set forth the powers granted to all financial institutions organized pursuant to chapters 30 and 31. Additional powers granted to savings banks, trust companies and savings and loan associations shall be as provided in Parts 5, 6 and 7, respectively.

§401. General corporate powers

A financial institution organized under chapter 30 or 31 shall have the power:

(a) To exist perpetually;

(b) To sue and be sued in its corporate name, and to participate in any judicial, administrative, arbitrative or other proceeding;

(c) To adopt and alter a corporate seal, and to use the same or a facsimile thereof;

(d) To elect, appoint or hire officers, agents and employees of the institution, and to define their duties and fix their compensation;

(e) To make and alter bylaws not inconsistent with its articles of incorporation or with the laws of this State for the administration and regulation of the affairs of the institution;

(f) To cease its corporate activities and surrender its corporate franchise;

(g) To make donations irrespective of corporate benefit for any charitable, scientific, educational or welfare purpose, as a majority of the directors shall deem appropriate;

(h) To establish and carry out pension plans, pension trusts, profit sharing plans, stock option plans, stock bonus plans and other incentive plans for any or all of its directors, officers, and employees; and to pay pensions and similar payments to its directors, officers or employees, and their families;

(i) To reimburse and indemnify directors, officers, and employees as provided in section 719 of Title 13-A of the laws of this State; and

(j) To join any cooperative league or other entity organized for the purpose of protecting and promoting the welfare of institutions of the same type and their depositors; and to comply with all conditions of membership therein.

See §§443, 1632, 1663, 991; Title 13-A §202

§402. Borrowing

In addition to any general borrowing powers specified elsewhere in this Title, a financial institution may obtain funds in the manner set forth below:

(a) Capital notes or debentures.

(1) Subject to the prior written approval of the superintendent, a financial institution may issue and sell its capital notes or debentures, which shall be subordinate to the claims of its depositors, shareholders and its other creditors.

(2) Capital notes or debentures of a financial institution may, with the approval of the superintendent, be issued, sold, or pledged to any officer, board, commission, corporation, or body created by the Federal Government. Such capital notes or debentures may be made subordinate to the claims or interests of its depositors, or other creditors or shareholders, or prior to the claims or interests of its depositors or shareholders, in and to the institution's surplus.

(3) Capital notes or debentures may also be issued, with the prior approval of the superintendent, pursuant to Federal housing legislation.

(b) Mortgage-backed securities. A financial institution shall have power to issue, or participate with other persons in the issuance of, mortgage-backed securities which are guaranteed as to principal and interest by the United States or by an agency of the United States, and are backed in whole or in part by mortgages held by the institution; and, in connection therewith, may enter into and perform such agreements relating to the custody and servicing of such mortgages and to other matters as may be required pursuant to applicable regulations of any such agency.

See §§443, 445

§403. Deposits in financial institutions

A financial institution may, except to the extent limitations may be imposed by Parts 5, 6 or 7, deposit its funds

in any other financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

See §§443, 1834

§404. Participation in public agencies

To the extent authorized by the superintendent pursuant to regulations, a financial institution shall have the power to participate in a public agency hereafter created under the laws of this State or of the United States, the purpose of which is to afford advantages or safeguards to financial institutions, depositors or shareholders, and to comply with all requirements and conditions imposed upon such participants.

See §6-6

§405. Powers of Federally-chartered institutions

To the extent authorized by the superintendent pursuant to regulations, a financial institution shall have the power to engage in any activity which financial institutions chartered by or otherwise subject to the jurisdiction of the Federal Government may hereafter be authorized to engage in by Federal legislation or regulations issued pursuant to such legislation.

See §6-6

CHAPTER 41

DEPOSITS IN GENERAL

Sec.

§410. Applicability of chapter; tax exemption

(a) The sections of this chapter shall govern deposits or accounts in financial institutions subject to the provisions of this Title and shall govern, when applicable, the deposit powers of specific types of institutions set forth in chapters 51, 61 or 71.

(b) All interest-bearing deposits or accounts of whatever type in financial institutions subject to the provisions of this Title are exempt from municipal taxation to said institution, and to the depositors or members of such institution.

See §224

§411. Insurance of deposits or accounts

(a) Requirement. A financial institution organized under the laws of this State shall take such action as may be necessary to have its deposits or accounts insured by either the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance

Corporation, or by the successors to such Federal corporations. The institution may have its deposits or accounts insured by whichever corporation insures the deposits or accounts of that type of institution.

(b) Transition period.

(1) A financial institution which is not insured by one of the corporations specified in (a) on the effective date of this section shall make application for such insurance coverage with the appropriate corporation within 6 months of said effective date. Such institution, within one week of making such application, shall file with the superintendent a certified copy of the resolution adopted by its board, corporators or members authorizing the application for insurance of deposits or accounts.

(2) Any institution making application for insurance pursuant to (1) shall have 2 years from the effective date of this section to comply with all Federal requirements relating thereto. Within one week of receipt of the notice of acceptance or rejection by one of the Federal corporations described in (a), the institution shall file a statement of such acceptance or rejection with the superintendent.

(c) Failure to obtain insurance. If an institution shall fail to obtain insurance within the time set forth in (b), or if its application shall have been rejected, the superintendent may exercise any and all powers granted to him by this Title, notwithstanding the solvency of such institution.

(d) Applicable law. A financial institution which has its deposits or accounts insured pursuant to this section shall comply with all statutes and regulations governing the insurance of deposits or accounts by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation; provided that nothing contained in this section shall be construed as repealing, modifying or impairing any powers, duties, rights or responsibilities under the provisions of this Title of the superintendent or of the institution so insured.

See §1931; Recommendation 12

§412. Demand deposits

A financial institution subject to the provisions of Parts 5, 6 or 7 shall have the power to accept demand deposits, subject to the conditions and limitations set forth in this section.

(a) Personal demand deposits.

(1) Except as otherwise provided in (b) of this section, a financial institution may accept only personal demand deposits, as defined in section 120, after the effective date of this section, subject to such regulations as may be promulgated by the superintendent.

(2) A signed statement by the depositor stating that the depositor shall use a demand deposit accepted by the institution pursuant to this subsection for only nonbusiness purposes or that the deposit is made by a non-profit organization operated primarily for religious, philanthropic, charitable, fraternal or other similar purposes, shall relieve the institution from liability for violation of this subsection; provided that if the institution acquires knowledge in the ordinary course of its business that the depositor is using such deposit for business or commerci purposes, the institution shall promptly give notice thereof to the depositor. If the depositor fails to terminate such business use within 30 days of said notice, the institution shall promptly close out such deposit by returning to the depositor the balance of funds in the account, less any service charges.

(b) General demand deposit powers.

(1) A financial institution subject to the provisions of Part 6 of this Title may accept general demand deposits from individuals and others, subject to such regulations as may be promulgated by the superintendent.

(2) A financial institution subject to Parts 5 or 7 shall accept only those deposits authorized in (a) of this section until such time as there exists either equality among financial institutions as to interest rates payable on deposits, or Federally-chartered thrift institutions in this State are authorized to have general check-

ing deposit or demand deposit privileges and, in the event of the latter, only to the extent such Federal institutions are so authorized. In either event, the offering of such deposits shall be permitted only to the extent authorized pursuant to regulations promulgated by the superintendent.

(c) Liquidity reserves. Liquidity reserve requirements for deposits authorized pursuant to (a) and (b) of this section shall be as established in sections 503, 602 or 703.

(d) Applicable law. Deposits accepted pursuant to this section and negotiable or transferable instruments drawn on such deposits shall be subject to Title 11 of the laws of this State, except as otherwise provided in this Title or pursuant to regulations promulgated by the superintendent.

See Recommendations 9, 11

§413. NOW accounts

(a) No financial institution shall allow the owner of a deposit or account on which interest or dividends are paid to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties, except that such withdrawals may be made at such time as any financial institution located in the State of Maine is authorized to do so under Federal law and then only to the extent permitted pursuant to regulations promulgated by the superintendent. Such regulations shall be designed to maintain competitive equality among all financial institutions authorized to permit such withdrawals.

(b) Liquidity reserve requirements for deposits authorized pursuant to (a) of this section shall be as established in sections 503, 602 or 703.

(c) Deposits accepted pursuant to this section and negotiable or transferable instruments drawn on such deposits shall be subject to Title 11 of the laws of this State, except as otherwise provided in this Title or pursuant to regulations promulgated by the superintendent.

See Recommendations 10, 11

§414. Computation of dividends and interest on deposits and accounts

(a) Period. A financial institution may determine the date or dividend periods on which dividends or interest may be legally paid to depositors having deposits or accounts in the institution.

(b) Amount on deposit. Dividends or interest shall be payable on the amount on deposit in the institution for each month of the period chosen pursuant to (a), except as provided in (d) of this section.

(c) Computation of amount on deposit. To determine the amount on deposit for each month of the period chosen in (a), the institution may elect to treat deposits made on other than the first day of the month as having been made either on the first day of the month, the last day of the month, or on the date of deposit; provided that all withdrawals shall be deducted first, as follows:

(1) First day crediting. If the institution elects to credit deposits during the month as having been made on the first day thereof, it shall deduct all withdrawals from said deposits and any excess of withdrawals shall be deducted from the depositor's opening monthly balance in determining the amount on deposit for that month.

(2) Last day crediting. If the institution elects to credit deposits during the month on the last day thereof, it shall deduct all withdrawals from said deposits and any excess of withdrawals shall be deducted from the depositor's opening monthly balance in determining the amount on deposit for that month.

(3) Date of deposit crediting. If the institution elects to credit deposits during the month as having been made on the date of deposit, it shall deduct all withdrawals from said deposits and any deposits remaining after such deduction shall earn dividends or interest from the date on which such deposits were made to the end of the month. If withdrawals exceed deposits during the month, any excess of withdrawals shall be deducted from the depositor's opening balance in determining the amount on deposit for that month.

At the end of the period chosen in (a), the institution shall pay such interest or dividends on the amounts on deposit, as shall be required by its agreement with the depositor.

(d) Other methods of computation. An institution may elect to compute interest from the date of deposit to the date of withdrawal. Any other method of computation may be used if such method approximates one of the methods set forth in this section; provided that prior to the use of such other method, the institution shall obtain written approval of the superintendent.

(e) Grace periods. An institution may elect to treat all deposits made before the 10th day of the month as having been made on the first day thereof, and all deposits made at other times during the month may be treated as provided in (c). Withdrawals made during the last 3 days of the period established in (a) may be considered as having been made on the first day of the next suceeding period.

(f) Compounding of dividends and interest. Nothing herein shall be construed as requiring an institution to compound interest or dividends paid on deposits or accounts other than at the end of the period established in (a); provided that an institution may compound interest at such earlier times as it may elect.

§415. Savings deposits or accounts: written notice of withdrawal

(a) A financial institution may at any time, by resolution of its board of directors, require written notice by a savings depositor not to exceed 90 days prior to the repayment of deposits or accounts, or may require similar notice before repaying deposits in excess of $50, or certain classes of savings deposits or accounts.

(b) In the event such notice is required, no such deposit or account shall be due or payable during the required period after the notice shall have been given. If not withdrawn within 15 days after the expiration of the required period following notice, such deposit or account shall not be due and payable under that notice.

(c) The institution may receive any deposit or deposits before expiration of the required period, subject to such regulations as may be imposed by the superintendent.

(d) The written notice of withdrawal required pursuant to this section shall not constitute a withdrawal from such deposit or account for purposes of section 414 until the amounts noticed shall have been actually withdrawn by the

depositor giving such written notice, and interest shall be earned thereon for the period prior to actual withdrawal as provided in section 414.

(e) In the case of a savings and loan association, notice required pursuant to this section shall not constitute an application for withdrawal as defined in section 714.

See §§512, 1095, 1702

§416. Deposit or account transactions

(a) Minor's deposits or accounts. Money deposited in the name of a minor is his property, and a financial institution may, in the discretion of the officer making or authorizing the payment, pay the same to such minor, to his order or to his guardian. The receipt of such minor, or his guardian, for any such payment is a valid release and shall discharge the institution.

(b) Fiduciary deposits or accounts.

(1) Whenever a deposit is made in trust, the name and address of the person for whom it is made, or the purpose for which the trust is created, shall be disclosed in writing to the institution, and the deposit shall be credited to the depositor as trustee for such person or purpose.

(2) Whenever a deposit is made by a person designated on the records of a financial institution as a fiduciary, it shall be conclusively presumed, in all dealings between the institution and the fiduciary or any other persons with respect to such deposit, that a fiduciary relationship in fact exists, and that such fiduciary has power to invest money in the institution, and to withdraw the same or any part thereof, and to transfer his deposit to any other person. The receipt or acquittance of such fiduciary shall fully exonerate and discharge the institution from all liability to any person having any interest in such deposit and the institution shall not be under any duty to see to the proper application of the trust property.

(3) Upon the death or disability of any fiduciary, the value of such deposit or account may be paid, at the option of the institution, and in the absence of notice of the existence and terms of a trust, either to the executor, administrator, conservator or guardian of such fiduciary, or to any substituted fiduciary, or to the person, if any, who is designated on the records of the institution as the beneficiary of such deposit, if of the age of 15 years or upwards, or to the guardian or parent or person standing in loci parentis to such person if under the age of 15 years. The receipt or acquittance of any such person shall fully exonerate and discharge the institution from all liability to any person having any interest in such deposit, and the institution shall not be under any duty to see to the proper application of the trust property.

(c) Fiduciary transactions by check.

(1) If a check drawn or endorsed by a fiduciary is received by a drawee financial institution, including a check for payment in cash or for the personal credit of such fiduciary, such institution may assume, without inquiry, that the fiduciary has acted within the scope of his authority.

(2) As used in this subsection, "fiduciary" includes a trustee under any trust, express or implied, resulting or constructive, or an executor, administrator, guardian, conservator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer or any other person acting in a fiduciary capacity for any person, trust or estate. "Person" includes 2 or more persons having a common interest. For the purposes of this subsection, such institution may rely upon, though it need not require, a writing certified by the clerk or secretary of a corporation as to such officer.

(3) Nothing contained in this subsection shall be deemed to modify or otherwise affect section 1-201, subsection (25) or section 3-304 of Title 11 of the laws of this State, nor to relieve such

institution from any liability imposed upon it by law to the extent of any payment or amount which such institution may receive for its benefit from any of such checks or funds represented thereby.

(d) Joint deposits or accounts.

(1) To whom paid. When a deposit has been made or shall hereafter be made in any financial institution authorized to do business in this State in the names of 2 or more persons, payable to either, or payable to either or the survivor, such deposit, or any part thereof, or the interest or dividends thereon may be paid to any or either of said persons, whether the other or others be living or not, or to the legal representative of the survivor of said persons, and the receipt or acquittance of the persons to whom said payment is so made shall be a valid and sufficient release and discharge to such financial institution for any payment so made.

(2) Property of survivor. All such deposits or accounts, whenever opened or issued, payable to either or the survivor who are husband and wife, up to, but not exceeding an aggregate value of $10,000, and payable to either or 2 or more or the survivor of those persons who are parent and child, grandparent and grandchild, or brothers and sisters, up to, but not exceeding an aggregate value of $5,000 including interest and dividends, in the name of the same persons in all financial institutions within this State shall, in the absence of fraud or undue influence, upon the death of any such persons, become the sole and absolute property of the survivor or survivors, even though the intention of all or any one of the parties be in whole or in part testamentary and though a technical joint tenancy be not in law or fact created. The said amount which so becomes the sole and absolute property of the survivor or survivors pursuant to this subsection shall be exclusive of, and in addition to, any amounts to which such survivor or survivors are entitled under common law as contributors to such deposit or deposits, account or accounts, share or shares.

(e) Pledge of joint deposits or accounts. The pledge of all or part of a deposit or account in joint tenancy signed by that person or those persons who are authorized in writing to make withdrawals from the deposit or account shall, unless the terms of the deposit or account provide specifically to the contrary, be a valid pledge and transfer of that part of the deposit or account pledged, and shall not operate to sever or terminate the joint and survivorship ownership of all or any part of the deposit or account.

(f) Power of attorney over deposits or accounts. Any financial institution may continue to recognize the authority of an attorney authorized in writing to manage or to make withdrawals either in whole or in part from the account of a depositor until it receives written notice of the revocation of his authority. For the purposes of this subsection, written notice of the death or adjudication of incompetency of such depositor shall constitute written notice of revocation of the authority of his attorney. No institution shall be liable for damages by reason of any payment made pursuant to this subsection.

(g) Transfer of deposit or account. A depositor may transfer, absolutely or conditionally, his deposit or account to any other person, subject to any provisions affecting such deposit or account pursuant to this chapter or Parts 5, 6 or 7, by a written assignment in a form approved by the institution, accompanied by delivery of the evidence of the deposit or account. Evidence of the deposit or account shall mean the membership certificate, share certificate, account book, passbook, or any other evidence of the deposit or account which may have been issued in connection with such deposit or account. Every such transfer of a deposit or account shall be deemed to include the deposit or account and the evidence of the deposit or account issued in connection therewith. No such absolute transfer shall be effective against an institution until such written assignment and the accompanying evidence of the deposit or account shall be delivered to the institution with a request that it complete such transfer upon its records. No such conditional transfer shall be effective against an institution unless and until it actually receives notice thereof in writing.

(h) Payment of decedent's deposit or account. If any depositor shall die leaving in a financial institution a deposit or account on which the balance due him shall not exceed $1,000, and no executor of his will or administrator of his estate shall be appointed, the institution may pay the balance of such deposit or account to the surviving spouse, next of kin, funeral director or other preferred creditor or creditors who may appear to be entitled thereto. For any payment so made, the institution shall not be held liable to the decedent's executor or administrator thereafter appointed unless the payment shall have been made within 6 months after the decedent's death and an action to recover the amount shall have been commenced within one year after the date of payment.

(i) Lost evidences of deposits or accounts.

(1) If a financial institution receives a notice in writing that an account book or passbook or other evidence of a deposit or account issued by said institution is lost, together with a request that a duplicate evidence of deposit or account be issued, such notice and request being signed by the appropriate person or persons as provided, the institution, at the expiration of a period of 10 days from the receipt of such notice if the missing evidence is not sooner presented, may issue a duplicate evidence of deposit or account to the person or persons signing said notice and request, and the delivery of such duplicate evidence shall relieve the institution from all liability on account of the missing original evidence of deposit or account. Such notice and request shall be signed in the following manner:

(A) Single depositor. If the evidence of deposit or account was issued to a single depositor, then by him, an officer in the event of a corporation, or by a guardian, conservator, trustee, executor or administrator;

(B) Two or more depositors. If the evidence of deposit or account was issued to 2 or more depositors, then by all such depositors then surviving, or by the last survivor of such depositors; provided that a guardian or conservator shall sign for any of the foregoing persons respecting whom he has been appointed.

made within 30 days after the date of such order; and at any subsequent period, provided the institution has not received actual notice of the death of the drawer.

See §§513, 1704, 1707, 514, 46, 515, 1710, 1708, 1711, 516, 1705, 517, 517-A, 1712, 42, 518

§417. Inactive deposits or accounts

(a) The treasurer or designated officer of every financial institution authorized to do business in this State shall annually, on or before the first day of November, cause to be published in a newspaper of general circulation in the county where the institution's principal office is located, or in such other newspapers as the superintendent may designate, a statement containing the name, the amount standing to his credit, the last known place of residence or post office address, and the fact of death, if known, of every depositor in said institution who shall not have made a deposit therein or withdrawn therefrom any part of his deposit or account, or any part of the dividends thereon, for a period of more than 20 years next preceding. This section shall not apply to the deposits or accounts of persons known to the treasurer to be living, to a deposit or account the deposit book of which has during such period been brought into the bank to be verified or to have the dividends added, nor to a deposit or account which, with the accumulations thereon, shall be less than $50.

(b) Such publication, in addition to the above required information, shall state that 2 years after the date of publication, all moneys in such inactive deposits or accounts shall be paid into the State Treasury. Said treasurer shall transmit a copy of such statement to the superintendent, to be placed on file in his office for public inspection. Any treasurer neglecting to comply with this section shall be punished by a fine of $50.

(c) Two years after the date of such publication, all moneys in such inactive deposits or accounts shall be deemed presumptively abandoned and shall be paid into the State Treasury and credited to the General Fund for the use of the State; and there shall be paid into the State Treasury, and so credited at the end of

tion's principal office is located, or in such other newspapers as the superintendent may designate, a statement containing the name, the amount standing to his credit, the last known place of residence or post office address, and the fact of death, if known, of every depositor in said institution who shall not have made a deposit therein or withdrawn therefrom any part of his deposit or account, or any part of the dividends thereon, for a period of more than 20 years next preceding. This section shall not apply to the deposits or accounts of persons known to the treasurer to be living, to a deposit or account the deposit book of which has during such period been brought into the bank to be verified or to have the dividends added, nor to a deposit or account which, with the accumulations thereon, shall be less than $50.

(b) Such publication, in addition to the above required information, shall state that 2 years after the date of publication, all moneys in such inactive deposits or accounts shall be paid into the State Treasury. Said treasurer shall transmit a copy of such statement to the superintendent, to be placed on file in his office for public inspection. Any treasurer willfully neglecting to comply with this section shall be punished by a fine of $50.

(c) Two years after the date of such publication, all moneys in such inactive deposits or accounts shall be deemed presumptively abandoned and shall be paid into the State Treasury and credited to the General Fund for the use of the State.

(d) All deposits and accounts which are inactive as set forth in subsection 1, which, with accumulations thereon, are less than $50, shall be paid into the State Treasury and credited to the General Fund for use of the State at the end of 20 years after the last deposit.

(e) After payment into the State Treasury of such deposits or accounts, no civil action shall be maintained in any court in this State by any depositor or his heirs, successors or assigns against any institution making such payments. Thereafter, any lawful claimants may petition the Governor and Council for payment of such moneys to the claimants. In his petition, the claimant shall state fully the facts showing the basis of his right, title and interest in such deposit. The Governor and Council, after a hearing,

shall determine who are lawful claimants and shall authorize payment by the Treasurer of State from the General Fund to such claimants. A deposit or account shall not be deemed to be inactive under the provisions of this section during such period that Bureau of Internal Revenue Form 1099, or its equivalent, is sent to the depositor and is not returned by the post office department.

See §§519, 1048, 1754, 226

§418. Withdrawal of deposits or accounts: authority of superintendent

Except as expressly limited by other provisions of this Title, the superintendent may authorize a financial institution or institutions, by regulation, to permit the withdrawal of funds on deposit by depositors, account holders or members of said institution or institutions, in such manner or by such method as the superintendent may deem appropriate under the circumstances.

CHAPTER 42

LOANS IN GENERAL

Sec.

§420. Applicability of chapter

The sections of this chapter shall govern loans made by financial institutions subject to the provisions of this Title and shall be in addition to the lending powers set forth in chapters 52, 62, and 72 for each type of institution.

§421. Interest on loans

(a) Interest absent a writing. The maximum legal rate of interest on a loan made by a financial institution, in the absence of an agreement in writing establishing a different rate, shall be 6 percent per year.

(b) Interest: noncommercial or consumer loans.

(1) The legal rate of interest, whether set forth in writing or not, on a noncommercial or consumer loan, shall be established in accordance with and subject to the limitations set forth in Title 9-A of the laws of this State.

(2) A loan made by a financial institution which is secured by a first mortgage on real estate shall not be within the interest limitations set forth in Title 9-A of the laws of this State; provided that the security interest in real estate is not given for purpose of evading said Title 9-A.

See §§228, 229; Title 9-A §1.202-7

§422. Fair credit extension

Every financial institution authorized to do business in this State shall be subject to and shall comply with the provisions of sections 4595 through 4598 of Title 5 of the laws of this State providing for the fair extension of credit by lenders in this State.

§423. Loan participations and purchases

(a) Authority. In addition to a loan made directly by a single financial institution to a borrower, an institution may:

(1) Participate with another lender or other lenders in the making of a loan;

(2) Purchase a participation interest in loans made by another lender or other lenders;

(3) Purchase loans from another lender or other lenders, or a holder of such loan; and

(4) Sell any loan or participation interest held by it to another lender or other lenders;

provided that such loan qualifies as a loan which the financial institution is otherwise authorized to make pursuant to this Title; and provided further that such participation, purchase, or sale is authorized by any Federal law or regulation which may be applicable to such institution by reason of sections 411, 551, 552, 603 or 752.

(b) Servicing of participations, purchases and sales. If a financial institution enters into any agreement or transaction with respect to a loan as authorized in (a), it may service said loan itself or agree to the servicing thereof by any other participating, selling, or purchasing lender or lenders.

(c) Treatment of participations and purchases. If a financial institution participates in the making of a loan or purchases a participation interest in a loan, only the amount of the institution's participation interest shall be counted toward any percentage of deposits or other limitations set forth in this Title. Any loan purchased by a financial institution shall be counted toward such limitations in an amount equal to the purchase price thereof.

(d) Treatment of sales of participations and loans. If a financial institution sells a loan or a participation interest in a loan, the amount of the loan or participation so sold shall not be counted thereafter toward any percentage of deposit or other limitation set forth in this Title; provided that such sale is made without recourse to the selling institution.

(e) Records of certain sales and purchases. Any loan or participation interest therein may be purchased from or sold to an entity affiliated with such financial institution, or purchased from or sold to any officer, director or employee of such institution; provided that the board of directors of such institution shall specifically approve such purchase or sale; and provided further, that the board shall keep complete records of such purchases and sales in such form as the superintendent may prescribe.

(f) Superintendent's authority. The superintendent may promulgate regulations pursuant to section 240 specifying the "lender" or "lenders", as those terms are used in (a) hereof, with which a financial institution may enter into the agreement or transaction authorized in (a); provided that the superintendent shall not exclude from any list of permissible lenders a financial institution whose deposits are insured by any corporation or agency authorized to insure deposits of financial institutions authorized to do business in this State; an agency or instrumentality of this State or of the United States engaged in the making, purchasing or selling of loans or participation interests therein; an approved Federal Housing mortgagee; or a service corporation in which a majority of the capital stock is owned by one or more insured financial institutions.

§424. Minority of borrower

(a) The disability of minority of any person otherwise eligible for a loan, or guaranty or insurance of a loan, pursuant to the Act of Congress entitled the "Servicemen's Readjustment Act", 38 U.S.C. §1801 et seq., as amended, and of the minor spouse of any eligible veteran, in connection with any transaction entered into pursuant to said Act of Congress, shall not affect the binding effect of any obligation incurred by such eligible person or spouse as an incident to any such transaction, including incurring of indebtedness and acquiring, encumbering, selling, releasing or conveying property, or any interest therein, if all or part of any such obligation be guaranteed or insured by the Government or the Administrator of Veterans' Affairs pursuant to said Act and amendments thereto; or if the Administrator be the creditor, by reason of a loan or a sale pursuant to said Act and amendments.

(b) This section shall not create, or render enforceable, any other or greater rights or liabilities than would exist if neither such person nor such spouse was a minor.

See §§1832, 561, 1135

§425. Open-end mortgages

(a) Any interest in real property which may be mortgaged to a financial institution may be mortgaged to secure existing debts or obligations, to secure debts or obligations created simultaneously with the execution of the mortgage, to secure future advances necessary to protect the security and to secure future advances to be made at the option of the parties up to a total amount stated in the mortgage; and all such debts, obligations and future advances, from and as of the time the mortgage is filed for record as provided by law, shall be secured by such mortgage and have priority over the rights of all persons who subsequent to the recording of such mortgage acquire any rights in or liens upon the mortgaged real estate. Such

priority over subsequent persons shall be only to the extent that the aggregate amount outstanding at any one time of such debts, obligations and future advances does not exceed the total amount stated in the mortgage; except that:

(1) The mortgagor or his successor in title is authorized to file for record, and the same shall be recorded in the same recording office as the original mortgage, a notice limiting the amount of optional future advances secured by such mortgage to not less than the amount actually advanced at the time of such filing; provided that a copy of such filing is filed with the mortgagee; and

(2) The priority of such debts, obligations and future advances shall not include any future optional advances secured by such mortgage made by such institution after any such person, in addition to acquiring such subsequent right or lien, sends to the institution by registered mail or delivers to an officer of the institution and secures a receipt therefor, express written notice stating that any such optional advances thereafter made will be junior to such person's mortgage or lien upon or rights in such real estate.

(b) "Future advances" referred to in (a) of this section shall include only those made to recipients designated in the mortgage.

(c) The provisions of this paragraph shall not be construed to affect or otherwise change the present law which allows mortgages stating nominal or no consideration to secure existing debts or obligations, or debts or obligations created simultaneously with the execution of the mortgage, to the extent of the actual debts or obligations, existing or granted; but such mortgages, when not also expressly providing for future advances to be made at the option of the parties, shall not afford security for any future advances except those necessary to protect the security.

See §§1832, 561

§426. Repayment of noncommercial and consumer loans

(a) A borrower from a financial institution may repay a noncommercial or consumer loan at any time upon application to the lending institution.

(b) Upon settlement of the account, the borrower shall be charged with the full amount of the unpaid balance of the original noncommercial or consumer loan, together with all interest, premiums and fines, and any prepayment penalty or other charge which may be legally due under the terms of the loan.

(c) The borrower shall be given credit for the withdrawing value of any account or deposit pledged and transferred as security and all other sums credited to said noncommercial or consumer loan, and the balance shall be received by the institution in full satisfaction and discharge of said loan.

See §1833

§427. Federal funds transactions

(a) A financial institution may loan or sell to any commercial bank insured by the Federal Deposit Insurance Corporation, or to the Federal Home Loan Bank of which it is a member, deposits which it maintains with insured commercial banks, a Federal Reserve Bank, or a Federal Home Loan Bank.

(b) For purposes of this section, "Federal funds loans or sales" means overnight loans to insured commercial banks which are payable the next business day, and such loans or sales shall be exempt from any limitations on loans to individual borrowers provided for in this Title.

(c) A financial institution loaning or selling Federal funds shall have a policy statement approved by its board of directors regarding such transactions and said policy statement shall include, but not be limited to, the manner in which the institution shall limit its credit exposure to any one borrower or purchaser. Such institution shall also maintain documentation evidencing the commercial bank purchasing the funds and the terms on which such funds have been so loaned or sold.

CHAPTER 43

SERVICES AND INCIDENTIAL ACTIVITIES

Sec.

§430. Applicability of chapter

The provisions of this chapter shall govern the services and incidental activities offered by financial institutions, except as otherwise provided in Parts 5, 6 and 7.

§431. Trustee, self-employment retirement plans

(a) A financial institution shall have power to act as trustee under a retirement plan established pursuant to the Act of Congress entitled "Self-employed Individuals Retirement Act of 1962", as amended, or an individual retirement account pursuant to the "Employee Retirement Income Security Act of 1974", as amended; provided that the provisions of such plans require the funds of such trust or account to be invested exclusively in deposits in said institution and limit the amount of such deposits, exclusive of interest, to the amount of maximum insurance coverage provided by the Federal corporation insuring the institution's accounts pursuant to section 411.

(b) In the event that any such retirement plan, which in the judgment of the institution constitutes a qualified plan under either said Self-employed Individuals Retirement Act of 1962 or the Employee Retirement Income Security Act of 1974 and the regulations promulgated thereunder at the time the trust or

account was established and accepted by the institution, is determined subsequently not to be such a qualified plan or ceases subsequently to be such a qualified plan, in whole or in part, the institution may nevertheless continue to act as trustee of any deposit theretofore made under such plan and to dispose of the same in accordance with the directions of the depositor and the beneficiaries thereof.

(c) No institution, with respect to the deposits made under this section, shall be required to segregate such deposits from its other deposits except as may be required under Federal law establishing such plans; provided that the institution shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this section.

See §§444, 1714

§432. Services for customers

In addition to all customer services incidental to the powers granted in its articles of incorporation, a financial institution authorized to do business in this State may offer the services set forth below to its customers, depositors or members.

(a) Checks, money orders and travelers' checks. A financial institution may engage, directly or indirectly, in the business of selling, issuing or registering checks or money orders, and may act as agent for the sale of travelers' checks.

(b) Safe deposit boxes. A financial institution may own and maintain safe deposit vaults, with boxes, safes, and other facilities therein, to be rented to depositors and other persons for the safekeeping or storage of personal property susceptible of being deposited therein, subject to the general laws and regulations applicable to safe deposit boxes.

(c) Safekeeping. A financial institution may receive on deposit from its customers, depositors or members property for safekeeping.

(d) Consumer financial counseling. A financial institution may render consumer financial counseling services, including budget planning, debt management and related services. Such services may be offered by the institution directly, or indirectly through a corporation organized by one or more financial institutions to provide such services, pursuant to section 434.

(e) Public collection agency. A financial institution may act as a collection agent and receive and transmit payments made on accounts of quasi-municipal corporations, public utility corporations or non-profit hospital or medical service corporations, subject to such regulations as the superintendent may prescribe.

(f) Participation in public lotteries. A financial institution may participate in public lotteries authorized pursuant to the laws of this State in the manner as outlined in guidelines and regulations promulgated pursuant to such laws; provided that the superintendent may promulgate additional rules and regulations governing such participation.

See §§443, 225, 991, 1632

§433. Credit cards

(a) A financial institution shall have the power to extend credit through the use of credit cards issued by such institution, any subsidiary thereof or issued by such as agent for another institution or subsidiary thereof subject to such regulations as may be promulgated by the superintendent.

(b) In the case of a savings bank or savings and loan association, credit extended through the use of credit cards shall be treated as a loan made pursuant to section 524 or 724.

See Recommendation 16

§434. Service corporations

(a) A financial institution may invest in the capital stock, obligations or other securities of a service corporation, as defined in section 120, or otherwise participate in or utilize the services of such a corporation.

(b) The stock of a service corporation formed pursuant to this section shall be owned only by financial institutions and two or more financial institutions may jointly own such corporations. The aggregate investment of a financial institution in such service corporations shall not exceed 3 percent of the assets of the institution.

(c) The books and accounts of a service corporation involving any financial institution shall be kept in such manner and form as the superintendent may prescribe; and any agreement between a financial institution and such corporation shall provide that such books and accounts may be examined by the superintendent or his designee.

See §§1834, 227

§435. Closely-related activities

A financial institution authorized to do business in this State which is not a subsidiary of a financial institution holding company, as defined in chapter 100, may engage in those activities deemed permissible for Maine financial institution holding companies pursuant to section 1003, subject to the conditions and limitations set forth in this section.

(a) A financial institution shall make application to the superintendent in accordance with section 241 for authority to engage in any activity permissible under section 1003. In determining whether such authority shall be granted, the superintendent shall consider those criteria set forth in section 242, except that size of such financial institution alone shall not be the determining factor in the superintendent's decision to approve or disapprove the application.

(b) In determining which activities shall be permissible for such financial institutions, the superintendent may limit activities by the type of institution, or may authorize an activity for all such non-subsidiary financial institutions. The superintendent shall also have authority to promulgate regulations setting forth those activities for which he will accept applications by type of institution; provided that nothing herein shall be construed to prohibit such financial institution from making an application in the absence of such regulations.

(c) All activities engaged in pursuant to this section shall be conducted through a subsidiary corporation, unless the superintendent shall authorize otherwise in approving an application, or by regulation.

(1) The investment of such financial institution in such subsidiary corporation shall be limited to its initial capital investment, and no further investment, whether in the form of an additional capital investment or loans, shall be made in such subsidiary corporation without the prior written approval of the superintendent;

(2) The maximum amount of investment in any one such subsidiary corporation shall not exceed 10 percent of the institution's total capital and reserves or its surplus account; and the aggregate investment in all such subsidiary corporations shall not exceed 20 percent of the institution's total capital and reserves or surplus account.

(d) A subsidiary corporation formed pursuant to this section may be owned by 2 or more such financial institutions; provided that the superintendent shall approve such joint ownership. In approving or disapproving joint ownership of a subsidiary, the superintendent may, in addition to the criteria set forth in section 242, consider the type of institutions making application, and the competitive effect of such joint ownership.

See Recommendation 4

CHAPTER 44

RECORDS AND REPORTS

Sec.

§440. Applicability of chapter

The provisions of this chapter shall apply to financial institutions organized under Parts 5, 6, 7 and 9, and shall establish minimum recordkeeping requirements for such institutions.

§441. Maintenance of records; accounting and assets

(a) Safekeeping of assets and records. Every financial institution shall make provisions to secure the safekeeping of the institution's assets and its books, accounts and records; and to keep them separate and apart from the assets or property of others. An institution may use the services of a correspondent bank as a depository for securities owned or held as collateral, of a computer service organization for accounting, or the practice of nominee registration of title of securities, when reasonably appropriate to accomplish the duties imposed by this section.

(b) Books and accounting. The clerk or treasurer of every financial institution, or such other officer as may be designated in the bylaws or by a duly recorded vote of its directors, shall cause the books and accounts of the institution to be kept in such manner and form as will most accurately and promptly reflect its condition and earnings. The superintendent may prescribe the manner and form of keeping such books and accounts, which need not be uniform.

(c) Assets.

(1) No asset shall be entered on the books of a financial institution at a figure in excess of its actual cost to the institution; nor shall the book value of any such asset be thereafter increased, except upon the written authorization of the superintendent or as may be provided below.

(2) The directors may in their discretion authorize the carrying of any asset of the institution at a value less than its cost to the institution, may authorize such provision for depreciation of physical assets as in their judgment may be required, and may provide for systematic amortization of premiums of bonds or other obligations acquired at a cost other than the par value thereof, or the directors may provide for accretion in accordance with generally accepted accounting principles for financial institutions.

(d) Fair value. The superintendent may require any of the assets of a financial institution to be charged down to such sum as in his judgment represents its fair value.

See §§474, 475

§442. Annual audits

(a) Selection of auditor. The board of directors of a financial institution subject to the provisions of this Title shall employ an independent public accountant or accountants at least annually.

(b) Duties of the auditor. The accountant or auditor selected in (a) shall analyze the books, accounts, notes, mortgages, securities and operating systems of the institution in such manner as in his judgment will result in an audit which, together with the internal auditing and accounting procedures of the institution, comports with generally accepted accounting standards for the protection of depositors, members and/or stockholders and the efficient operation of the institution. The accountant or auditor shall make a written report of the condition of the institution to the president and chairman of the board, for the board, in such manner and to such extent as said accountant or auditor may deem necessary or proper, and said accountant or auditor shall supply such additional information obtained from his audit as the board may direct.

(c) Superintendent comment on audit. The superintendent shall, in the course of his regular official examination of the institution and at such other times as he deems advisable, investigate the work of such accountant or auditor to determine its adequacy for the purposes set forth in (b). In determing the adequacy of such an audit, the superintendent shall take into account the internal auditing and accounting procedures established by such institution. If the superintendent determines that the audit is inadequate, he shall report forthwith his findings, with instructions, in writing to the directors, who shall, within 30 days thereafter, comply therewith.

(d) Audit limiting liability. Whenever the directors of a financial institution shall have provided for such audit or audits by the method prescribed and, in the case of the employment, election or appointment of an accountant or auditor by them, shall have taken such action to remedy conditions as may be deemed reasonably necessary in the light of the information disclosed by any report of said accountant or auditor, and shall have complied with all reasonable recommendations of the superintendent relative thereto within the time hereinbefore prescribed, they shall not be personally liable for any loss suffered by such institution due to any subsequent wrongdoing by any officer or employee of the institution, in the absence of other facts indicating negligence on the part of said directors.

See §§1049, 472, 1992, 1991

§443. Destruction of deposit records

When a statement of account has been rendered by a financial institution to a depositor accompanied by vouchers, if any, which are the basis for debit entries in such account, or the depositor's account book or passbook has been written up by the institution showing the condition of the depositor's account and delivered to such depositor with like accompaniment of vouchers, if any, such account, after the period of 6 years from the date of its rendition, in the event no objection thereto has been made theretofore by the depositor, shall be deemed finally adjusted and settled and its correctness conclusively presumed and such depositor shall thereafter be barred from questioning the correctness of such account for any cause. Nothing herein shall be construed to relieve the depositor from the duty now imposed by law of exercising due diligence in the examination of such account and vouchers, if any, when rendered by the institution and of immediate notification to the institution upon discovery of any error therein, nor from the legal consequences of neglect of such duty, nor to prevent the application of Title 11 to cases governed thereby. Financial institutions shall accordingly not be required to preserve or keep their records or files relating thereto for a longer period than 6 years.

CHAPTER 45

PROHIBITIONS

Sec.

§450. Applicability of chapter

The provisions of this chapter setting forth acts and practices which are prohibited shall apply to all savings banks, trust companies, savings and loan associations, credit unions and financial institution holding companies subject to the laws of this State and shall be in addition to the prohibitions set forth elsewhere in this Title.

§451. Interlocks of directors, corporators, officers and advisory committee members

(a) Except as provided in subsections 2 and 3, no person who is a director, corporator, officer or employee of, or voting member of an advisory committee to, a financial institution, credit union or financial institution holding company authorized to do business in this State shall serve as a director, corporator, officer or employee of, or voting member of advisory committees to, any other such financial institution, credit union or financial institution holding company authorized to do business in this State.

(b) The prohibitions contained in subsection 1 shall not apply to directors, officers or employees of, or voting members of advisory committees to, subsidiaries of financial

institution holding companies who may also be directors, officers or employees of, or voting members of advisory committees to, the parent financial institution holding company, or of other subsidiaries of such holding company.

(c) The prohibitions contained in subsection 1 shall not apply to any person who is presently serving in such multiple offices until October 3, 1976.

See §§472-2, 1041, 1661; Recommendation 22

§452. Stock in Maine financial institutions

(a) Prohibition. Except as provided in (b) and (c) of this section, no financial institution authorized to do business in Maine or Maine financial institution holding companies shall acquire shares of stock in any other financial institution authorized to do business in this State or in a Maine financial institution holding company after the effective date of this section, without the prior approval of the superintendent.

(b) Existing holdings.

(1) A financial institution or financial institution holding company holding shares of stock in such other financial institution or financial institution holding companies described in (a) on the effective date of this section may continue to hold such shares; provided that any holdings in excess of 1 percent of the outstanding voting shares of such other institution shall be sold within 5 years from the effective date of this section, in accordance with a plan approved by the superintendent. The superintendent may permit an additional time, up to 5 years, to dispose of such excess holdings, if market or other conditions warrant such delay.

(2) If at the end of the additional time, if any, granted by the superintendent, the institution shall have failed to dispose such excess holdings, it shall either promptly sell the excess voting stock or in a petition setting forth the reasons for failure to dispose of such stock, request the superintendent to hold a hearing for the purpose of determining whether market and economic conditions warrant additional time to dispose such stock. Upon receipt of a petition the

superintendent shall hold a hearing pursuant to section 254. If the institution requesting the hearing shall establish good cause at the hearing for failure to comply with this section, the superintendent shall grant the institution additional time in which to dispose of such excess holdings, subject to such terms and conditions as the superintendent deems necessary to effectuate the purposes of this section.

(3) Nothing herein shall be construed as authorizing a financial institution to purchase shares to maintain or establish holdings of stock in other financial institutions described in (a) not exceeding 1 percent of the outstanding voting shares of such other institution.

(c) Exception. The prohibitions contained in (a) and (b) shall not apply to any shares held in a fiduciary capacity by a financial institution; to shares acquired upon a merger or consolidation pursuant to chapter 34; nor to shares acquired pursuant to chapter 100.

(d) Financial institution stock as collateral. If a financial institution receives stock in any other financial institution authorized to do business in this State after the effective date of this section by way of foreclosure on such shares pledged as security for a loan or otherwise, it shall place such shares in escrow and not vote such shares, pending their disposal in such manner as the superintendent deems appropriate under the circumstances, except as such holdings may be permitted pursuant to (c).

See Recommendation 46

§453. Loans on shares of stock

(a) A financial institution shall not make loans or discounts on the security of the shares of its own capital stock or the capital stock of its parent holding company or its subsidiaries, if any, nor shall an institution be the purchaser or holder of any such shares unless necessary to prevent loss upon a debt previously contracted for in good faith, and all stock so acquired shall be disposed of at public or private sale within one year after its acquisition, in accordance with such requirements as the superintendent deems appropriate.

(b) The time for disposition of shares acquired in (a) may be extended by the superintendent for good cause shown, upon application in writing to the superintendent.

(c) Nothing in this section shall be construed as prohibiting an institution from redeeming shares of its capital stock or from purchasing shares for the purpose of reducing its outstanding shares pursuant to provisions in its bylaws; provided that prior written approval of the superintendent has been obtained.

See §1134

§454. Loans to directors, corporators or officers

(a) Trust companies.

(1) Prohibitions. Except for loans adequately secured by a pledge of a savings deposit, certificate of deposit, or the cash surrender value of a life insurance policy, or as provided in paragraph B, no trust company shall make any loan to any of its directors, corporators, officers, agents or to any other person in the company's employ, or on which any such director, corporator, officer, agent or employee is an endorser, guarantor or surety, or to any firm or business syndicate of which such director, corporator, officer, agent or employee is a member, or to any person or on the endorsement or guaranty of any person, who is a partner of, or member of a business syndicate with such director, corporator, officer, agent or employee, or to any corporation of which any such director, corporator, officer, agent or employee is a director, officer, agent or employee, until the proposition to make such loan shall have been submitted to the board of directors, or the the executive committee, if any, of such company and accepted and approved by a majority of the entire membership of such board or committee in the following manner:

(A) No director of such trust company who is interested in said loan in any of the above capacities or who is connected or associated with the borrower in any of the above ways shall be regarded as voting in the affirmative on such loan.

(B) The term "agent" as used in this section shall not be construed to include any person other than a person elected or appointed by the stockholders.

(2) Exception. Notwithstanding any prohibition contained in (a) of this section, a trust company may make a loan to a person in its employ who is not a director or corporator if the loan does not exceed $5,000 in amount or if it is secured by collateral, other than that specified in (a), having a value of at least 105 percent of the amount of the loan, and if such loan is confirmed within 30 days of its making by the board of directors or executive committee.

(b) Thrift institutions. Except for loans secured by a first mortgage on real estate, personal loans having an aggregate value of $5,000 or less, and passbook loans, no thrift institution subject to the laws of this State shall make any loans to its officers or directors, and no thrift institution shall make a loan to its corporators unless such loans are on the same terms as are generally available to the public.

(c) Liability for making.

(1) Every director, corporator, officer, agent and employee of a financial institution who authorizes or assists in procuring, granting or causing the granting of a loan in violation of this section or sections 613 and 633, or pays or willfully permits the payment of any funds of the institution on such loan, and every director of an institution who votes on a loan in violation of any of the provisions of this section and every director, corporator, officer, agent or employee who willfully and knowingly permits or causes the same to be done shall be personally responsible for the payment thereof and shall be guilty of a misdemeanor.

(2) All loans granted in violation of this section shall be due and payable immediately, without demand, whether they appear on their face to be time loans or otherwise.

(3) When the superintendent shall find any loans outstanding in violation of this section, he shall notify the president, clerk or treasurer of the institution to cause the same to be paid forthwith.

(4) If they are not paid within 30 days or such further time as said superintendent shall determine, he shall report the facts to the Attorney General who shall commence a civil action in the name and for the benefit of such institution for the collection of the same. The Attorney General may employ special counsel to prosecute said civil action; and said institution shall pay all expenses thereof, to be recovered in a civil action in the name of the State.

See §§1132, 1133, 472-5, 473-5

§455. Unlawful acts

The acts set forth in this section shall be unlawful and shall be deemed criminal offenses unless otherwise provided.

(a) Copying records of financial institutions. Any director, corporator, officer, agent or employee of a financial institution who copies any of the books, papers, records or documents belonging to or in the custody of such institution, either for his own use or for the use of any other person other than in the ordinary and regular course of his duties, shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 11 months, or by both.

(b) Disclosures by service corporation employees. Any information derived from financial institution records or sources by personnel of a service corporation formed pursuant to section 434 shall not be disclosed except in the regular course of business. Whoever violates this subsection shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 11 months, or by both.

(c) Violation of orders. No person shall violate any order of the superintendent lawfully served upon him.

(d) Unauthorized business. No person shall engage in the business authorized for any financial institution unless he is properly authorized, nor represent that he is acting as such a financial institution, nor use an artificial or corporate name which purports to be or suggests that it is such a financial institution. Financial institutions organized under the laws of the United States shall not be subject to this provision.

(e) Procuring loans. No director, corporator, officer, agent, employee or attorney of a financial institution shall stipulate for or receive or consent or agree to receive any fee, commission, gift or thing of value, from any person, firm or corporation for procuring or endeavoring to procure for such person, firm or corporation, or for any other person, firm or corporation, from any such financial institution, any loan or extension or renewal of loan or substitution of security, or the purchase or discount or acceptance of any paper, note, draft, check or bill of exchange by any such financial institution. Nothing contained in this subsection shall be construed to refer to the expenses of examining titles, drafting conveyances and mortgages and the performance of other purely legal services.

(f) Concealment. No director, corporator, officer, agent or employee of a financial institution shall conceal or endeavor to conceal any transaction of the financial institution from any director, corporator, officer, agent or employee of the institution nor any official or employee of the Bureau of Banking to whom it should be properly disclosed.

(g) Deception; false statements. No director, corporator, officer, agent or employee of a financial institution shall maintain or authorize the maintenance of any account of the financial institution in a manner which, to his knowledge, does not conform to the requirements prescribed by statutes applicable to the supervision of financial institutions or regulations issued thereunder; nor shall such person, with intent to deceive, make any false or misleading statement or entry or omit any statement or entry that should be made in any book, account, report or statement of the institution; obstruct or endeavor to obstruct a lawful examination or investigation of the institution or any of its affairs by an official or employee of the Bureau of Banking.

(h) Violation of Title or regulations. If, in the opinion of the superintendent, any financial institution or its officers or directors have persistently violated any provision of this Title, he shall forthwith report the same with such remarks as he deems expedient to the Attorney General who shall forthwith institute a prosecution therefor on behalf of the State. This section shall apply to section 352.

(i) False returns. No director, corporator, officer, agent or employee of any financial institution shall willfully or knowingly make a false return to the superintendent in response to any call for information issued by the superintendent or by a deputy superintendent, nor upon the making or filing of any regular or special report required by this Title.

(j) Failure to make returns. Any financial institution which shall fail to furnish reports and information to the superintendent, as required by this Title within the time specified, shall be subject to a penalty of not more than $100 per day for each day it is in violation of this section, which penalty may be recovered in a civil action in the name of the State.

(k) Criminal sanctions.

(1) Any person responsible for an act or omission expressly declared to be a criminal offense by statutes pertaining to the supervision of financial institutions and for which no other penalty has been provided by statute shall be guilty of a misdemeanor and shall be punished by imprisonment for not more than 11 months or by a fine of not more than $5,000 or by both. If the act or omission was intended to defraud, such person shall be guilty of a felony and shall be punished by a fine of not more than $10,000 or by imprisonment for not more than 5 years, or by both.

(2) A director, corporator, officer, agent or employee of a financial institution shall be responsible for an act or omission of the institution declared to be a criminal offense against statutes pertaining to the supervision of financial institutions whenever, knowing that such act or omission is unlawful, he participates in authoriz-

ing, executing, ratifying or concealing such act, or in authorizing or ratifying such omission or, having a duty to take the required action, omits to do so.

See §§43, 227, 171, 403, 1041, 172, 6

§456. Prohibited outside business interests

(a) No director, officer, agent or employee of a financial institution subject to the laws of this State shall engage in for any compensation, direct or indirect, the business of selling or negotiating securities as the agent or salesman of any securities dealer, as defined in section 751 of Title 32 of the laws of this State, other than the institution.

(b) No treasurer or assistant treasurer of a financial institution shall engage in, directly or indirectly, any other business or occupation without the consent of a majority of the directors, evidenced by a duly recorded resolution.

(c) Any person described in subsections 1 or 2 who is in violation of this section on the effective date hereof shall have two years from said effective date to comply with the requirements of subsections 1 and 2.

See §473

PART 5

SAVINGS BANKS

CHAPTER 51

CAPITAL AND LIQUIDITY RESERVES

§500. Applicable law; powers

(a) Each savings bank, lawfully organized, shall be subject to the laws of Maine regulating corporations in general, except as otherwise provided in this Title. The powers, privileges, duties and restrictions conferred and imposed upon any savings bank, by whatever name known, in its charter or act of incorporation, are so far abridged, enlarged or modified, that every such charter or act shall conform to this Title. Every such corporation possesses the powers, rights and privileges, and is subject to the duties, restrictions and liabilities conferred and imposed by this Title, anything in their respective charters or acts of incorporation to the contrary notwithstanding.

(b) In addition to those specific grants of power set forth in this Title, a savings bank shall have the power to receive and repay deposits, to lend and invest the same, to declare dividends, and to exercise

by its board of directors or duly authorized officers or agents, subject to law, all such powers as are reasonably incidental to the business of a savings bank.

See §443

§501. Undivided profits

(a) The undivided profits of a savings bank shall represent the undistributed earnings of the bank, exclusive of any amounts required to be placed into the fund established pursuant to section 502, and which is unallocated and for general corporate use.

(b) Such profits shall be the source for all interest and dividend payments made by the bank to depositors or stockholders; provided that dividends may be declared and paid from capital surplus to holders of outstanding cumulative preferred stock pursuant section 516 of Title 13-A of the laws of this State.

§502. Guaranty fund

(a) Every savings bank shall establish and maintain a guaranty fund which at all times shall exceed 5 percent of all existing deposits of the savings bank, unless the superintendent shall approve, in writing, a lesser amount. Such fund shall provide security against losses and contingencies, and all losses not otherwise absorbed shall be charged against it.

(b) The guaranty fund shall initially consist of the capital deposits of the corporators or proceeds from the bank's capital notes or debentures issued for such purpose in a savings bank organized under chapter 31; or the capital stock and paid-in capital stock surplus of a bank organized under chapter 30.

(c) Should the guaranty fund become impaired and fall below 5 percent of the bank's total deposits, it shall be restored by setting aside from current net income an amount which, together with other amounts so set aside for this purpose during the year, shall be equal to at least 1/2 of 1 percent of its deposits, until the fund is restored to the required amount. If the savings bank has capital stock pursuant to chapter 30, all or part of such restoration may be made from its paid-in capital stock surplus, provided that any paid-in capital stock surplus so used shall not be available for any other corporate purpose.

(d) A savings bank insured by the Federal Savings and Loan Insurance Corporation pursuant to section 411 may designate the guaranty fund required by this section as its Federal insurance reserve account, and any bank so insured shall be considered in compliance with this section; provided that the reserve requirements of the Federal Savings and Loan Insurance Corporation are being complied with.

See §476-1

§503. Liquidity reserves

(a) Every savings bank shall establish and maintain a minimum liquidity reserve in an amount established by the superintendent within the following levels:

(1) Between 1 and 4 percent of the bank's savings deposits;

(2) Between 3 and 6 percent of the bank's time deposits;

(3) Between 8 and 15 percent of the bank's demand deposits less treasury tax and loan account deposits; and

(4) Between 8 and 15 percent of the bank's NOW account deposits.

(b) The liquidity reserve required in subsection 1 shall be comprised of the following items:

(1) Cash on hand;

(2) Deposits held in commercial banks, savings banks and savings and loan associations;

(3) Federal funds sold to banks pursuant to section 438;

(4) The book value of investments in obligations of the United States; provided that any such obligations shall mature in 5 years or less;

(5) The book value of investments in the obligations, notes and debentures issued by any agency or instrumentality of the United States; provided that any such obligations, notes or debentures shall mature in 5 years or less.

(c) The required amount of liquidity reserve shall be computed each business week by averaging the daily totals of items set forth in subsection 2. The method of computation and the reserve computation period for determining compliance with this section shall be established by the superintendent. The superintendent may, if financial institution conditions warrant, lower the maximum maturity periods in paragraphs D and E of subsection 2 for such reserve computation periods as he deems necessary.

(d) Deficiencies in the liquidity reserves established pursuant to this section may be subject to an assessment for such period of time as the deficiency may exceed 2 percent of the required reserves. Any such penalty may be assessed at a rate not to exceed 10 percent per annum.

(e) If any savings bank fails to make up a reserve deficiency with a corresponding excess reserve in the reserve computation period immediately following the period in which the deficiency occurred, the bank shall not make any investments authorized by this Title, except those authorized under sections 528(a), 541(a) and 541(c), without the prior written approval of the superintendent.

CHAPTER 51

DEPOSITS

Sec.

§510. Deposits in general

In addition to the provisions in this chapter governing deposits in a savings bank, a savings bank shall be subject to the provisions in chapter 41 setting forth the deposit powers common to all financial institutions subject to Parts 5, 6, or 7.

§511. Classification and amounts

(a) A savings bank may receive on deposit, for the use and benefit of its depositors, all sums of money offered for that purpose, and may classify and differentiate among deposits on such basis as it may determine. The bank may, by vote of its directors or by bylaws, establish minimum and maximum amounts which may be received; and the directors may refuse deposits at their pleasure.

(b) A savings bank may accept sums of money on deposit and issue certificates of deposit providing for payment of interest at a specified rate; or, by appropriate resolution, the bank may provide for the acceptance of non-passbook accounts on terms deemed appropriate.

(c) A savings bank whose deposit accounts are insured by the Federal Savings and Loan Insurance Corporation or by the Federal Deposit Insurance Corporation pursuant to section 411 may create any type or class of deposit account, the issuance of which has been approved by that corporation insuring the savings bank's deposit accounts.

(d) A savings bank may pay different rates of dividends on different classes or types of deposits; provided that the bank shall regulate a dividend in such manner that each depositor shall receive the same ratable portion of dividends as every other depositor in that class.

(e) Savings banks may accept sums of money for Christmas clubs or other special purpose accounts on terms to be agreed upon, with provision for repayment of the same, with or without interest.

(f) Any type or class of deposit not offered by a savings bank prior to the effective date of this section or not authorized for savings banks pursuant to other provisions of this Title or not authorized by the corporation insuring the bank's deposits may not be offered by a savings bank without the written approval of the superintendent.

(g) Nothing contained in this section shall be construed as authorizing a savings bank to establish demand deposit accounts or NOW accounts, except as provided in sections 412 and 413.

See §§511, 477-5

§512. Dividends and interest on deposits and accounts

(a) After passing to the guaranty fund that part of income required in section 502, if any, the directors may declare such dividends or interest as in their judgment should be declared in the light of the bank's condition and earning power, and as may be permitted or required by the bank's bylaws.

(b) The directors, in their discretion, may declare an extra dividend payable from the undivided profits of the bank when in their opinion the undivided profits are more than adequate for the protection of the bank's depositors; provided that if the savings bank has capital stock, a majority of the shares entitled to vote thereon must approve such extra dividends to depositors. Such action shall not become effective until written approval thereof has been given by the superintendent. The clerk or treasurer shall prompty notify said superintendent by registered mail of such contemplated action by sending a copy of such vote of the directors, and vote of the stockholders if required, duly certified by him. Within 10 days after receipt thereof, the superintendent shall notify the directors, through the clerk or treasurer, of his approval or disapproval of such action.

(c) Dividends may be declared, and credited and paid to depositors only as authorized by a vote of the board of directors and a vote of the stockholders, if required pursuant to (b), entered upon the bank's records whereon shall be recorded the yeas and nays upon such vote or votes.

(d) Dividends and interest due on the deposits or accounts in a savings bank shall be determined in accordance with section 414.

(e) Notwithstanding any other provision of this Title, a savings bank may exclude from earnings or dividends any account or deposit having a withdrawal value of less than $25.

See §447

CHAPTER 52

LOANS

Sec.

§520. Loans in general

In addition to the provisions in this chapter governing loans made by a savings bank, a savings bank shall be subject to the provisions of chapter 42 setting forth the lending powers common to all financial institutions subject to Parts 5, 6 or 7.

§521. Real estate mortgage loans

(a) Authorized mortgage loans. Subject to the conditions and limitations set forth in this section, a savings bank may make loans to individuals or corporations, to be secured by a first mortgage of real estate located in any of the New England states, or located anywhere if the loan is authorized under subsections (3), (4) or (5) of this section, as follows:

(1) In an amount not exceeding 70 percent of the bank's appraisal of the market value of such real estate.

(2) In an amount not exceeding 80 percent of the bank's appraisal of the market value; provided that the note or other obligation evidencing the loan shall requi monthly payment of the interest and principal thereon

at a rate of amortization sufficient to repay the entire loan within a period not exceeding 30 years, or shall require full payment of the loan within a period of 3 years. No such loan of 3 years or less shall be renewed for any sum in excess of 70 percent of the then existing market value of such real estate. For reasonable cause, the beginning of amortization may be delayed up to 18 months from the making of an amortized loan; also, for reasonable cause, principal payments in designated portions of the year may be omitted.

(3) Without regard to any other law, a savings bank is authorized to make or buy and sell any loan, secured or unsecured, or any real estate installment sale contract, which is insured or guaranteed in any manner, in part or in full, by the United States or any instrumentality thereof, or by this State or any instrumentality thereof, or for which there is a commitment to so insure or guarantee, or for which a conditional guarantee has been issued.

(4) Loans to individuals secured by first mortgage of real estate located anywhere, to an amount not in excess of 100 percent of the appraised market value thereof, or purchase such notes, bonds or other obligations secured by such a mortgage, if such loans have been guaranteed or insured by the Federal Housing Administration or any successor corporation or organization to whom the government of the United States may assign the mortgage insurance functions which have heretofore been exercised by the Federal Housing Administration, or if the Federal Housing Administration or such successor corporation or organization has made a commitment to guarantee or insure them, all such loans to conform to the Federal legislation pertaining thereto and to regulations promulgated thereunder.

(5) Loans in an amount not exceeding 95 percent of the bank's appraisal of the real estate's market value, if at least the top 20 percent of the loan is insured by a mortgage guaranty insurer licensed to do business in this State.

(6) Loans to individuals or corporations not in excess of the purchase price of real estate pertaining thereto if such loans are made to enable the mortgagor to purchase from the bank real estate acquired by the bank through foreclosure or by deed in lieu of foreclosure.

(b) Deposit limitations on mortgage loans. No savings bank shall have more than 80 percent of its deposits invested in real estate mortgages, except that it may invest more than 80 percent of its deposits in real estate mortgages so long as the amount in excess of 80 percent is invested in real estate mortgages that are insured or guaranteed, in any manner, in part or in full, by the United States or any instrumentality thereof, or insured by a mortgage guaranty insurer in the manner provided by paragraph E of subsection 1 hereof, or for which there is a commitment to so insure or guarantee. Loans made pursuant to section 533 shall be considered mortgage loans for purposes of applying the limitation set forth herein.

§522. Other mortgage loans

(a) Loans on leases. A savings bank may make a loan secured by a mortgage, pledge or collateral assignment of a lease of real property or a lease of air rights upon the following conditions:

(1) The security shall be a first lien upon the lease and the fee shall not be subject to any prior lien;

(2) The amount of the loan shall not exceed 80 percent of the bank's appraisal of the leasehold interest, including the leasehold interest in improvements erected or to be erected upon the leased real property; and

(3) The note or other obligation evidencing the loan shall require monthly payment of the interest and principal thereon at a rate of amortization sufficient to repay the entire loan within a period not to exceed 4/5 of the unexpired term of the lease, defined so as to exclude extensions of the term which may be provided by an option of renewal or extension, and within a period not to exceed in any event 25 years.

(b) Mobile home loans. A savings bank may make loans secured by an interest in a mobile home, in an amount not to exceed 100 percent of the value of the security, on such terms as the board of directors may determine; provided that the following conditions are met:

(1) The security interest shall be a first lien upon the mobile home;

(2) The mobile home is placed or to be placed upon a slab or foundation located on real property which is owned, rented or leased by the borrower;

(3) The mobile home is or will be connected with all existing public utilities; and

(4) The borrower uses the mobile home as his residence and not for business or commercial purposes.

(c) Limitation. All loans made pursuant to subsections 1 or 2 hereof shall be deemed mortgage loans, regardless of the personal property nature of the security, and shall be included with loans made pursuant to subsection 1 of section 532 for purposes of applying the limitation on mortgage loans set forth in subsection 2 of section 532.

See §§562, 572-1

§523. Personal and consumer loans

(a) A savings bank may make loans to any individual borrower or borrowers, evidenced by a note or other obligation, with or without security, in addition to loans provided for in section 528.

(b) Loans made to any one individual pursuant to this section shall not exceed 1 percent of the bank's deposits; and the aggregate amount of such loans shall not exceed 10 percent of the deposits of the bank, except as provided in section 527.

See Recommendations 14a, 15

§524. Loan participations originated by commercial banks

(a) A savings bank may purchase a participation interest in any loan originated by a commercial bank authorized to do business in this State, subject to the restrictions set forth in (b) and (c) of this section.

(b) A participation interest purchased pursuant to this section shall meet the following conditions:

(1) It shall not exceed 75 percent of the amount of the loan, and the selling bank shall maintain at all times a minimum participation of 25 percent of the outstanding loan balance;

(2) It shall be evidenced by a participation certificate signed by the selling bank;

(3) It shall be subject to a specific repayment schedule;

(4) If the loan in which the participation interest is sold is a commercial loan, the selling bank shall prepare and supply to the purchasing savings bank a comprehensive analysis of balance sheets, earnings statements and surplus reconciliations covering the most recent 5 years of the borrower's operations, or for the number of years in operation if less than 5 years; and

(5) The selling bank shall annually supply to the savings bank a report of the loan, its security, if any, and the financial status of the borrower.

(c) Total participations in loans to any one borrower shall not exceed 1 percent of the bank's deposits; and the aggregate amount of such loans shall not exceed 10 percent of the deposits of the bank, except as provided in section 527.

See §564-1; Recommendations 14b, 15

§525. Other prudent loans

(a) A savings bank may make such other loans, including commercial loans, as the directors of the bank consider to be prudent loans, the making of which would not otherwise be legal but for this section.

(b) Loans within this section shall include, but not be limited to:

(1) Loans to dealers on mobile homes for inventory financing; provided that the amount of such loans shall be limited to the manufacturer's invoice price of each new mobile home including any installed equipment.

(2) Purchase of loan participations in which the United States or any instrumentality thereof participates which qualify as legal loans for savings banks under any provision or combination of provisions of this Title.

(3) Purchases from the issuer of its commercial paper maturing within 12 months; provided that:

(A) The issuer's business is principally in the United States;

(B) The paper would qualify 90 days prior to maturity as eligible for rediscount with a Federal Reserve Bank; and

(C) The paper is rated within the 3 highest grades by any rating service approved by the superintendent.

(c) Loans to any one borrower pursuant to this section shall not exceed 1 percent of the bank's deposits; and the aggregate amount of such loans shall not exceed 10 percent of the deposits of the bank, except as provided in section 527.

See §§564-2, 568; Recommendation 14c, 15

§526. Additional loans authorized by superintendent

(a) The superintendent may by regulation grant additional authority for a savings bank to make commercial loans, or purchase participation interests in loans originated by commercial banks authorized to do business in this State, in an amount determined by the superintendent with the percentage thereof to be adjustable on an industry-wide basis between 0 and

10 percent of total deposits. Loans made pursuant to this section shall be made in accordance with such criteria as shall be established pursuant to regulations promulgated by the superintendent.

(b) The superintendent may by regulation adjust the percentage limitations contained in sections 524, 525 and 526; provided that at no time shall the total loans outstanding under sections 524, 525, and 526 exceed 30 percent of the deposits of a savings bank.

See Recommendation 14d

§527. Miscellaneous loans

In addition to loans authorized elsewhere in this Title, a savings bank may make the following loans, subject to the terms and conditions set forth herein:

(a) Account and secured loans.

(1) Loans secured by a pledge of any share account or deposit book or certificate issued by any financial institution located in the State of Maine, or secured by pledge of a life insurance policy.

(2) The amount of any loan made pursuant to (a)(1) shall not exceed the withdrawal value of the pledged account, or exceed the cash surrender value of any pledged life insurance policy.

(b) National Housing Act. Loans to an amount within the discretion of the board of directors; provided that the loan is eligible for insurance under the National Housing Act and seasonable application is made under Title I of that Act.

(c) Higher education. Loans to an amount within the discretion of the board of directors; provided that the loan is made to assist the borrower in furthering his higher education.

(d) Loans to municipal corporations. Loans to any municipal or quasi-municipal corporation in this State and any religious, charitable, educational

or fraternal association or corporation evidenced by note or other obligations, with or without security.

See §§565, 566

§528. Aggregate limitation on loans

(a) After the effective date of this chapter, the aggregate total of all loans made by a savings bank under this Title shall not exceed 100 percent of the total of its deposits and undivided profits, as determined by the superintendent. In determining the aggregate of loans hereunder, there shall be excluded mortgage loans backing any security in the issuance of which the association participates pursuant to section 402.

(b) Notwithstanding the limitation set forth in (a) of this section, the superintendent may, for good cause shown, approve an aggregate amount of loans in excess of the amount set forth in (a), subject to such terms and conditions as the superintendent deems necessary.

(c) This section shall not apply to savings banks whose deposits or accounts are insured by the Federal Savings and Loan Insurance Corporation; provided that the loan requirements of the Federal Home Loan Bank are being complied with.

See §570

CHAPTER 53

REAL PROPERTY OWNERSHIP

Sec.

§530. Real estate investment in general

Savings banks may hereafter invest their funds, in addition to loans authorized under chapters 42 and 52 and securities authorized under chapter 54, in real estate in accordance with this chapter and in accordance with section 326.

§531. Real estate other than for offices

(a) In addition to real estate owned for offices and facilities pursuant to section 326, a savings bank may invest in or otherwise hold real estate located anywhere within the State of Maine the book value of which, together with real estate invested in pursuant to section 326, shall not exceed 50 percent of its total capital and reserves in the case of a bank organized pursuant to chapter 30, or 50 percent of its surplus account in a bank organized pursuant to chapter 31; provided that the superintendent may approve in writing an additional percentage.

(b) The limitation contained in (a) shall not apply to real estate held pursuant to section 532 or the value of real estate acquired by foreclosure or by the acceptance of a deed in lieu of foreclosure.

§532. Housing development real estate

(a) A savings bank may acquire real estate or interests in real estate by mortgage foreclosure, purchase or

by any other means, and may hold the same for investment purposes and may improve, develop, lease, contract, convey and otherwise deal with the same; provided that such investment is restricted to that which promotes the development of housing for lower income families under the Housing and Urban Development Act of 1968, as amended, or such as promote the preservation or restoration of historically or architecturally significant buildings or structures.

(b) The book value of real estate investments made under this section shall not exceed 5 percent of the bank's deposits. Such computation shall exclude the value of real estate held by a savings bank pursuant to sections 531 and 326, and also the value of real estate acquired by foreclosure or by the acceptance of a deed in lieu of foreclosure.

CHAPTER 54

INVESTMENTS IN SECURITIES

Sec.

§540. Investments in general

Savings banks and savings and loan associations may hereafter invest their funds in securities, in addition to loans and real estate authorized elsewhere in this Title, in accordance with the provisions of this chapter, subject to the conditions and limitations set forth herein.

See §§621, 1834-5

§541. Government unit bonds

Savings banks and savings and loan associations are authorized to invest in:

(a) United States and instrumentalities. The bonds and other obligations of the United States, or the bonds and other obligations or participation certificates issued by any agency, association, authority or instrumentality created by the Congress or any executive order.

(b) States. The bonds and other obligations issued or guaranteed by any State or by any instrumentality or agency of any State, or by any political subdivision of any State; provided that such securities are rated within the 3 highest grades by any rating service approved by the superintendent.

(c) Maine. The bonds and other obligations issued or guaranteed by this State, or issued by any instrumentality or agency of this State, or any political subdivision thereof which is not in default on any of its outstanding funded obligations.

(d) Canada. The bonds and other obligations issued or guaranteed by the Dominion of Canada, or issued or guaranteed by any province, or political subdivision thereof; provided that such securities are rated within the 3 highest grades by any rating service approved by the superintendent, and are payable in United States funds.

See §§622, 623, 624, 625

§542. Corporate securities

Savings banks and savings and loan associations are authorized to invest in:

(a) Corporate bonds. The bonds and other obligations of any United States or Canadian corporation; provided that such securities are rated within the 3 highest grades by any rating service approved by the superintendent, and are payable in United States funds. Not more than 2 percent of the deposits of an institution shall be invested in the securities of any one such corporation.

(b) Maine corporate bonds. The bonds and other obligations of any Maine corporation, actually conducting in this State the business for which such corporation was created, which, for a period of 3 successive fiscal years or for a period of 3 years immediately preceding the investment, has earned or received an average net income of not less than 2 times the interest on the obligations in question and all prior liens or, in the case of water companies subject to the jurisdiction of the Maine Public Utilities Commission, an average net income of not less than 1 1/2 times the interest on the obligations in question and all prior liens. Not more than 20 percent of the deposits of an institution shall be invested in such securities of Maine corporations; and not more than 2 percent of such deposits in the securities of any single corporation.

(c) Maine corporate stocks.

(1) Characteristics. The stock of any Maine corporation, other than stock of a financial institution, actually conducting in this State the business for which such corporation was created; provided that such corporation has, for a period of 3 years immediately preceding the investment, earned and received an average net income after taxes equivalent to at least 6 percent upon the entire outstanding issue of the stock in question.

(2) Limitations. Not more than 10 percent of the deposits of an institution shall be invested under this section in stocks of Maine corporations; and not more than 1 percent of the deposits of such institution shall be so invested in the stock of any single corporation. No such institution shall hold by way of investment or as security for loans, or both, more than 20 percent of the capital stock of any corporation; provided that this limitation shall not apply to assets acquired in good faith upon judgments for debts or in settlements to secure debts, nor to any of such capital stock acquired subsequent to the making of the original loan in good faith for the sole purpose of improving the security of such loan; and provided further that nothing in this section shall be construed to prohibit an institution from acquiring or investing in stock of corporations organized pursuant to sections 434 or 435.

See §§626, 627, 628

§543. Financial institution stock and other obligations

(a) Savings banks and savings and loan associations are authorized to invest in:

(1) Maine financial institutions. The debentures and certificates of deposit of any financial institution authorized to do business within this State, incorporated under the laws of this State or the United States and of any financial

institution holding company; provided that such holding company is registered under the Bank Holding Company Act of 1956, as amended, or section 408 of the National Housing Act, as amended. Stock in a financial institution described in this subsection shall only be owned or acquired pursuant to section 452 or chapters 34 and 100.

(2) Banks outside of Maine. The capital stock, preferred stock, debentures, acceptances and certificates of deposit of any bank not having an office in this State and which is a member of the Federal Reserve System and has total capital and reserves of not less than $50,000,000; and of any bank holding company whose subsidiary banks have total capital and reserves of not less than $50,000,000; provided that the holding company is registered under the Bank Holding Company Act of 1956.

(3) Thrift institutions. Capital notes or debentures issued by any other savings bank or savings and loan association chartered under the laws of any State, or of the United States, or of the Commonwealth of Puerto Rico, notwithstanding the fact that such notes or debentures may be subordinate to the claims of depositors or other creditors of the issuing institution. Not more than 1 percent of the deposits of an institution shall be so invested.

(4) Others. Obligations issued, assumed or guaranteed by the International Bank for Reconstruction and Development, or the Inter-American Development Bank.

(b) Limitations. An institution shall not acquire or hold stock and obligations described in (a) both by way of investment and as security for loans in excess of 10 percent of its deposits; nor shall it acquire or hold stock and obligations of any single bank or holding company not operating in this State with a book value in excess of 1 percent of its deposits; nor shall it acquire or hold such stock in excess of 10 percent of the capital stock of any bank or holding company; provided, however, that nothing in this section shall be construed to prohibit the acquisition or holding of shares pursuant to chapters 34 or 100.

§544. Other stock investments

Savings banks and savings and loan associations are authorized to invest in:

(a) Preferred stock of public utilities. The preferred stock of any public corporation if all of the publicly issued bonds of such corporation qualify as legal investments under sections 542(a) or 542(b). Not more than 10 percent of the deposits of an institution shall be invested in preferred stocks of public utilities; and not more than 1 percent of such deposits shall be invested in the preferred stocks of any one corporation.

(b) Maine Development Credit Corporation. The stock, notes and other obligations legally issued by the Development Credit Corporation of Maine in an amount not to exceed 1 percent of the deposits of the institution.

(c) Bonds of nonprofit organizations. The bonds or other interest-bearing obligations of any religious, charitable, educational or fraternal association or corporation. Not more than 10 percent of the deposits of an institution shall be invested in securities coming within the coverage of this subsection; and not more than 1 percent of the deposits of an institution shall be invested in securities of any one such association or corporation.

See §§630, 631, 633

§545. Other prudent securities

Savings banks and savings and loan associations are authorized to invest in such securities as the directors consider to be sound, prudent investments, the making of which would not otherwise be legal but for this section. Not more than 10 percent of the deposits of an institution shall be invested in securities within the coverage of this section; and, investments in the stock of Maine financial insitutions shall not be considered within this section. All investments made pursuant to the authority granted in this section shall be so recorded in the minutes of the board of directors meeting at which such investments are approved.

See §634

§546. Retention of unauthorized securities

Financial institutions organized under Part 3 may acquire and hold securities not authorized by law but which have been acquired in settlements, reorganizations, recapitalizations, mergers, consolidations, by receipt of stock dividends or by the exercise of rights applicable to securities held by said financial institutions, and may continue to hold such securities at the discretion of the directors of such financial institutions; provided, however, that this section shall in no way be construed as affecting the limitations set forth in section 452. Financial institutions organized under this Title may continue to hold at the discretion of their directors securities under authorization of law.

See §635

§547. Change in investment limitations

The superintendent may by regulation, issued pursuant to section 240, raise or lower the several limitations as to percentage of securities prescribed under this chapter or prescribe such additional limitations as in his judgment banking conditions warrant.

See §636

§548. Subsidiary companies

A savings bank may invest its funds in subsidiary service corporations pursuant to section 434, and in corporations authorized to conduct activities pursuant to section 435; provided that all conditions and limitations set forth in those sections and regulations promulgated thereunder are complied with.

CHAPTER 55

ADDITIONAL POWERS

Sec.

§550. Powers in general

In addition to the powers granted to a savings bank by this chapter and elsewhere in Part 5, a savings bank shall have all those powers set forth in Parts 3 and 4 for all financial institutions subject to Parts 5, 6 or 7.

§551. Federal Reserve membership

(a) Any savings bank may become a member and stockholder in a Federal Reserve Bank within the Federal Reserve district where said savings bank is situated, and while such savings bank continues as a member bank under the "Federal Reserve Act", as amended, it shall be subject to said Federal Reserve Act and any amendments thereto relative to bank reserves. Reserves required under the Federal Reserve Act shall be substituted for the liquidity reserves required by section 503.

(b) Every savings bank that becomes a member of a Federal Reserve Bank may have and exercise any and all of the corporate powers and privileges which may be exercised by member banks under the Federal Reserve Act; provided that such savings bank shall at all times be subject to the requirements imposed on savings banks by this Title and the laws of this State, unless otherwise provided therein.

§552. Federal Home Loan Bank membership

(a) Any savings bank may become a member and stockholder in a Federal Home Loan Bank within the Federal Home Loan Bank district where said savings bank is situated; and while such savings bank continues as a member under the "Federal Home Loan Bank Act", as amended, it shall be subject to said Act relative to bank reserves. Reserves required under said Act shall be substituted for the liquidity reserves required pursuant to section 503; provided that if such bank is also a member of the Federal Reserve System pursuant to section 551, such liquidity reserves shall be maintained in such manner as shall comply with the requirements of both the Federal Reserve Bank and the Federal Home Loan Bank of which the savings bank is a member.

(b) Every savings bank becoming a member of a Federal Home Loan Bank may have and exercise any and all of the corporate powers and privileges which may be exercised by member institutions under the Federal Home Loan Bank Act; provided that such savings bank shall at all times be subject to the requirements imposed on savings banks by this Title and the laws of this State, unless otherwise provided therein.

§553. Promissory notes; bills of exchange

A savings bank shall have the power to collect promissory notes or bills of exchange.

See §443-2

§554. Borrowing

(a) A savings bank may borrow money from any source, within or without the State, and execute repurchase agreements when in the judgment of the directors such action is desirable.

(b) Notwithstanding the power granted to a savings bank in (a), the superintendent may, by regulation, establish limitations and conditions on any borrowing or type of borrowing by a savings bank.

CHAPTER 56

PROHIBITIONS

Sec.

§560. Prohibitions in general

In addition to the prohibitions applied to savings banks pursuant to this chapter, a savings bank, its officers and its directors shall be subject to the prohibitions in chapter 45 which are applicable to all financial institutions subject to Parts 5, 6 or 7.

§561. Use of the word "saving"

No person, partnership, association, or corporation, bank or trust company, except a savings bank organized under the laws of this State, shall use as part of its name or title the word or words "saving", "savings", or "savings bank"; except that loan and building associations legally organized under the laws of this State may use the name or style "savings and loan association"; provided that in all written uses of the name or style "savings and loan association", a loan and building association shall give equal emphasis to the word "savings" and the word "loan". This restriction shall not apply to any business being conducted under such name or style prior to the 23rd day of April, 1905, nor to any bank or trust company using such word or words prior to the first day of January, 1929.

See §401

PART 6

TRUST COMPANIES

CHAPTER 60

CAPITAL AND LIQUIDITY RESERVES

§600. Applicable law; powers

(a) All laws affecting trust companies shall apply to corporations organized and doing business as trust and banking companies.

(b) Any trust company chartered by special act of the Legislature shall have all the rights and powers and shall be subject to all provisions, regulations, and restrictions from time to time conferred upon trust companies or established with reference thereto by general law, except that the enumeration of powers in this Title shall not be construed as revoking any rights or powers possessed by such trust company by virtue of express provisions of its charter.

(c) Trust companies established prior to the effective date of this Title shall enjoy all of the privileges and be subject to this Title, as if organized thereunder.

§601. Guaranty fund

(a) Every trust company shall establish and maintain a guaranty fund which at all times shall exceed 4 percent of all existing deposits of the trust company, unless the superintendent shall approve, in writing, a lesser amount. Such fund shall provide security against losses and contingencies, and all loses not otherwise absorbed shall be charged against it.

(b) The guaranty fund shall initially consist of the capital stock and paid-in capital stock surplus of a trust company organized under chapter 30; or the capital deposits of the corporators or proceeds from the trust company's capital notes or debentures issued for such purpose in a trust company organized under chapter 31.

(c) A stock trust company shall set apart not less than 10 percent of its net earnings in each and every year until the amount so set apart, together with any unimpaired capital stock and paid-in capital stock surplus, shall amount to 4 percent of all existing deposits.

(d) A trust company organized pursuant to chapter 31 shall set apart not less than 10 percent of its net earnings in each and every year until the guaranty fund shall exceed 4 percent of all existing deposits of the trust company.

(e) Whenever the general reserve shall become impaired and fall below the amounts provided for in this section, it shall be reimbursed in the manner provided for its accumulation. If conditions warrant, the superintendent may increase the percentage of deposits by regulation.

See §1045

§602. Liquidity reserves

(a) Every trust company shall establish and maintain minimum liquidity reserves in an amount established by the superintendent within the following levels:

(1) Between 1 and 4 percent of the company's savings deposits;

(2) Between 3 and 6 percent of the company's time deposits;

(3) Between 8 and 15 percent of the company's demand deposits less treasury tax and loan account deposits; and

(4) Between 8 and 15 percent of the company's NOW account deposits.

(b) The liquidity reserve required in subsection 1 shall be comprised of the following items:

(1) Cash on hand;

(2) Deposits held in commercial banks, savings banks and savings and loan associations;

(3) Federal funds sold to banks pursuant to section 438;

(4) The book value of investments in obligations of the United States; provided that any such obligations shall mature in 5 years or less;

(5) The book value of investments in the obligations, notes and debentures issued by any agency or instrumentality of the United States; provided that any such obligations, notes or debentures shall mature in 5 years or less.

(c) The required amount of liquidity reserve shall be computed each business week by averaging the daily totals of items set forth in subsection 2. The method of computation and the reserve computation period for determining compliance with this section shall be established by the superintendent. The superintendent may, if financial institution conditions warrant, lower the maximum maturity periods in paragraphs D and E of subsection 2 for such reserve computation periods as he deems necessary.

(d) Deficiencies in the liquidity reserves established pursuant to this section may be subject to an assessment for such period of time as the deficiency may exceed 2 percent of the required reserves. Any such penalty may be assessed at a rate not to exceed 10 percent per annum.

(e) If any trust company fails to make up a reserve deficiency with a corresponding excess reserve in the reserve computation period immediately following the period in which the deficiency occurred, the superintendent may declare loans made by it during the period of continuing deficiency to be illegal and the obligation for payment of such loans and the responsibility of the directors, officers, agents and employees of such trust company shall be as set forth in section 454(c).

See §1044

§603. Federal Reserve membership

(a) Any trust company may become a member and stockholder of the Federal Reserve Bank within the Federal Reserve district where said trust company is situated, and while said trust company continues as a member bank under the "Federal Reserve Act", as amended, the company shall be subject to said Federal Reserve Act and any amendments thereto relative to bank reserves. Reserves required under the Federal Reserve Act shall be substituted for the liquidity reserves required under section 602.

(b) Every such trust company may have and exercise any and all of the corporate powers and privileges which may be exercised by member banks under the Federal Reserve Act. All provisions of charters in conflict with this section are void.

See §1044

§604. Liability of stockholders

As to deposits in and claims outstanding against trust companies on July 24, 1937, the liability of stockholders shall be as provided by law until terminated in accordance with this section. Such liability shall cease on November 1, 1937, with respect to all shares of stock issued by any trust company which shall be transacting the business of banking on November 1, 1937; provided that not less than 3 months prior to such date said trust company shall have caused notice of such prospective termination of liability to be published in a daily newspaper, if any, otherwise in a weekly newspaper, published in the city, town or county in which the principal office of such trust company is located. If a trust company fails to give such notice as and when provided, a termination of such liability may thereafter be accomplished as of the date 3 months subsequent to publication in the manner provided. No such notice shall be required as to shares of common stock in any trust company issued after December 16, 1933, which shall not in any event be subject to any liability to the depositors or any other creditor thereof.

See §1050

CHAPTER 61

DEPOSITS

Sec.

§610. Deposits in general

In addition to the provisions in this chapter governing deposits in a trust company, a trust company shall be subject to the provisions of chapter 41 setting forth the deposit powers common to all financial institutions subject to Parts 5, 6 or 7.

§611. Pledge of assets for deposits

A trust company shall not have the power to pledge or hypothecate any of its assets as security for deposits made with it, except for the following deposits:

(A) Federal, State, county, municipal, United States postmaster funds, postal savings funds or other public funds;

(B) Funds deposited by the superintendent as receiver of an institution of which he has, pursuant to law, taken possession; and

(C) Funds deposited by a trust company in its own bank, which funds are being held by such trust company in a fiduciary capacity.

See §1091

§612. Trust assets

(a) Except as otherwise provided, all securities, moneys and property received by any trust company to be held in trust or in any other fiduciary capacity shall be kept separate and apart from the other assets of the company in a trust department to be established and maintained by such trust company.

(b) The investments of each account shall be kept separate from those of all other accounts, except that:

(1) They may be placed in custody with any other bank or trust company, whether within or without this State and may, while so held, be commingled with other securities of other such accounts, with records being kept to show the share of each in the commingled securities.

(2) They may be commingled with similar securities of other accounts, with records being kept to show the share of each in the commingled securities. The ownership of and other interests in the securities credited to such account may be transferred by entries on the books of the trust company without physical delivery of any securities.

(3) Assets held as a trustee, executor, administrator or guardian may be invested in a common trust fund established under section 4101 of Title 18 of the laws of this State.

(4) Securities, the principal and interest of which the United States or any department, agency or instrumentality thereof has agreed to pay or has guaranteed the payment of may be deposited with the Federal Reserve Bank in the district

in which this State is located, to be credited to one or more fiduciary or safekeeping accounts on the books of said Federal Reserve Bank in the name of such trust company and to which accounts other similar securities may be credited. A trust company so depositing securities with a Federal Reserve Bank shall be subject to such rules and regulations with respect to the making and maintenance of such deposits as the superintendent may from time to time issue.

(5) Any cash, whether principal or income, or both, may be deposited in its commercial department in an account, either time or demand, specifically stating the trust to which the same belongs.

(6) Any cash, whether principal or income, or both, may be deposited in its commercial department in an aggregate deposit, either time or demand, including balances from other trusts, with the books of the department showing the specific interest of each trust in such aggregate deposit.

(c) A record of all matters relating to each trust account shall be kept separately in the trust department and shall indicate such particulars respecting each such account as the superintendent shall direct.

(d) The trust assets held by any such company shall not be subject to any other liabilities of said company.

See §1093

§613. Deposits by fiduciaries and other officials

An administrator, executor, assignee, guardian, conservator, receiver or trustee; any court, including courts of probate and insolvency; officers and treasurers of towns, cities, counties; and savings banks of this State may deposit any moneys, bonds, stocks, evidences of debt or of ownership in property or any personal property with a trust company; and any of said courts may direct any person deriving authority therefrom to so deposit the same.

See §1094

§614. Deposits of securities

(a) Notwithstanding any other provision of law, any fiduciary, as defined in section 642 of Title 13 of the laws of this State, holding securities in its fiduciary capacity; any bank, trust company or private banker holding securities as a custodian or managing agent; and any bank, trust company or private banker holding securities as custodian for a fiduciary, is authorized to deposit or arrange for the deposit of such securities in a clearing corporation as defined in Article 8 of Title 11 of the laws of this State, upon the following terms and conditions:

(1) When such securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other such securities deposited in such clearing corporation by any person, regardless of the ownership of such securities and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such bank, trust company or private banker acting as custodian, as managing agent or as custodian for a fiduciary shall at all times show the name of the party for whose account the securities are so deposited.

(2) Title to such securities may be transferred by bookkeeping entry on the books of such clearing corporation without physical delivery of certificates representing such securities.

(3) A bank, trust company or private banker so depositing securities pursuant to this section shall be subject to such rules and regulations as, in the case of State-chartered institutions, the superintendent and, in the case of national banking associations, the Comptroller of the Currency, may from time to time issue.

(4) A bank, trust company or private banker acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such bank, trust company or private banker in such clearing corporation for the account of such fiduciary.

(5) A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of such fiduciary's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary in such clearing corporation for its account as such fiduciary.

(b) This section shall apply to any fiduciary holding securities in its fiduciary capacity, and to any bank, trust company or private banker holding securities as a custodian, managing agent or custodian for a fiduciary, acting on October 3, 1973, or who thereafter may act regardless of the date of the agreement, instrument or court order by which it is appointed and regardless of whether or not such fiduciary, custodian, managing agent or custodian for a fiduciary owns capital stock of such clearing corporation.

See §1096

§615. Federal Housing Administration and Maine Housing Authority mortgages and debentures as collateral

Whenever collateral must or may be furnished by any depository in this State as security for the deposit of any funds whatsoever, or whenever collateral must or may be deposited with any official of this State pursuant to any statute of this State, mortgages insured and debentures issued by the Federal Housing Administrator or the Maine Housing Authority shall be considered eligible collateral for such purposes.

See §1092

CHAPTER 62

LOANS

Sec.

§620. Loans in general

In addition to the provisions in this chapter governing loans made by a trust company, a trust company shall be subject to the provisions of chapter 42 setting forth the lending powers common to all financial institutions subject to Parts 5, 6, or 7.

§621. Loans and security

A trust company authorized to do business in this State shall have the power to loan money on credits or real estate or personal security, and to negotiate loans and sales for others.

See §991-2

§622. Individual borrower loan limitations

(a) No stock trust company shall loan to any person, firm, business syndicate or corporation an amount or amounts, at any time outstanding, in excess of

10 percent of its total capital and reserves or, in the case of a mutual trust company, 10 percent of its total surplus, except on the approval of a majority of its entire board of directors or executive committee, unless the loan is secured by collateral which shall be of value equal to the excess of said loans above said 10 percent; and in no event shall the total amount of loans to any person, firm, business syndicate or corporation exceed 20 percent of the amount set forth above.

(b) In determining said amount, every person, firm, syndicate or corporation appearing on any loan as endorser, guarantor or surety shall be regarded as an original promisor.

(c) The following items shall be excluded from the limitation set forth in (a) and shall not be considered as a loan within (a):

(1) The discount of bills of exchange drawn in good faith against actually existing values, and the discount of commercial or business paper actually owned by the person negotiating the same, and the renewal or renewals in whole or in part of such commercial or business paper so discounted for periods not exceeding in all 3 years for any such paper;

(2) Loans to municipal corporations located within this State upon their bonds or notes;

(3) Any loan or loans to the extent that they are secured or covered by guarantees or by commitments or agreements to take over or purchase the same, made by any Federal Reserve Bank or by the United States or State of Maine or any department, bureau, board, commission, agency, authority, instrumentality or establishment of the United States or State of Maine, including any corporation owned directly or indirectly by the United States or State of Maine;

(4) Obligations as endorser, with or without recourse, or as guarantor, conditional or unconditional, of dealer-originated obligations;

(5) Sales of Federal funds, interbank deposits and clearings; and

(6) Loans to the extent secured by deposits or the cash surrender value of a life insurance policy.

(d) In all cases where loans in excess of said 10 percent are granted without collateral, the records of the company shall show who voted in favor thereof, and said records and those required by section 211 shall constitute prima facie evidence of the truth of all facts stated therein in prosecutions and civil actions to enforce the several provisions and penalties enumerated in section 454(c).

See §1131

§623. Guaranteed loans

Without regard to any other law, any bank or trust company authorized to do business in this State is authorized to make or buy and sell any loan, secured or unsecured, which is insured or guaranteed in any manner, in part or in full, by the United States or any instrumentality thereof, or by this State or instrumentality thereof, or for which there is a commitment to so insure or guarantee or for which a conditional guarantee has been issued.

See §1135

§624. Investments secured by mortgages under the G. I. Bill of Rights

Trust companies in this State shall have the power to invest their funds in notes or bonds secured by mortgages issued under the provisions of the Servicemen's Readjustment Act, 38 U.S.C. §1801 et seq., as amended.

See §991-3

§625. Lines of credit

(a) Nothing contained in sections 454 and 622 shall make it unlawful for a trust company to give any person, firm, syndicate or corporation a line of credit to an amount not exceeding 20 percent of its total capital and reserves, subject to the restrictions as to the vote of the entire board and the rights of interested persons to vote on the same, set forth in sections 454 and 622.

(b) The records of the institution shall show the approval or disapproval of a line of credit and if approved, unless otherwise specified, it shall be assumed that all directors voted in the affirmative.

(c) When such line of credit is given, the treasurer or other authorized officer may accept notes thereunder and pay out loans in accordance therewith without further approval.

(d) A line of credit given pursuant to this section shall expire no later than 12 months after its approval unless renewed in the same manner in which it was originally given.

See §1132

CHAPTER 63

PROPERTY OWNERSHIP

Sec.

§630. Real and personal property

Except as limited in section 326, a trust company shall have the power to hold and enjoy all property, real, personal and mixed, and may sell, grant and dispose of all such property.

See §991-5

CHAPTER 64

INVESTMENTS IN SECURITIES

Sec.

§640. Investments in general

In addition to the general investment powers of a trust company, a trust company may make investments as authorized by this chapter.

§641. Stock in Federal Reserve Banks; Federal Deposit Insurance Corporation

(a) Any trust company which is, or hereafter may become, a member of the Federal Reserve Bank within the Federal Reserve district where such trust company is situated under the "Federal Reserve Act", as amended, may acquire and hold shares of stock of said Federal Reserve Bank.

(b) Such trust company may acquire and hold shares of stock of the Federal Deposit Insurance Corporation under the "Banking Act of 1933", as amended, and while such trust company continues as a member bank, is authorized to exercise such power and do any and all things necessary to avail itself of the benefits of said Banking Act of 1933, and any other Acts of Congress granting powers to or conferring benefits on such member bank now or hereafter passed, without otherwise limiting or impairing in any way the authority conferred upon the superintendent under the laws of this State.

See §1047

§642. Subsidiary companies

A trust company may invest its funds in subsidiary service corporations pursuant to section 434, and in corporations authorized to conduct activities pursuant to section 435; provided that all conditions and limitations set forth in those sections and regulations promulgated thereunder are complied with.

CHAPTER 65

ADDITIONAL POWERS

Sec.

§650. Powers in general

In addition to the powers granted to a trust company by this chapter and elsewhere in Part 6, a trust company shall have those powers set forth in Parts 3 and 4 for all financial institutions subject to Parts 5, 6 or 7.

§651. Bond

No surety shall be necessary upon the bond of the trust company in its capacity as trustee, executor, administrator, conservator, guardian, assignee or receiver, or in any other capacity, unless the court or officer approving such bond shall require it.

See §991-10

§652. Trusts

A trust company may hold by grant, assignment, transfer, devise or bequest, any real or personal property or

trusts duly created, and may execute trusts of every description.

See §991-7

§653. Executor, guardian, etc.

A trust company may act as assignee, receiver, executor, administrator, trustee, conservator or guardian; provided that any such appointment as guardian shall apply to the estate of the ward only and not to the person.

See §991-8

§654. Acting as an agent

A trust company may act as agent for issuing, registering and counter-signing certificates, bonds, stocks and all other evidences of debt or ownership in property.

See §991-6

§655. Bills or drafts

(a) Subject to such restrictions as may be imposed by the superintendent, and subject to the limitation contained in (b), a trust company may accept for payment at a future date drafts and bills of exchange drawn upon it, and may issue letters of credit authorizing holders thereof to draw drafts upon it or its correspondents, at sight or on time; provided that such acceptances or drafts are based upon actual values.

(b) No trust company shall accept such bills or drafts to an aggregate amount exceeding at any one time 50 percent of its total capital and reserves, except with the approval of the superintendent; and, in no case, to an aggregate amount in excess of 100 percent of its total capital and reserves.

See §991-9

CHAPTER 66

PROHIBITIONS

Sec.

§660. Prohibitions in general

In addition to the prohibitions applied to trust companies pursuant to this chapter, a trust company, its officers and its directors shall be subject to the prohibitions in chapter 45 which are applicable to all financial institutions subject to Parts 5, 6 or 7.

§661. Surety bond business prohibited

(a) No trust company authorized to do business in this State shall engage in the business of acting as surety on official bonds or bonds for the performance of other obligations or guaranteeing the fidelity of persons in positions of trust, private or public, and at the same time engage in the business of receiving on deposit money, coin, bank notes, evidences of debt, accounts of individuals, companies, corporations, municipalities or States subject to check or payable on demand, other than deposits for the payment of bonds and interest thereon and for sinking funds.

(b) No trust company organized under the laws of this State shall be authorized to guarantee the fidelity of persons in positions of trust, private or public, and to act as surety on official bonds and for the performance of other obligations, unless it shall have a capital stock, fully paid in, of not less than $250,000.

(c) Nothing in this section shall be construed as enlarging any of the corporate powers of any trust company.

See §954

§662. Use of word "bank"

No person, unless duly authorized under the laws of this State or the United States to conduct the business of a bank or trust company, shall use as a part of the name or title under which such business is conducted or as designating such business, the word or words "bank", "banker", "trust company", "banking" or "trust and banking company" or the plural of any such word or words, or any abbreviation thereof in or in connection with any other business than that of a bank or trust company duly authorized as aforesaid. This restriction shall not apply to any such person conducting business under such name or style prior to the 23rd day of April, 1905.

See §953

PART 7

SAVINGS AND LOANS

CHAPTER 70

CAPITAL AND LIQUIDITY RESERVES

§700. Applicable law; powers; name

(a) Every savings and loan association, lawfully organized and as now existing or hereafter created, shall have all the powers conferred by this Title upon savings and loan associations, both express and implied, and such others as are incidental thereto, and incidental or necessary to the operation of its business and attainment of its purposes. Such powers shall be exercised in conformity with the provisions of this Title applicable to savings and loan associations.

(b) Savings and loan associations established prior to the effective date of this Title shall enjoy all of the privileges and be subject to this Title as if organized thereunder.

(c) Associations formed in accordance with chapters 30 or 31 with a charter to conduct business pursuant to Part 7 shall be known as Savings and Loan Associations, and the name of every association so formed shall contain as part thereof the words "Savings and Loan" or "Loan and Building".

See §§1631, 1556, 1591

§701. Undivided profits

(a) The undivided profits of a savings and loan association shall represent the undistributed earnings of the association, exclusive of any amounts required to be placed into fund pursuant to section 702 and which is unallocated and for general corporate use.

(b) Such profits shall be the source for all interest and dividend payments made by the association to members, depositors and shareholders; provided that dividends may be declared and paid from capital surplus to holders of outstanding cumulative preferred stock pursuant to section 516-2 of Title 13-A of the laws of this State.

§702. Guaranty fund

(a) Every savings and loan association shall establish and maintain a guaranty fund which at all times shall equal at least 5 percent of all existing withdrawable accounts and deposits of the association, unless the superintendent shall approve, in writing, a lesser amount. Such fund shall provide security against losses and contingencies; and all losses not otherwise absorbed shall be charged against it.

(b) The guaranty fund shall initially consist of the capital deposits of the incorporators or the association's capital notes or debentures issued for such purpose in a savings and loan association

organized under chapter 31; or the capital stock and paid-in capital stock surplus of an association organized under chapter 30.

(c) Should the guaranty fund become impaired and fall below 5 percent of the association's total withdrawable accounts and deposits, it shall be restored by setting aside from current net income an amount which, together with other amounts so set aside for this purpose during the year, shall be equal to at least 1/2 of 1 percent of its deposits, until the fund is restored to the required amount. If the savings and loan association has capital stock pursuant to chapter 30, all or part of such restoration may be made from its paid-in capital stock surplus; provided that any paid-in capital stock surplus so used shall not be available for any other corporate purpose.

(d) A savings and loan association insured by the Federal Savings and Loan Insurance Corporation may designate the guaranty fund required by this section as its Federal insurance reserve account, and any association so insured shall be considered in compliance with this section; provided that the reserve requirements of the Federal Savings and Loan Insurance Corporation are being complied with.

See §§1838, 476-1

§703. Liquidity reserves

(a) Every savings and loan association shall establish and maintain a minimum liquidity reserve in an amount established by the superintendent within the following levels:

(1) Between 1 and 4 percent of the association's savings deposits;

(2) Between 3 and 6 percent of the association's time deposits;

(3) Between 8 and 15 percent of the association's demand deposits less treasury tax and loan account deposits; and

(4) Between 8 and 15 percent of the association's NOW account deposits.

(b) The liquidity reserve required in subsection 1 shall be comprised of the following items:

(1) Cash on hand;

(2) Deposits held in commercial banks, savings banks and savings and loan associations;

(3) Federal funds sold to banks pursuant to section 438;

(4) The book value of investments in obligations of the United States; provided that any such obligations shall mature in 5 years or less;

(5) The book value of investments in the obligations, notes and debentures issued by any agency or instrumentality of the United States; provided that any such obligations, notes or debentures shall mature in 5 years or less.

(c) The required amount of liquidity reserve shall be computed each business week by averaging the daily totals of items set forth in subsection 2. The method of computation and the reserve computation period for determining compliance with this section shall be established by the superintendent. The superintendent may, if financial institution conditions warrant, lower the maximum maturity periods in paragraphs D and E of subsection 2 for such reserve computation periods as he deems necessary.

(d) Deficiencies in the liquidity reserves established pursuant to this section may be subject to an assessment for such period of time as the deficiency may exceed 2 percent of the required reserves. Any such penalty may be assessed at a rate not to exceed 10 percent per annum.

(e) If any savings and loan association fails to make up a reserve deficiency with a corresponding excess reserve in the reserve computation period immediately following the period in which the deficiency occurred, the association shall not make any investments authorized by this Title, except those authorized under sections 728, 741 and 742, without the prior written approval of the superintendent.

CHAPTER 71

DEPOSITS

Sec.

§710. Deposits in general

In addition to the provisions in this chapter governing deposits in a savings and loan association, a savings and loan association shall be subject to the provisions of chapter 41 setting forth the deposit powers common to all financial institutions subject to Parts 5, 6 or 7.

§711. Classification and amounts

(a) Savings and loan associations may issue such savings accounts and savings deposits as its board of directors or bylaws may determine, and may classify and differentiate among such accounts and deposits on such basis as it may determine. By vote of its directors or pursuant to its bylaws, an association may establish minimum and maximum amounts and time requirements for savings deposits and classes of savings deposits, and the board or any person duly authorized by it may refuse any deposit and may limit the amount of payments which may be received on an account, except as provided in section 713.

(b) An association shall issue to each depositor an account book, certificate or some other evidence of a savings account or savings deposit which shall clearly indicate any time or notice requirement pertaining thereto.

(c) An association whose savings accounts and savings deposits are insured by the Federal Savings and Loan Insurance Corporation pursuant to section 411 may issue any type or class of savings account or savings deposit, the issuance of which has been approved by the Federal Savings and Loan Insurance Corporation.

(d) An association may agree in advance to pay an additional or different rate of earnings on any class or subclass of account established pursuant to (a) of this section; provided that the association regulates the distribution of earnings in such a manner that each depositor shall receive the same ratable portion of earnings as every other depositor in that class.

(e) A savings and loan association may accept sums for Christmas clubs and other special purpose accounts on terms to be agreed upon, with provision for repayment of the same, with or without interest.

(f) Any type or class of deposit not offered by a savings and loan association prior to the effective date of this section, nor offered by any association not insured by the Federal Savings and Loan Insurance Corporation, may not be offered by an association without the prior written approval of the superintendent.

(g) Nothing contained in this section shall be construed as authorizing a savings and loan association to establish demand deposit accounts or NOW accounts except as provided in sections 412 and 413.

See §§1702, 1837

§712. Dividends and interest on share accounts and deposits

(a) After passing to the guaranty fund that part of net income required in section 702, if any, an association may pay dividends or interest on its savings shares, savings accounts, savings and other deposits, at such rate and at such times and for such time or notice periods as shall be determined by resolution of its board of directors or in accordance with deposit agreements entered into pursuant to this Title.

(b) Payments of dividends and interest pursuant to (a) shall be made only from net income and from undivided profits not otherwise restricted by law.

(c) Notwithstanding any other provisions of this Title, an association may, if its bylaws so provide, exclude from earnings or dividends any of the following classes of accounts or deposits:

(1) Those having a withdrawal or participating value of less than $25; and

(2) Those which are issued under a plan whereby they shall be withdrawn within 24 months from the date upon which they are issued.

(d) Dividends and interest due on the deposits or accounts in a savings and loan association shall be determined in accordance with section 414.

See §1837

§713. Limitation upon accounts or deposits

By its bylaws or resolution of its board of directors, a savings and loan association may limit the aggregate participation of any member or depositor; provided that such limitation shall not apply:

(A) To an account which is pledged as security for the repayment of money due such association;

(B) To an account which exceeds the aforesaid limitation on the effective date of this Title, but no additions other than dividends shall be made thereto;

(C) When the excess results from the addition of dividends to any such account, or from the acquisition of an account by gift, will or inheritance, or from the acquisition of an account previously held as collateral security for the payment of an obligation, or from the acquisition by one association of the assets of another association; or

(D) When such excess results from a reduction in the capital of the association.

See §1703

§714. Withdrawals

Except as provided in sections 412 and 413, withdrawals from share accounts and deposits in a savings and loan association shall be made in the manner prescribed in this section.

(a) Any member or depositor may at any time present a written application for withdrawal of all or any part of his share accounts or deposits, which application shall request immediate withdrawal of a stated amount in accordance with this section; provided that no member or depositor shall have on file in any one association more than one application at a time. Such application may be cancelled in whole or in part at any time pursuant to written notice by the member or depositor.

(b) Every association shall pay or number, date and file in order of actual receipt every withdrawal application. Withdrawals shall be made in the order of actual receipt of applications, except as provided in this section; and, upon withdrawal, an association shall pay the value of any share accounts or deposits, as determined by the board of directors, but not in excess of the withdrawal value thereof.

(c) If an association so elects, it may at any time pay in full each and every application as presented. It shall not pay some in full, unless it pays every application on file in full, except by paying all applications on file on the rotation plan prescribed in this section; provided, however, that the board of directors shall have an absolute right to pay upon any application not exceeding $200 to any member or depositor in any one month, in any order.

(d) Members or depositors who have filed written application for withdrawal shall remain members or depositors. No dividends shall be declared upon that portion of a share account or deposit which has been noticed for withdrawal, which for dividend purposes is required to be deducted from the latest previous additions to such share account or deposit, so long as such application is on file.

(e) The rotation plan of payment of withdrawals referred to in (c) is as follows:

(1) On the first day of each month, each application which has been on file since the first day of the preceding month and which is reached in order shall be paid $1,000 on account, or in full if the amount noticed for withdrawal or the unpaid balance of such application is less than $1,000.

(2) Each such application for more than $1,000 so paid shall be deemed refiled as if filed on that day.

(3) Such limited payment on the first day of each month and such renumbering shall take place on the first day of each subsequent month as long as there are applications unpaid.

(4) At least 1/3 of the receipts of an association from its members or depositors during the preceding calendar month shall be applied on the first day of each month to the payment of applications which have been on file since the first day of the preceding month. Any association may apply to withdrawals an amount larger than 1/3 of such receipts, but cannot obligate itself to do so.

(5) When an application to withdraw is reached for payment as provided, a written notice shall be sent to the applicant by mail at his last address recorded on the books, and unless the applicant shall apply in person or in writing for such withdrawal within 30 days from the date of such notice, no payment on account of such application shall be made and such application shall be cancelled.

See §1751

§715. Retirement of accounts or deposits

(a) At any time after 4 years from the date of issue, the board of directors may, under rules adopted by it, retire unpledged share accounts or deposits by enforcing their withdrawal.

(b) The members or depositors whose share accounts or deposits are to be retired shall be determined by lot, and they shall be paid the full value of their share accounts or deposits less all fines, if any, and a proportionate part of any unadjusted profit or loss; provided that in the case of an association organized pursuant to chapter 30, a retired member or depositor shall be paid the full value of his share accounts or deposits, less all fines, if any, plus the accrued

dividends or interest owed by the association on that share account or deposit.

See §1752

§716. Application of withdrawal value to indebtedness

(a) If a borrowing member or depositor of an association is in default on any indebtedness to such association, the board of directors may, after 30 days' written notice of such intention sent by mail to such borrower at his last known address as shown on the books of said association, apply to his indebtedness at their withdrawal value the whole or any part of any shares or sums credited on any account or deposit of such borrowing member or depositor. Share accounts or deposits credited to the indebtedness of a borrower shall be cancelled and any balance remaining shall be held for his account.

(b) If a non-borrowing member or depositor of an association is in default on any payment to such association for a period of 90 days or more, the board of directors may, after 30 days' written notice of such intention sent by mail to such member or depositor at his last known address as shown on the books of said association, forfeit the share account or deposit of such member or depositor; and the value thereof, after deducting all fines and legal charges, shall be transferred to the credit of the defaulting member or depositor in an account to be designated "forfeited accounts". Said member or depositor shall be entitled, upon 30 days' notice, to receive the balance so transferred without dividends or other accruals from the time of such transfer.

(c) Nothing in this section shall prevent an association from applying and crediting at any time the full withdrawal value of any share account or deposit pledged with it as security for the payment of any debt toward the payment of such debt.

See §1753

§717. Share accounts and deposits as legal investments or security for bonds

(a) Subject to the application of the prudent man rule, administrators, executors, custodians, guardians, conservators, trustees and other fiduciaries of every kind and nature; insurance companies, business and manufacturing companies, banks, credit unions, and all other types of financial institutions; charitable, educational, eleemosynary and public corporations and organizations; municipalities and other public corporations and bodies; and public officials are specifically authorized and empowered to invest funds held by them in share accounts or deposits of any association operating pursuant to this Title. With respect to investments by custodians, associations hereby are deemed to be "banks" within the meaning of that term as used in the Uniform Gift to Minors Act of this State.

(b) Whenever, under the laws of this State or otherwise, a deposit of securities is required for any purpose, the securities made legal investments by this section shall be acceptable for such deposits, and whenever, under the laws of this State or otherwise, a bond is required with security, such bond may be furnished, and the securities made legal investments by this section in the amount of such bond, when deposited therewith, shall be acceptable as security without other security.

(c) This section is supplemental to any and all other laws relating to and declaring what shall be legal investments for the persons, corporations, organizations and officials referred to in this section and the laws relating to the deposit of securities and the making and filing of bonds for any purpose.

See §1706

CHAPTER 73

LOANS

Sec.

§720. Loans in general

In addition to the provisions in this chapter governing loans made by a savings and loan association, a savings and loan association shall be subject to the provisions of chapter 42 setting forth the lending powers common to all financial institutions subject to Parts 5, 6 or 7.

§721. Real estate mortgage loans

(a) Subject to the conditions and limitations set forth in this section, a savings and loan association may make any loan secured by a mortgage which shall be a first lien on real estate.

(b) Prior to approval of any loan, every association shall appraise or cause to be appraised the security for the loan, and said appraisal or appraisals shall be in writing with a certificate signed by the appraiser or appraisers, and such appraisal shall be filed and preserved by the association. Appraisals shall be conducted in one or more of the following ways:

(1) By an independent qualified appraiser designated by the board of directors;

(2) By the association's appraisal committee appointed by the board of directors; or

(3) In the case of an insured or guaranteed loan, by an appraiser appointed by any lending, insuring or guaranteeing agency of the United States or the State of Maine which shall insure or guarantee such loan, in whole or in part.

(c) Direct reduction loans may be made, provided such are repayable in weekly or monthly installments. All payments made upon such loans shall be applied first to interest and other charges, and the remainder to the reduction of the principal of the loan. Loans made under this subsection shall be subject to the following conditions and limitations:

(1) To an amount not exceeding 80 percent of the appraised value of one to 4-family residential property or combination residential and business property, repayable in a period not exceeding 30 years;

(2) To an amount not exceeding 80 percent of the appraised value of any other type of improved real estate, repayable in a period not exceeding 25 years;

(3) Principal payments on any loan may be waived from time to time for good cause by an authorized officer whose action is confirmed by the board of directors;

(4) Principal payments on construction loans may be postponed for a maximum of one year from the date of the note; provided that the final maturity date of the loan does not exceed the limits established in (1) or (2);

(5) Mortgage loans not exceeding 95 percent of the appraised value may be made; provided that at least the top 20 percent of the loan is insured by a mortgage guaranty insurer licensed to do business in this State;

(6) Loans may be made in any amount not exceeding 90 percent of the appraised value or 90 percent of the purchase price of owner occupied, one-family homes, whichever amount is less, if secured by a mortgage; and

(i) The loan contract requires that in addition to interest and principal payments on the loan, the equivalent of 1/12 of the estimated annual taxes, assessments and insurance premiums on the secured property be paid monthly in advance to the association; and

(ii) Loans written under this subsection which exceed 80 percent of the appraised value shall at no time exceed 20 percent of the association's total assets.

(d) Non-amortizing real estate loans may be made subject to the following conditions and limitations:

(1) Interest must be payable at least semiannually;

(2) No loan may have a maturity exceeding 5 years; and

(3) No loan may exceed 75 percent of appraised value.

(e) Loans written under (d), together with loans on properties located more than 100 miles from an association's place of business, shall not in the aggregate exceed 20 percent of total assets of the association.

(f) Real estate loans may be made on the sinking fund plan in amounts not exceeding the limits specified in this section. Any shares pledged for real estate loans, known as sinking fund shares, may be cancelled and the full amount of these shares, including dividend credit thereon, less all monthly installments of interest, fines, taxes and any other legal charges in arrears, may be endorsed on the mortgage note and future payments handled in the same manner as with direct reduction loans, with the written agreement of the borrower. When such agreement for transfer is entered into, a copy of the agreement shall be placed in the association files and a copy given to the borrower.

(g) Additional loans upon the same real estate or a portion thereof may be made; provided that any mortgage securing such loan shall contain a provision to the effect that the premises described are subject to such prior mortgage or mortgages to the mortgagee; and provided further that there shall be no intervening mortgage or encumbrance other than those held by the association concerned.

(h) A savings and loan association may purchase a participating interest in mortgage loans. The mortgage which secures payment of any such participating interest shall be a first lien upon real estate, and shall be the type of mortgage loan that the association is authorized to make pursuant to this Title. Such participating interest shall entitle the association to share all money and other benefits derived from such mortgage loan, or incidental thereto, pro rata with, or with preference and priority over, the holder of any other participating interest therein.

(i) Loans for the purchase or improvement of real estate, or for the construction, alteration, repair or improvement of buildings erected thereon, or those which may be made for any other purpose may be made by an association without regard to the restrictions of this Title, provided that the following conditions and limitations are complied with:

(1) The loan shall be secured by a mortgage on real estate;

(2) The loan shall be guaranteed in whole or in part by the United States or the State of Maine, any instrumentality or agency of either of them, or a commitment to so guarantee or insure shall have been made; and

(3) The loan shall have been made in accordance with the terms and conditions permitted by the agency guaranteeing or insuring such loan, notwithstanding any other provision of law limiting interest or other charges or prescribing terms and conditions.

(j) No association shall make a loan secured by any one property which exceeds $35,000 or 10 percent of its surplus account, whichever is greater; nor shall the total loans to any one borrower or group of associated borrowers exceed $45,000 or 20 percent of its surplus account, whichever is greater. This limitation shall not apply to associations whose accounts are insured by the Federal Savings and Loan Insurance Corporation; provided that the loan requirements of the Federal Home Loan Bank Board are being complied with.

See §§1832,1834

§722. Other mortgage loans

(a) Loans on leases. A savings and loan association may make a loan secured by a mortgage, pledge or collateral assignment of a lease of real property or a lease of air rights, subject to the following conditions and limitations:

(1) The security shall be a first lien upon the lease and the fee shall not be subject to any prior lien;

(2) The amount of the loan shall not exceed 80 percent of the association's appraisal of the leasehold interest, including the leasehold interest in improvements erected or to be erected upon the leased real property; and

(3) The note or other obligation evidencing the loan shall require monthly payment of the interest and principal thereon at a rate of regular amortization sufficient to repay the entire loan within a period not to exceed 4/5 of the unexpired term of the lease, defined so as to exclude extensions of the term which may be provided by an option of renewal or extension, and within a period not to exceed in any event 25 years.

(b) Mobile home loans. A savings and loan association may make loans secured by an interest in a mobile home, in an amount not to exceed 100 percent of the value of the security, on such terms and conditions as the board of directors may determine; provided that the following conditions are met:

(1) The security interest shall be a first lien upon the mobile home;

(2) The mobile home is placed or to be placed upon a slab or foundation located on real property which is owned, rented or leased by the borrower;

(3) The mobile home is or will be connected with all existing public utilities; and

(4) The borrower uses the mobile home as his residence and not for business or commercial purposes.

See §§1832-8, 1832-10

§723. Personal and consumer loans

(a) A savings and loan association may make loans to any individual borrower or borrowers, evidenced by a note or other obligation, with or without security, including loans for home improvement, in addition to loans provided for in section 728.

(b) Loans made to any one individual pursuant to this section shall not exceed 1 percent of the association's deposits; and the aggregate amount of such loans shall not exceed 10 percent of the deposits of the association, except as provided in section 727.

See §1832-4; Recommendations 14a, 15

§724. Loan participations originated by commercial banks

(a) A savings and loan association may purchase a participation interest in any loan originated by a commercial bank authorized to do business in this State, subject to the restrictions set forth in (b) and (c) of this section.

(b) A participation interest purchased pursuant to this section shall meet the following conditions:

(1) It shall not exceed 75 percent of the amount of the loan and the selling bank shall maintain at all times a minimum participation of 25 percent of the outstanding loan balance;

(2) It shall be evidenced by a participation certificate signed by the selling bank;

(3) It shall be subject to a specific repayment schedule;

(4) If the loan in which the participation interest is sold is a commercial loan, the selling bank shall prepare and supply to the purchasing association a comprehensive analysis of balance sheets, earnings statements and surplus reconciliations covering the most recent 5 years of the borrower's operations, or for the number of years in operation if less than 5 years; and

(5) The selling bank shall annually supply to the association a report of the loan, its security, if any, and the financial status of the borrower.

(c) Total participations in loans to any one borrower shall not exceed 1 percent of the association's deposits; and the aggregate amount of such loans shall not exceed 10 percent of the deposits of the association, except as provided in section 727.

See Recommendations 14b, 15

§725. Other prudent loans

(a) A saving and loan association may make such other loans, including commercial loans, as the directors of the association consider to be prudent loans, the making of which would not otherwise be legal but for this section.

(b) Loans within this section shall include, but not be limited to:

(1) Loans to dealers on mobile homes for inventory financing; provided that the amount of such loans shall be limited to the manufacturer's invoice price of each new mobile home including any installed equipment.

(2) Purchase of loan participations in which the United States or any instrumentality thereof participates which qualify as legal loans for savings and loan associations under any provision or combination of provisions of this Title.

(3) Purchases from the issuer of its commercial paper maturing within 12 months; provided that:

(A) The issuer's business is principally in the United States;

(B) The paper would qualify 90 days prior to maturity as eligible for rediscount with a Federal Reserve Bank; and

(C) The paper is rated within the 3 highest grades by any rating service approved by the superintendent.

(c) Loans to any one borrower pursuant to this section shall not exceed 1 percent of the association's deposits; and the aggregate amount of such loans shall not exceed 10 percent of the deposits of the association, except as provided in section 727.

See Recommendations 14c, 15

§726. Additional loans authorized by superintendent

(a) The superintendent may by regulation grant additional authority for savings and loan associations to make commercial loans or purchase participation interests in loans originated by commercial banks authorized to do business in this State, in an amount determined by the superintendent with the percentage thereof to be adjustable on an industry-wide basis between 0 and 10 percent of total deposits. Loans made pursuant to this section shall be made in accordance with such criteria as shall be established pursuant to regulations promulgated by the superintendent.

(b) The superintendent may by regulation adjust the percentage limitations contained in sections 724, 725, and 726; provided that at no time shall the total loans outstanding under sections 724, 725, and 726 exceed 30 percent of the deposits of a savings and loan association.

See Recommendation 14

§727. Miscellaneous loans

In addition to the loans authorized elsewhere in this Title for savings and loan associations, an association may make the following loans, subject to the terms and conditions set forth herein:

(a) Account and secured loans.

(1) Loans secured by a pledge of any share account or deposit book or certificate issued by any financial institution located in this State, or secured by a pledge of a life insurance policy.

(2) The amount of any loan made pursuant to (a)(1) of this section shall not exceed the withdrawal value of the pledged account, or the cash surrender value of any pledged life insurance policy.

(b) National Housing Act. Loans to an amount within the discretion of the board of directors; provided that the loan is eligible for insurance under the National Housing Act and seasonable application is made under Title I of that Act.

(c) Higher education. Loans, secured or unsecured, to an amount within the discretion of the board of directors; provided that the loan is made to assist the borrower in furthering his higher education.

See §§1832-2, 1832-4, 1832-7

§728. Aggregate limitation on loans

(a) After the effective date of this chapter, the aggregate total of all loans made by a savings and loan association under this Title shall not exceed 100 percent of its withdrawable accounts and undivided profits, as determined by the superintendent. In determining the aggregate of loans hereunder, there shall be excluded mortgage loans backing any security in the issuance of which the association participates pursuant to section 402.

(b) Notwithstanding the limitation set forth in (a) of this section, the superintendent may, for good cause shown, approve an aggregate amount of loans in excess of the amount set forth in (a), subject to such terms and conditions as the superintendent deems necessary.

(c) This section shall not apply to associations whose accounts are insured by the Federal Savings and Loan Insurance Corporation; provided that the loan requirements of the Federal Home Loan Bank are being complied with.

See §1832-1-G

CHAPTER 73

REAL PROPERTY OWNERSHIP

Sec.

§730. Real estate investments in general

Savings and loan associations may hereafter invest their funds, in addition to investments in loans under chapters 42 and 72 and securities and other investments under chapter 74, in real estate in accordance with this chapter and in accordance with section 326.

§731. Real estate other than for offices

(a) A savings and loan association may acquire by purchase or otherwise any real estate upon which the association may have a mortgage, judgment, lien or other encumberance, or in which it may have an interest for the purpose of protecting or conserving such interest.

(b) The association may sell, convey, contract to sell, lease or mortgage at pleasure the real estate so acquired to any person or persons.

(c) Any real estate acquired pursuant to (a) may be sold and the association, in the discretion of its board of directors, may accept the note of the purchasers, secured by a first mortgage, upon such terms and conditions as the directors may determine.

See §1835-2

CHAPTER 74

INVESTMENTS IN SECURITIES

Sec.

§740. Investments in general

A savings and loan association may hereafter invest its funds in other than loans and real estate investments authorized elsewhere in this Title, in accordance with the provisions of this chapter, subject to the conditions and limitations set forth herein.

§741. Investments authorized for savings banks

A savings and loan association may invest in securities which are, or hereafter may be made, legal for savings banks pursuant to the provisions of chapter 54, subject to the conditions and restrictions set forth therein. An association may also invest in such other investments as are or shall be authorized by any law of this State for associations regulated by this Title.

See §1834-5

§742. Federal Home Loan Bank obligations

A savings and loan association may invest in the bonds, notes, debentures or other securities or time deposits or obligations issued by any Federal Home Loan Bank of the United States, or by the Federal Home Loan Bank System.

§743. Subsidiary companies

A savings and loan may invest its funds in subsidiary service corporations pursuant to section 434, and in corporations authorized to conduct activities pursuant to section 435; provided that all conditions and limitations set forth in those sections and regulations promulgated thereunder are complied with.

CHAPTER 75

ADDITIONAL POWERS

Sec.

§750. Powers in general

In addition to the powers granted to a savings and loan association by this chapter and elsewhere in Part 7, a savings and loan association shall have the powers set forth in Parts 3 and 4 for all financial institutions subject to Parts 5, 6 or 7.

§751. Expenses and service charges

(a) A savings and loan association may take from its members or borrowers all expenses incurred in connection with the consummation of a real estate mortgage loan and, in addition thereto, a service charge, premium or fee for priority or privilege of a loan for the acquisition of real estate.

(b) No such expense, service charge, premium or fee taken by an association pursuant to (a) shall be deemed usurious.

See §1632-10

§752. Federal Home Loan Bank membership

(a) A savings and loan association may become a member and stockholder in a Federal Home Loan Bank within the

Federal Home Loan Bank district where said savings and loan association is situated; and, while such association continues as a member under the "Federal Home Loan Bank Act", as amended, it shall be subject to said Act relative to association reserves. Reserves required under said Act shall be substituted for the liquidity reserves required pursuant to section 703.

(b) Every savings and loan association which is a member and stockholder in a Federal Home Loan Bank may have and exercise any and all of the corporate powers and privileges which may be exercised by member institutions under the Federal Home Loan Bank Act; provided that such association shall at all times be subject to the requirements imposed on savings and loan associations by this Title and the laws of this State, unless otherwise provided therein.

§753. Participation in Federal Reserve Bank: collection or exchange of checks and drafts

A savings and loan association may maintain an account with the Federal Reserve Bank of the district in which such association is situated, for the purpose of facilitating the collection or exchange of checks or drafts pursuant to section 13 of the Federal Reserve Act, as amended, to the extent that the maintenance of such an account and participation in the collection and exchange system by a savings and loan association may be authorized by applicable Federal laws or regulations.

§754. Mutual association acting as an agent

Any savings and loan association organized pursuant to chapter 31 may act as an agent for any person where such agency will further the interests of the association and its members, subject to such limitations as may be prescribed by the superintendent.

See §1632-12

§755. Borrowing

(a) A savings and loan association may borrow money from any source in or out of the State, on the note, bond and mortgage or other obligation of the association, upon such terms and conditions as the board of directors may from time to time prescribe by resolution adopted by at least a majority of all the members of the board and duly recorded on the minutes; and may pledge, assign or transfer mortgages owned by the association and the obligations secured by such mortgages, together with the shares, if any, pledged as collateral security therefor, or any real or other personal property, as security for the repayment of money so borrowed.

(b) No association, without the written consent of the superintendent, shall borrow any sum or sums the aggregate of which would exceed 25 percent of its total assets, except that any association which is a member of a Federal Home Loan Bank shall have power to secure advances.

See §1632-9

CHAPTER 76

PROHIBITIONS

Sec.

§760. Prohibitions in general

In addition to the prohibitions applied to savings and loan associations pursuant to this chapter, a savings and loan association, its directors and its officers shall be subject to the prohibitions in chapter 45 which are applicable to all financial institutions subject to Parts 5, 6 or 7.

§761. Business restrictions

(a) No person, association or corporation shall carry on the business of accumulating and loaning or investing the accounts of its members or of other persons in the manner of savings and loan associations, or carry on any business similar thereto within this State, unless incorporated under the laws thereof for such purposes, but this section shall not prevent such association, corporation or institution incorporated under the laws of another state from loaning money upon mortgages of real estate located within this State.

(b) Federal savings and loan associations, incorporated pursuant to the Home Owners' Loan Act of 1933, as amended, shall not be deemed foreign corporations under this section. Insofar as this Title is not inconsistent with Federal law, this Title shall apply to Federal savings and loan associations whose home offices are located in this State, and to the members thereof.

(c) This section may, on complaint of the superintendent, be enforced by injunction; and any violation thereof may be punishable by a fine of not more than $1,000.

See §1901

PART 8

CREDIT UNIONS

CHAPTER 80

ORGANIZATION AND FORMATION

Sec.

§800. Applicable law; powers

(a) Every credit union lawfully organized shall be subject to the provisions of this Part and all regulations issued hereunder.

(b) Chapters 80 through 87 shall not be construed as repealing, modifying or amending the provisions of any private or special Acts authorizing the organization of or defining the purposes of corporations of a similar nature to credit unions, except that such corporations shall be deemed to

have all the powers vested in corporations organized under this Part in addition to those powers under such private or special Acts.

See §2605

§801. Permission to organize

(a) Organizers. Any number of persons, but not less than 10, all of whom shall be residents of this State, may apply in writing to the superintendent for permission to organize a credit union for the purpose of promoting thrift among its members and creating a source of credit for them, at legitimate rates of interest, for provident and productive purposes.

(b) Application to organize. The organizers shall file with the superintendent an application to organize a credit union, together with such copies as the superintendent may require. The organizers shall agree to be bound by its terms and the application shall state:

(1) The name by which the credit union shall be known, which name shall include the words "credit union";

(2) The proposed location of its principal office;

(3) The names and addresses of subscribers to the application, and the number of shares subscribed for by each;

(4) The proposed field of membership, as defined in section 803; and

(5) Such other information as the superintendent may deem necessary and appropriate.

No application for permission to organize a credit union shall be deemed complete unless accompanied by an application fee of $50, payable to the Treasurer of State, to be credited and used as provided in section 203.

(c) Publication of notice. After determining that the application required in (b) is complete, the superintendent may advise the organizers to publish, within 15 days of such advice, a notice, in such form as the superintendent may prescribe. If required, such notice shall appear at least once a week for 3 successive weeks in one or more newspapers of general circulation in the county where the credit union is to be established, or in such other newspapers as the superintendent may designate. Such published notice shall set forth the information in the application for permission to organize, and such additional information as the superintendent may require. The superintendent may require individual notice to any person, organization or corporation, and may require that one of such publications contain the information required under section 241(b).

(d) Permission from superintendent.

(1) In accordance with section 241, the superintendent shall determine whether a certificate to commence business and permission to organize should be granted.

(2) In addition to the criteria set forth in section 242, the superintendent shall consider the following criteria in determining whether permission to organize should be granted; namely that:

(A) The character, responsibility and general fitness of the persons named in such certificate are such as to reasonably assure the proper conduct of the affairs and operation of a credit union;

(B) The proposed field of membership provides a common bond of interest and a potential membership such as will reasonably assure success of the credit union; and

(C) The proposed credit union will not jeopardize materially the financial stability of any existing credit union.

See §2641

§802. Organization

Upon receipt of a permission to organize pursuant to section 801, the organizers shall comply with the following requirements:

(a) Conformance with law. Other than as provided herein, a credit union shall be organized in accordance with Title 13-A of the laws of this State.

(b) Bylaws.

(1) The organizers shall next adopt bylaws consistent with this Part for the general supervision of, and which shall govern the affairs of, the credit union.

(2) The bylaws shall provide for and determine:

(A) The name of the corporation;

(B) The purposes for which it is formed;

(C) The condition of residence, occupation or association which qualifies persons for membership;

(D) The conditions on which shares may be paid in, transferred and withdrawn;

(E) The method of receipting for money paid on account of shares or repaid on loans;

(F) The number of directors, and the number of members of the credit committee and the supervisory committee, and the manner of electing same;

(G) The time of holding regular meetings of the board of directors, the credit committee and the supervisory committee;

(H) The duties of the several officers;

(I) The entrance fees, if any, to be charged;

(J) The fines, if any, to be charged for failure to meet obligations to the corporation punctually;

(K) The manner in which members shall be notified of all meetings;

(L) The number of members who shall constitute a quorum at all meetings; and

(M) Such other regulations as may be deemed necessary.

(3) Within 10 days after adoption of the bylaws, the organizers shall file copies thereof with the superintendent; and, within 15 days after receipt the superintendent shall, after examining such bylaws for conformance with the requirements of this Title, approve or disapprove such bylaws.

(c) Payment of shares.

(1) A credit union shall not commence business until the number of shares subscribed to in section 801(b) have been fully paid in by the subscribers.

(2) At such time as the subscribed shares have been fully paid in, a complete list of the shareholders with the name, address, occupation and amount of shares held by each shall be filed with the superintendent, which list shall be verified by the board of directors of the credit union.

(d) Certificate to commence business.

(1) Upon receipt of the statement required in (c) of this section, the superintendent shall cause an examination to be made to determine if the shares have been paid in and all requirements of this section and other laws have been complied with.

(2) Upon completion of his examination, and if all requirements of (1) are met, including approval of the bylaws, the superintendent shall issue a certificate authorizing the credit union to receive payments on account of shares, make loans, and otherwise commence business. Such certificate shall be conclusive of the facts stated therein; and it shall be unlawful for any credit union to begin transacting business until such a certificate has been granted. A copy of the certificate shall be filed with the Secretary of State by the Superintendent.

(e) Failure to commence business.

(1) Any credit union which shall fail to commence business as a credit union within one year after receiving permission to organize shall forfeit said permission and any certificate to commence business so obtained; and shall cease all activities, which fact shall be certified to the Secretary of State by the superintendent.

(2) Notwithstanding the limitation in (1), the superintendent may extend the period in which business shall be commenced for a period not to exceed 6 months, upon written application by the organizers setting forth the reasons for such extension. If an extension is approved by the superintendent, the Secretary of State shall be so notified by the superintendent.

See §§2644, 2646

§803. Membership requirements

(a) Field of membership. "Field of membership" of a credit union means those persons having a common bond of occupation or association; residence within a well-defined neighborhood, community or rural district; employment by a common employer or by employers located within a well-defined industrial park or community; membership in a bona fide fraternal, religious, cooperative, labor, rural, educational or similar organization; and members of the immediate families of such persons.

(b) Limited members. Any fraternal organization, voluntary association, partnership or corporation having a usual place of business within the State and composed principally of individual members or stockhodlers in a credit union may become a member of a credit union; provided that, except with the consent of the superintendent, a credit union shall make no loans to such a member in excess of the total of its shares therein. No credit union shall receive from any such member money in payment for shares to such an amount that the total of such payments by all members of the class described in this subsection shall exceed at any time 25 percent of the assets of the credit union; provided that the superintendent may approve in writing a greater percentage.

See §§2601, 2643

§804. Supervision and examination

Credit unions shall be under the supervision of the superintendent; and Part 2 of this Title shall be applicable to credit unions in the same manner as that Part applies to financial institutions in general.

See §2642

CHAPTER 81

POWERS

Sec.

§810. Powers in general

In addition to the implied and incidental powers granted elsewhere in this Part, a credit union shall be empowered to do the acts set forth in this chapter, subject to the conditions and limitations set forth herein.

§811. Borrowing

(a) Limitation. A credit union may borrow moneys from any source; provided that its aggregate borrowings shall not exceed 50 percent of its paid-in share capital and total surplus.

(b) Exceeding limitation. Upon making application to and receiving the written approval of the superintendent, a credit union may borrow in excess of the limitation set forth in (a), but not in excess of the amount stated in such approval.

See §2724; Recommendation 24

§812. Services for members

(a) Sale of negotiable checks and money orders. A credit union may engage directly in the business of selling, issuing or registering checks or money orders to its members.

(b) Safe deposit boxes. A credit union may own and maintain safe deposit vaults, with boxes, safes and other facilities therein, for the use of its members and for the safekeeping or storage of personal property susceptible of being deposited therein, subject to the general laws and regulations applicable to safe deposit boxes.

(c) Safekeeping. A credit union may receive on deposit from its members property for safekeeping.

(d) Financial counseling. A credit union may render, or participate in the rendering of, financial counseling services, including budget planning, debt management and related services, to its members.

(e) Trustee, self-employment retirement plans. A credit union shall have the power to act as trustee for a member under a retirement plan established pursuant to the "Self-employed Individuals Retirement Act of 1962", as amended, or the "Employee Retirement Income Security Act of 1974", as amended, subject to the conditions and limitations set forth in section 431.

See §§2604-A, 2604-B, 2728

§813. Participation in electronic funds transfer system

(a) A credit union, with the prior written approval of the superintendent, may issue to its members cards or other devices permitting such members to gain access to or participate in an established electronic funds transfer system.

(b) The use of such cards or other devices pursuant to (a) by the members of the credit union shall be subject to the interest rate and loan limitations set forth in this Part.

See Recommendation 16

§814. Participation in public lotteries

A credit union may participate in public lotteries authorized pursuant to the laws of this State in the manner outlined in guidelines and regulations promulgated pursuant to such laws; provided that the superintendent may promulgate additional rules and regulations governing such participation.

§815. Branch offices

Subject to the prior written approval of the superintendent pursuant to section 325, a credit union may establish branches and facilities, as authorized in chapter 32, at any location within this State; provided that such branches or facilities of a credit union shall meet the needs and convenience of the credit union's common bond members. The superintendent may by regulation lower the application fee provided for in section 336.

See Recommendation 6

§816. Deposits

A credit union may receive savings of its members in payment for shares, Christmas clubs, special purpose clubs, tax clubs, deposit accounts and the like.

See §2761

§817. Powers of Federally-chartered credit unions

To the extent authorized by the superintendent pursuant to regulations, a credit union shall have the power to engage in any activity which a credit union chartered by or otherwise subject to the jurisdiction of the Federal Government may hereafter be authorized to engage in by Federal legislation or regulations issued pursuant to such legislation.

CHAPTER 82

FINANCIAL MANAGEMENT

Sec.

§820. Share capital and surplus

(a) Amount and par value of share capital.

(1) The capital of a credit union shall be unlimited in amount and shall consist of shares which may be subscribed to and paid for in such manner as the bylaws may prescribe.

(2) The par value of such shares may be established by the credit union in its charter, in an amount not less than $5 nor more than $25 per share; provided that par values in excess of $5 per share shall be in multiples of $5.

(3) The maximum amount of shares which may be held by any one member shall be established from time to time by resolution of the board of directors.

(b) Share transactions. The provisions of section 416 shall be applicable to a member's shares in a credit union.

(c) Surplus. "Surplus" or "total surplus" of a credit union means the sum of its guaranty fund, undivided profits and other surplus and reserve accounts.

See §2647; Recommendation 23

§821. Guaranty fund

(a) Every credit union shall establish and maintain a guaranty fund in the manner set forth in (b) and (c) of this section. Such fund shall provide security against losses and contingencies, and all losses not otherwise absorbed shall be charged against it.

(b) Before the payment of a dividend, there shall be set apart into the guaranty fund a percentage of the gross income of the credit union which was accumulated during the preceeding dividend period, in the following manner:

(1) 10 percent of gross income until the guaranty fund shall equal 7 and 1/2 percent of the total of outstanding loans and risk assets of the credit union; and then

(2) 5 percent of the gross income until the guaranty fund shall equal 10 percent of the total outstanding loans and risk assets of the credit union.

(c) Whenever the guaranty fund shall fall below 10 percent or 7 and 1/2 percent of the total of outstanding loans and risk assets, as the case may be, it shall be replenished by regular contributions in such amounts as needed to maintain the fund goals of 7 and 1/2 or 10 percent pursuant to (b).

(d) The superintendent shall have authority to define which assets of a credit union are to be deemed "risk" assets for purposes of this section; and the superintendent may vary the amount of the fund required under this section as may be necessary for the protection of the credit union and its members.

See Recommendation 26

§822. Dividends and interest

(a) Time for payment; method.

(1) As the bylaws may provide and after provision for the fund in section 821, and at such intervals as it shall determine, the board of directors may declare a dividend to be paid from the remaining net earnings or from undivided profits.

(2) Such dividends shall be paid on all paid-up shares outstanding at the end of the period for which the dividend is declared. Shares which become fully paid up during such dividend period and are outstanding at the close of the period shall be entitled to a proportional part of such dividend for each month of the period in accordance with section 414.

(3) Dividends due to a member shall, at the discretion of the board of directors, be paid to him in cash or be credited to his account in shares.

(b) Rates on different accounts. The board of directors shall be permitted to establish dividend rates for Christmas club accounts and the like.

(c) Maximum dividend rate.

(1) The superintendent shall have the authority to establish, by regulation, rate ceilings on dividends paid by credit unions; such ceilings to be established with due regard for the maintenance of competitive equality among State-chartered credit unions, Federally-chartered credit unions, and other financial institutions.

(2) In the absence of regulations pursuant to (c)(1), no dividend shall be authorized or paid at a rate in excess of 7 percent per year.

(d) Tax exemption. Shares in a credit union organized pursuant to this Part shall be exempt from taxes; and no taxes or charges, except as otherwise provided, shall be levied against them.

See §§2687, 2762; Recommendation 25

§823. Fiscal year

The fiscal year of a credit union shall end as of the close of business on the last business day of December.

See §2603

§824. Reports to superintendent

(a) Within 30 days after the last business day of December in each year, a credit union shall file with the superintendent a report in such form as he may prescribe, signed by the president, treasurer and a majority of the members of the supervisory committee, who shall take an oath in writing that said report is correct according to their best knowledge and belief.

(b) A credit union neglecting to make said report within the time prescribed may be required, at the discretion of the superintendent, to forfeit to the State $100 for each day during which such neglect continues.

See §2725

§825. Insurance of shares

(a) Requirement. Every credit union authorized to do business in this State shall insure its member's shares with the National Credit Union Administration or the successor to such Federal agency.

(b) Transition period.

(1) A credit union not insured by the National Credit Union Administration on the effective date of this section shall make application for such insurance coverage with the Administrator within 6 months of said effective date. Such credit union, within one week of making

said application, shall submit to the superintendent a certified copy of the resolution adopted by its board of directors authorizing such application.

(2) Any credit union making application for insurance pursuant to (1) shall have up to 2 years from the effective date of this section to comply with all requirements of the Administrator for insurance of its shares. Within one week of the receipt of the notice of acceptance or rejection by the Administrator of its application, the credit union shall file a statement of such acceptance or rejection with the superintendent.

(c) Failure to obtain insurance. If a credit union shall fail to obtain insurance of its shares within the time set forth in (b), or if its application shall be rejected, the superintendent may exercise any and all powers granted to him by this Title for the protection of the public and members of the credit union, notwithstanding the solvency of such credit union.

(d) Applicable law. A credit union insured pursuant to (a) shall have the power and duty to comply with all statutes and regulations governing insurance of shares by the National Credit Union Administration; provided that nothing contained in this section shall be construed as repealing, modifying or impairing any powers, duties, rights or responsibilities of the superintendent, or of the credit union so insured, under the provisions of this Title.

See §1931; Recommendation 12

CHAPTER 83

MANAGEMENT AND OPERATIONS

Sec.

§830. Management in general

The management and operations of a credit union shall be conducted in accordance with the provisions of Title 13-A of the laws of this State, except as provided in this chapter and elsewhere in this Part.

§831. Board of directors

The management and control of the affairs of a credit union shall be vested in a board of directors, whose powers shall be exercised in accordance with the provisions of this section.

(a) Number, election and qualifications.

(1) The number of directors of a credit union shall not be less than 5, all of whom must be residents of this State.

(2) The initial board of directors shall be elected at the first meeting of the members of the credit union, and by a vote of the members at each annual meeting thereafter.

(3) The term of a director shall not be less than one year nor more than 3 years; provided that if the term is more than one year, the bylaws shall establish terms of office so that an equal number of directors, so far as possible, shall be elected each year.

(4) Directors shall be sworn annually to the proper discharge and faithful performance of their duties. Such oaths shall be taken within 60 days of election to office, or such office shall become vacant. A record of every such qualification shall be preserved with the records of the credit union.

(5) A director shall serve until a successor is elected and qualified.

(6) If a director ceases to be a member of the credit union, his office shall thereupon become vacant.

(b) Powers and duties. The board of directors shall manage the affairs, funds and records of the credit union and shall meet as often as necessary, but not less than once a month, notice of such meeting to be made in the manner prescribed in the bylaws. As set forth below, the special duties of the board of directors shall be:

(1) Applications for membership. To act upon applications for membership; or to appoint a membership committee, or one or more membership officers from among the members of the credit union, other than the treasurer, an assistant treasurer or loan officer, who may be authorized by the board to approve applications for membership under such conditions as the board may prescribe; provided that such committee or membership officer so authorized shall submit to the board at each monthly meeting a list of approved or pending applications for membership received since the previous monthly meeting, together with such other related information as the bylaws or board may require;

(2) Loans. To fix from time to time the maximum amount, both secured and unsecured, which may be loaned to any one member, except as limited by chapter 84;

(3) Employees. To authorize the employment of such person or persons as may be necessary to carry on the business of the credit union; and to fix the compensation of such employees, including the treasurer;

(4) Borrow money. To borrow money to carry on the functions of the credit union, subject to the limitation set forth in section 811;

(5) Conveyance of property. To authorize the conveyance of property;

(6) Bond. To purchase a blanket bond in an amount which is not less than an amount recommended by the superintendent, which shall be required of the treasurer and of each other officer and other employee having custody of funds or property;

(7) Number of shares. To limit the number of shares which may be owned by one member, and such limitation shall apply alike to all members;

(8) Investment of funds. To have charge of the investment of funds;

(9) Other duties. To perform such other duties as the members may from time to time require;

(10) Supervisory committee. To appoint a supervisory committee of not less than 3 members, not more than one member of which may be a director;

(11) Credit committee. To appoint a credit committee of not less than 3 members;

(12) Executive Committee. To appoint an executive committee, when the bylaws so provide, consisting of not less than 3 members of the board with authority to invest funds or borrow in the name of the credit union;

(13) Suspension of members of committees. To suspend any or all members of the credit and supervisory committees for failure to perform their duties;

(14) Vacancies. To fill vacancies occurring between annual meetings in the board of directors and in the credit committee and supervisory committee until the election or appointment and qualification of their successors;

(15) Loan officers. To establish and provide for compensation of loan officers appointed by the credit committee, and of auditing assistance requested by the supervisory committee;

(16) Depository for funds. To designate a depository or depositories for the funds of the credit union;

(17) Dividends. To declare dividends in the way and manner provided in the bylaws and in accordance with this Part;

(18) Rate of interest. To determine from time to time the rate of interest consistent with this Part which shall be charged on loans; and to determine from time to time the amount of interest rebate and the interval on which such rebate if any, shall be computed; and

(19) Other action. To perform or authorize any action consistent with this Part not specifically reserved by the bylaws for the members.

(c) Compensation. No member of the board of directors shall receive any compensation for his services as a member of said board, or as a member of any committees of the credit union.

(d) Director as a committee member. No director of a credit union shall be a member of both the credit and the supervisory committees of the credit union, unless the number of members in the credit union is less than 11.

(e) Co-makers of loans. No director shall become surety or co-maker for any loan.

See §§2682, 2684, 2683

§832. Officers and employees

(a) Election.

(1) The directors, at their first meeting after the annual meeting of the members, shall elect from their own number a president, one or more vice presidents, a clerk, a treasurer and such other officers as may be necessary for the transaction of the business of the credit union. The offices of clerk and treasurer may be held by the same person.

(2) Those persons elected in (1) shall be the officers of the corporation, and shall hold office until their successors are elected and qualified.

(b) Bond.

(1) The treasurer and all other officers and employees of a credit union having access to the cash or negotiable securities in its possession shall each give bond, including faithful performance clause, to the credit union in such amount and with such surety or sureties and conditions as the superintendent may prescribe, and shall file with the superintendent an attested copy thereof.

(2) The treasurer and any other officers and employees required to give bond may be included in one or more blanket or schedule bonds.

(c) Compensation. The treasurer, or any other officer serving in the capacity of general manager, may be compensated in such amount as the board of directors may from time to time determine.

See §§2683, 2684

§833. Supervisory committee

(a) Duties. The supervisory committee, appointed pursuant to section 831(b), shall keep informed fully and at all times as to the financial condition of the credit union, shall examine or cause to be examined carefully the cash and accounts of the credit union annually, and shall report to the board of directors its findings, together with its recommendations.

(b) Verification of deposits.

(1) At least once in every 3 years, the supervisory committee shall verify the passbooks and accounts of members of the credit union, and a report of such verification shall be made to the superintendent during the course of his regular examination pursuant to section 221.

(2) If the superintendent deems such verification inadequate, he may cause the Bureau to verify such accounts; and the Bureau shall have full access to every aspect of the credit union's activities and to all books, papers, vouchers, resources and all other records and property belonging to said credit union, whether in its immediate possession or otherwise, for the purpose of facilitating such verification.

(3) Expenses incurred by the superintendent in any such verification shall be paid by the credit union, to be credited and used as provided in section 203.

(c) Meetings. The supervisory committee shall hold meetings at least once each quarter, and shall keep records thereof.

(d) Annual report. The supervisory committee shall make an annual report at the annual meeting of members of the credit union.

See §2722

§834. Credit committee

(a) Powers and duties. The credit committee, appointed pursuant to section 831(b), shall:

(1) Hold meetings at least once in each month;

(2) Act on all applications for loans to members;

(3) Approve in writing all personal loans granted and the security, if any, pledged therefor; and

(4) Submit to the board of directors all applications for loans to be secured by mortgages of real estate, with its recommendations thereon, which shall include a signed appraisal as to its best judgment of the value of the real estate involved.

(b) Loan officers.

(1) When so provided by the bylaws, the credit committee may appoint one or more loan officers who may receive such compensation as may be provided by the board of directors.

(2) The credit committee may delegate to the loan officer or officers such authority as is within the limits set for the committee by the board of directors, as it may vote. The authority granted to any loan officer shall be reported to and included in the minutes of the meetings of the board of directors.

(3) No loan officer shall disapprove any loan application, but shall refer such applications to the full credit committee. All loan officers shall furnish to the credit committee a record of each application acted upon by him at the next meeting of said committee after the date of filing of the application therefor. No loan officer shall have authority to disburse funds of the credit union for any loan approved by him in his capacity as loan officer.

(c) Personal loans. No personal loan, other than those approved by loan officers, shall be made unless a majority of the members of the credit committee who are present at a meeting when the loan application is considered vote to approve said loan. A quorum of the

credit committee at such meeting shall be at least 2/3 of the members of the committee.

See §2723

§835. Meetings of the members

(a) Time and notice. The annual meeting of the members of a credit union shall be held at such time and place as the board of directors may determine, but not later than 60 days after the close of the fiscal year. Special meetings may be called at any time by a majority of the directors, and shall be called by the clerk upon written application of 10 or more members entitled to vote. Notice of all meetings of the members shall be given in the manner prescribed in the bylaws.

(b) Voting. No member shall be entitled to vote by proxy, except in a vote for dissolution, or have more than one vote; and a member under the age of 18 shall not be entitled to vote. A fraternal organization, voluntary association, partnership or corporation having membership in a credit union may cast one vote at any of the meetings of the credit union by a duly delegated agent.

(c) Lending limitations; dividends. The members at each annual meeting may fix the maximum amount to be loaned to any one member and, upon recommendation of the board of directors, may declare dividends in accordance with section 822.

See §2681,2763

§836. Expulsion of members

(a) The board of directors may expel from the credit union any member who has not carried out his engagement with it, or who has been convicted of a criminal offense, or who neglects or refuses to comply with the provisions of this Part or the bylaws of the credit union, or who has deceived the credit union or a committee thereof with regard to the use of borrowed money; but no member

shall be expelled until he has been informed in writing of the charges against him and until an opportunity has been given him, after reasonable notice, to be heard thereon.

(b) The amounts paid in on shares by members who have withdrawn or have been expelled shall be paid to them in the order of withdrawal or expulsion, but only as funds therefor become available and after deducting any amounts due from such members to the credit union.

(c) Such expulsion shall not operate to relieve a member from any outstanding liability to the credit union.

See §2726

§837. Amendment of bylaws and charter

(a) Procedure. Amendments of the bylaws may be adopted, and amendments of the charter requested, by the affirmative vote of 2/3 of the members of the board of directors at any duly held meeting thereof, if the members of the board have been given at least 7 days' notice of said meeting and the notice has contained a copy of the proposed amendment or amendments.

(b) Superintendent's approval. No amendments to the bylaws or charter of a credit union shall become effective without the written approval of the superintendent.

See §§2645, 2646

CHAPTER 84

LOANS

Sec.

§840. Loans in general

(a) A credit union may make loans to its members in accordance with the provisions of this chapter.

(b) In addition, a credit union shall be subject to section 421 relating to interest absent a writing; and to section 423 relating to loan participations.

(c) The credit committee provided for in section 834 shall approve all loans to members made by the credit union. In addition, the approval of the credit union's board of directors or executive committee shall be required for all loans other than personal loans to members.

See §2686

§841. Loan applications

(a) General procedures. All applications for loans shall be made in writing, and shall state the purpose for which the loan is desired and the security, if any, offered.

(b) Real estate mortgage loans. The form of application for a loan to be secured by a mortgage on real estate shall contain:

(1) The date;

(2) The name of the applicant;

(3) The name of the spouse of the applicant, if any;

(4) The amount of loan desired;

(5) The appraised value of the real estate in question;

(6) A statement of all balances due on any mortgages outstanding against said real estate;

(7) The income, if any, from said real estate;

(8) A description of said real estate; and

(9) Such other information as the board of directors may require.

See §2764

§842. Unsecured loans

Unsecured loans to members may be made by a credit union in an amount not to exceed $500 or 2 and 1/2 percent of share capital and surplus, whichever is greater, up to a maximum amount of $5,000 for each such loan.

See §2765-1; Recommendation 27

§843. Secured loans

(a) Secured loans to members may be made by a credit union in an amount not to exceed $1,000 or 5 percent of share capital and surplus, whichever is greater; provided that such loan is adequately secured by real or personal property.

(b) Loans fully secured by a pledge of shares of a credit union may be made without limitation as to amount.

See §2765-2

§844. Real estate mortgage loans

A credit union may make loans to its members secured by a first mortgage on real estate located within this State, subject to the following conditions and limitations:

(a) Amount.

(1) The total liability of any member upon loans within this section shall be as established in section 843(a).

(2) No loan made pursuant to this section shall exceed 80 percent of the appraised value of the property mortgaged, as determined by the credit committee. The note or other obligation evidencing the loan shall require monthly payment of the interest and principal thereon sufficient to repay the entire loan within a period not exceeding 30 years, except that this provision shall not apply to real estate loans insured by the Federal Housing Administration.

(b) Loans to secure future advances. Any interest in real estate which may now be mortgaged to a credit union pursuant to this section may be mortgaged in the manner set forth in section 425, subject to the terms and conditions set forth therein. This subsection shall apply to all credit unions authorized to do business in this State, whether organized under the laws of this State, including special or private laws, or organized under the laws of the United States.

(c) Aggregate mortgage loan limitation. The total amount which a credit union may invest in loans secured by first mortgages on real estate shall not exceed 35 percent of its share capital and surplus.

See §2765-3

§845. Loans to other credit unions

Subject to the approval of its board of directors, a credit union may make loans to other credit unions located in this State; provided that the aggregate loans outstanding at any one time to any one credit union shall not exceed 10 percent of the share capital and surplus of the lending credit union.

See §2686

§846. Lines of credit

(a) Subject to the limitations set forth in section 853, the credit committee of a credit union may approve a line of credit to a member upon written application by the member, and advances may be made to such member within the limits of such extension of credit. No additional loan applications shall be required from the member so long as the aggregate obligation outstanding at any time does not exceed the specified limit of such extension of credit.

(b) Advances made pursuant to a member's line of credit as authorized in (a) shall be made by the credit union directly to the member and not to any other person or entity.

(c) Repayment of advances made pursuant to a line of credit shall be on such terms as shall be mutually agreed upon by the member and the credit union.

(d) A line of credit given pursuant to this section shall expire no later than 12 months after its approval unless renewed in the same manner in which it was originally given.

§847. Federal funds transactions

A credit union may lend or sell to any member bank of the Federal Reserve System, or to any trust company incorporated under the laws of this State, such deposits as it maintains with a member bank or trust company, in accordance with the provisions of section 427.

CHAPTER 85

INVESTMENTS

Sec.

§850. Investments in general

(a) In addition to the loans a credit union is authorized to make pursuant to chapter 84, a credit union may invest its funds in accordance with the provisions of this chapter.

(b) Investments pursuant to this chapter shall only be made with the approval of the board of directors or executive committee of the credit union.

§851. Deposits, notes and bonds

A credit union may invest in:

(A) Deposits or share accounts in any financial institution, or shares in a credit union authorized to do business in this State; provided that deposits in such institution or credit union are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or the National Credit Union Administration;

(B) Bonds, notes of the United States or of any State or political subdivision thereof, or bankers' acceptances; provided that such are, at the time of purchase by the credit union, legal investments for savings banks in this State pursuant to sections 541, 542(a), 542(b), 543(a)(1) or 544(c); and

(C) The purchase of notes from a liquidating credit union; provided that such purchase shall not exceed 5 percent of the purchasing credit union's share capital and surplus.

Nothing contained in this section shall be construed as authorizing a credit union to purchase or invest in the stock of any corporation.

See §2686

§852. Real estate for office facilities

(a) A credit union may invest in real estate by the purchase of improved or unimproved real estate, and in the erection or improvement of buildings thereon together with fixtures and equipment, for the purpose of providing offices for the transaction of its business. Such buildings may include space for rental purposes.

(b) The cost to the credit union of such lands, buildings, fixtures and equipment shall not exceed 50 percent of such credit union's total surplus at the time such investment is made; provided that the superintendent may, for good cause shown, upon application by the credit union in writing, approve an amount in excess of said 50 percent of total surplus, subject to such conditions as the superintendent may deem necessary.

See §2686

§853. Service corporations

(a) A credit union may purchase the capital stock or obligations or otherwise invest in or participate in or utilize the services of any organization performing necessary clearing, bookkeeping, statistical and related services for the credit union or other credit unions or related organizations.

(b) No credit union may invest more than 10 percent of its assets for such purpose; provided that the superintendent may, upon application in writing and for good cause shown, approve an amount in excess of said 10 percent, subject to such terms and conditions as the superintendent deems necessary.

(c) A credit union or credit unions seeking to invest in a service corporation shall do so in accordance with the provisions of section 434.

See §2686

§854. Additional authority

Credit unions organized under private or special laws shall have the authority granted by this chapter, in addition to such other investment authority as they now possess.

See §2686

CHAPTER 86

DISSOLUTION, MERGERS AND CONVERSIONS

Sec.

§860. Dissolution

(a) Voluntary.

(1) At a meeting especially called to consider the matter, a majority of the entire membership may vote to dissolve the credit union; provided that a copy of the notice was mailed to the superintendent at least 10 days prior thereto. A member may cast his vote by proxy on forms prepared by the directors and mailed with the notice.

(2) The credit union shall thereupon immediately cease to do business, except for the purposes of liquidation; and the president and secretary shall, within 5 days following such meeting, notify the superintendent of intention to liquidate and include a list of the names of the directors and officers of the credit union, together with their addresses, and the name of the person or organization appointed by the board of directors to liquidate the credit union.

(b) Involuntary.

(1) If it shall appear that any credit union is insolvent, or that it has violated any of the provisions of this Title applicable to credit unions, the superintendent may, after holding a hearing or giving adequate opportunity for a hearing, order such credit union to correct such

conditions; and shall grant it not less than 60 days within which to comply.

(2) Failure to comply with such order shall afford the superintendent grounds for revocation of the certificate of organization and charter, and for applying to the Superior Court of the county in which such credit union is located for the appointment of a receiver to close up the affairs of such credit union.

(c) Liquidation procedures.

(1) In liquidation, the credit union shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets and doing all the acts required in order to wind up its business; and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted. The board of directors or receiver may sell or transfer the assets of the credit union to any other credit union, corporation, credit union league fund or other purchaser, upon the written approval of the superintendent or a court having jurisdiction in this matter.

(2) The board of directors or, in the case of involuntary dissolution the receiver, shall use the assets of the credit union to pay in the following order:

(A) Expenses incidental to liquidation, including any surety bond that may be required;

(B) Any liability due nonmembers; and

(C) Savings club accounts.

Assets then remaining, if any, shall be distributed to the members proportionately to the shareholdings held by each member, as of the date dissolution was voted.

(3) As soon as the board of directors or the receiver determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed as set forth in this subsection, they shall execute a certificate of dissolution on a form prescribed by the superintendent and file same with the Secretary of State and registry of deeds where the original

certificate of organization is recorded. After recording, the board of directors shall forward it to the superintendent, whereupon such credit union shall be dissolved.

See §2791

§861. Mergers

(a) Eligibility.

(1) Any 2 or more credit unions authorized to do business in this State may, with the approval of the superintendent obtained pursuant to section 241, and in accordance with such procedures as the superintendent may make, merge or consolidate into a credit union organized under the laws of this State.

(2) If any credit union involved in the proposed merger is a Federal credit union, such merger is subject to all applicable laws, rules and regulations of the United States.

(b) Plan and adoption. The merger shall be pursuant to a plan agreed upon by a majority of the board of directors of each credit union joining in the merger; and approved by the affirmative vote of a majority of the members voting in person or by proxy at meetings of each credit union called for that purpose or by written consent of the majority of the members of each credit union.

(c) Compliance. The superintendent shall not approve said merger unless the surviving credit union would be in compliance with all other laws of the State regulating the organization of credit unions.

(d) Effective date; certificate.

(1) When the requirements as to approval have been met, including the approval of the superintendent and any Federal agency whose approval may be required under Federal law for such merger or consolidation, the superintendent shall, issue an appropriate certificate which must be filed in all places where original organization certificates are required to be filed in this State. In all cases, the superintendent shall cancel the charters of those credit unions which will cease to exist under the terms of the merger and file notice of such action in all places where organization certificates are required to be filed in this State.

(2) The merger shall become effective upon filing of the certificates pursuant to (d) (1), unless a later effective date was set forth in the certificate.

(e) Effect of merger. Upon the issuance by the superintendent of a certificate to the surviving credit union, all property rights and interests of the merged credit union shall vest in the surviving credit union, without deed, endorsement or other instruments of transfer; and all debts, obligations and liabilities of the merged credit unions are assumed by the surviving credit union. Thereafter, the charter of any merged credit union is void, and existence of the merged credit union as a legal entity separate from the surviving credit union shall terminate. Sections 345, 346 and 347 shall apply to such mergers.

See §2792

§862. Conversion: Federal to State charter

(a) A credit union now or hereafter authorized to do business in this State and organized pursuant to provisions of Federal law may become subject to this Part and receive a charter as a State-chartered credit union by making application in writing to the superintendent for such conversion. The superintendent may approve or disapprove such conversion in accordance with the

criteria set forth in section 242; provided that as a condition precedent to such approval, the credit union shall show compliance with all applicable Federal laws and regulations relating to such conversion.

(b) Upon receiving approval from the superintendent, the credit union shall be issued a charter under this Part, which fact shall be certified by the superintendent to the Secretary of State; and, from and after the issuance of such charter, said credit union shall be subject to the provisions of this Part and all regulations issued hereunder.

(c) A credit union converting to a State charter pursuant to this section shall be subject to the provisions contained in sections 345, 346 and 347, governing resulting institutions.

§863. Conversion: State to Federal charter

A credit union organized under the general or special laws of this State may convert to a Federally-chartered credit union. Approval of the members of the credit union for such conversion shall be obtained in the manner set forth in section 331(c). Upon obtaining such approval, the credit union shall comply with the requirements of subsections (3), (4) and (5) of section 331(c); provided that filings required to be made thereunder and the obtaining of approvals and charters therein specified shall be done in accordance with the requirements of the National Credit Union Administration and all Federal laws and regulations applicable thereto.

§864. Conversion: change in type of State charter

A credit union subject to the laws of this State may convert its charter to do business as a credit union into a charter to do business as a savings bank, trust company or savings and loan association as a mutual institution under the laws of this State; provided that any plan of conversion authorized by this section shall be adopted and approved in accordance with the requirements of section 332.

CHAPTER 87

PROHIBITIONS

Sec.

§870. Prohibited practices.

All credit unions organized pursuant to or subject to the laws of this State, and the directors and officers of such credit unions, shall be subject to the prohibitions and restrictions provided for in chapter 45, except that the superintendent may, upon application and for good cause shown, permit an officer or director of one credit union to hold office in another credit union.

§871. Use of name "credit union"

No person, partnership or association and no corporation, except one incorporated under this Part or the corresponding provisions of earlier laws, shall receive payments on shares from its members and loan such payments on shares and transact business under any name or title containing the words "credit union". Whoever violates any provision of this section shall be punished by a fine of not more than $1,000, and the Superior Court shall have jurisdiction to grant appropriate equitable relief to enforce this section.

See §2602

PART 9

INDUSTRIAL BANKS

CHAPTER 90

INDUSTRIAL BANKS

Sec.

§900. Definition

"Industrial bank" means a corporation organized under the provisions of Part 5 of Title 9 of the laws of this State, as repealed on the effective date of this Title; and which was, on or before June 1, 1967, making loans and selling certificates of investment, either of fixed or uncertain term, and receiving payments in installments or otherwise, with or without an allowance of interest upon such installments.

See §2301

§901. Capital and management

(a) Stock: classes; par value. The capital stock of an industrial bank shall have a par value $100 for each share, and only one class of such stock shall be created.

(b) Management. Except as otherwise provided in this chapter, the management and operations of an industrial bank shall be conducted in accordance with the provisions of Title 13-A of the laws of this State.

See §§2341, 2342, 2343, 2344

§902. Powers

In addition to the powers conferred upon corporations by the general corporations law of this State, an industrial bank shall have the power to:

(A) Borrow and to lend money, and discount notes and bills of exchange including trade acceptances;

(B) Establish branch offices or agencies in accordance with the provisions of chapter 32; provided that the powers set forth in (E) hereof may only be exercised at branch offices or agencies authorized and doing business on or before June 1, 1967.

(C) Purchase, invest in, hold and sell such notes, bonds and securities as are legal for investments in accordance with the provisions of chapter 54.

(D) Make such loans as are eligible for insurance pursuant to Title I of the National Housing Act, as amended, and to apply for and obtain insurance on said loans pursuant to said Act; and

(E) Sell certificates of investment, either of fixed or of uncertain term.

See §2345

§903. Insurance of certificates of investment

Every industrial bank shall comply with the requirements of section 411 relating to insurance of deposits, and shall be deemed a "financial institution" for purposes of that section.

See Recommendation 12

§904. Mergers, consolidations and acquisitions

(a) An industrial bank may merge or consolidate with another industrial bank or a financial institution organized under the laws of this State; provided that any such merger or consolidation shall be executed pursuant to the provisions of sections 341 or 343, and shall be subject to the provisions of sections 345, 346 and 347.

(b) An industrial bank may sell all or substantially all of its assets and liabilities to, or purchase all or substantially all of the assets and assume the liabilities of, another industrial bank or a financial institution organized under the laws of this State; provided that such purchase or sale shall be executed pursuant to the provisions of section 344 and shall be subject to the provisions of sections 346 and 347.

(c) Nothing contained in (a) or (b) shall be construed as prohibiting an industrial bank from merging or consolidating with, being acquired by, acquiring or purchasing the assets of, or selling its assets to, a corporation or entity which is not enumerated in (a) or (b); provided that such merger, consolidation, acquisition or sale is executed in accordance with the provision of Title 13-A of the laws of this State, and timely notice of such action is given to the superintendent; and provided further that upon the effective date of such action, said industrial bank shall forfeit its charter as an industrial bank and cease all activities as an industrial bank, which fact shall be certified by the superintendent to the Secretary of State.

§905. Liquidations and conservation of assets

Industrial banks shall be subject to the provisions of chapter 35 relating to voluntary and involuntary liquidations, and the provisions of said chapter relating to conservation and segregation of assets.

See §2303

§906. Superintendent's authority

(a) Supervision and examination. An industrial bank authorized to conduct business in this State shall be subject to the provisions of Part 2.

(b) Interest rate ceilings. The superintendent shall have the power and authority to establish rate ceilings which shall govern the interest paid by an industrial bank on certificates of investment and other deposit accounts offered by such company. Regulations promulgated by the superintendent establishing such ceilings shall seek to maintain competitive equality among all financial institutions in this State.

See §2303; Recommendation 13

§907. Unlawful acts

No industrial bank authorized to do business in this State shall:

(a) Loan limitations; rates of loan to capital and surplus. Hold at any one time the direct obligation or obligations of any one person, firm or corporation for more than 4 percent of the amount of total capital and reserves of such industrial bank or the indirect obligation or obligations of any one person, firm or corporation for more than 15 percent of the amount of total capital and reserves of such industrial bank. Nothing in this section shall be construed to limit the holdings of

an industrial bank in the obligations of the United States or the State of Maine, and in amounts authorized by a vote of a majority of the directors or the executive committee. For the purpose of this section, bills of exchange, including trade acceptances, shall be deemed to be the direct obligations of the acceptors thereof and the indirect obligations of the drawers thereof.

(b) Loan limitations; 3-year limit. Make any loan for a period longer than 3 years from the date thereof, except in the case of loans that are eligible for insurance under the National Housing Act and for the insurance of which under that Act seasonable application is made.

(c) Deposit of funds in other financial institutions. Deposit any of its funds with any other financial institution, unless such institution has been designated as such depository by a vote of a majority of the directors or of the executive committee, exclusive of any director who is an officer, director or trustee of the depository so designated.

(d) Borrowing limitations. Be at any time indebted for borrowed money to an amount in excess of 100 percent of its total capital and reserves, except that by vote of a majority of its entire board of directors or executive committee setting forth the reasons therefor, and upon receiving the written consent of the superintendent thereto, it may borrow money to redeem its certificates of investment or prevent loss by sale of assets, and may redeem rediscount notes, or pledge bonds, notes or other securities as collateral therefor. Copies of all votes authorizing such excess borrowing shall be promptly forwarded by the secretary to the superintendent. Rediscount shall be considered as borrowed money for the purpose of this section.

See §2381

§908. Use of name "industrial bank"

No person, firm or corporation shall use, hold itself out as being, or advertise with the name "industrial bank", except that industrial banks which were properly authorized and doing business on or before June 1, 1967, may use such name at and in connection with their principal office and any branches which were so authorized and doing business on or before said date, and may continue to sell certificates of investment, either fixed or uncertain, and to receive payments in installments or otherwise, with or without an allowance of interest upon such installments, if doing business in such certificates on or before said date.

PART 10

OTHER FINANCIAL ENTITIES

CHAPTER 100

FINANCIAL INSTITUTION HOLDING COMPANIES

§1000. Definitions

For the purposes of this chapter:

(1) "Financial institution holding company" means any company which has control over any financial institution or has control over any company which controls any financial institution.

(2) "Maine financial institution holding company" means any company which has control over any financial institution authorized to do business in this State or has control over a company which controls any

such financial institution; provided that if a financial institution holding company described in section 1002(b) acquires control of a financial institution authorized to do business in this State, it shall not be deemed a "Maine financial institution holding company" unless the operations of its financial institution subsidiaries are principally conducted in the State of Maine.

(3) "Company" means a corporation, partnership, business trust, association or similar organization.

(4) A company shall be deemed to control another company (referred to in this chapter as a "subsidiary") if it owns 25 percent or more of the voting shares of the subsidiary or if under the Bank Holding Company Act of 1956, as amended, or under section 408 of the National Housing Act, as amended, it is presumed to control the subsidiary or a determination has been made by the superintendent that it exercises a controlling influence over the management and policies of the subsidiary.

(5) A company shall be deemed to own shares owned by a subsidiary, and to engage in activities engaged in by a subsidiary or by any other company of which it owns 5 percent or more of the voting shares.

(6) "Maine financial institution" means a financial institution authorized to do business in the State of Maine.

§1001. Registration.

(a) Any company that controls one or more Maine financial institutions shall register with the superintendent in accordance with procedures established by him.

(b) Unless the superintendent allows an additional time, registration shall be completed within 180 days after the effective date of this chapter, or after the company acquires control of a Maine financial institution, whichever is later.

§1002. Acquisition of interests in financial institutions

(a) No company shall acquire control of a Maine financial institution, and no Maine financial institution holding company shall acquire more than 5 percent of the voting shares of any other Maine financial institution or of a financial institution authorized to do business outside of the State of Maine, without the prior approval of the Superintendent.

(b) A financial institution holding company that controls one or more financial institutions outside of the State of Maine may establish or acquire control of one or more Maine financial institutions with the prior approval of the superintendent; provided that the State in which operations of the subsidiary financial institutions of such financial institution holding company are principally conducted authorizes the establishment of, or acquisition of control of, financial institutions in that State by Maine financial institution holding companies, under conditions no more restrictive than those imposed by this chapter, as determined by the superintendent.

§1003. Closely-related activities

(a) A Maine financial institution holding company shall not engage in any activity other than managing or controlling financial institutions, except such activities as are deemed permissible by the superintendent. The superintendent shall promulgate regulations specifying which other activities permissible under either the Bank Holding Company Act of 1956 or section 408 of the National Housing Act shall be permissible for Maine financial institution holding companies and such regulations may establish different permissible activities dependent upon the type of financial institutions controlled by a Maine financial institution holding company. The superintendent shall establish procedures for applications by individual companies for approval to engage in such activities in Maine.

(b) A financial institution holding company that is engaged in an activity that is not permissible for Maine financial institution holding companies to engage in may nevertheless acquire control of a Maine financial

institution with the approval of the superintendent as provided in section 1002; provided that before the acquisition is consummated such financial institution holding company shall cease to engage in that activity in Maine, unless it is exempted from the prohibitions of subsection (a) by reason of subsection (c).

(c) The prohibitions of subsection (a) shall not apply with respect to any activity in which a Maine financial institution holding company, on the effective date of this section, was lawfully engaged in on that date, unless the superintendent, after notice and opportunity for a hearing, determines that termination of the activity is necessary to assure the safety and soundness of a subsidiary financial institution.

§1004. Applications

(a) Approval of the superintendent shall be obtained for the following actions:

(1) Acquisition by a company of control of a Maine financial institution;

(2) Acquisitions by a financial institution holding company of interests in a Maine financial institution in excess of 5 percent of the voting shares of such institution;

(3) Acquisition or establishment by a Maine financial institution holding company of a financial institution outside of the State of Maine;

(4) Authority for a Maine financial institution holding company to engage in a closely-related activity; or

(5) Authority for any financial institution holding company controlling a Maine financial institution to engage in a close-related activity in Maine.

(b) Applications for approvals required in subsection 1 shall be filed pursuant to procedures established by the superintendent. Action on such applications shall be taken in accordance with the requirements of section 252 and shall be subject to the standards set forth in section 253.

§1005. Reports and examinations

The superintendent may require any financial institution holding company that controls a Maine financial institution to furnish such reports as he deems appropriate to the proper supervision of such companies. Unless the superintendent determines otherwise, reports prepared for Federal authorities may be submitted by such holding company in satisfaction of the requirements of this section. If such information and reports are inadequate in his judgment for that purpose, the superintendent may examine such financial institution holding company and any subsidiary doing business in Maine. Section 203 shall apply with respect to any such examination.

See Recommendation 1

§1006. Conformity with Federal procedures

To the maximum extent consistent with the effective discharge of the superintendent's responsibilities, the forms established under this chapter for registration, applications and reports shall conform with those established under either the Bank Holding Company Act of 1956 or section 408 of the National Housing Act.

See Recommendation 2

§1007. Exclusions from chapter

The superintendent may promulgate regulations excluding financial institution holding companies from the provisions of this chapter, under conditions comparable to those provided in either the Bank Holding Company Act of 1956 or section 408 of the National Housing Act, where control of a Maine financial institution arises out of the acquisition of shares in a fiduciary capacity, or in connection with an underwriting of securities or proxy solicitation, or in securing or collecting a debt.

§1008. Prohibitions

(a) Prohibited practices. To the extent provided for therein, financial institution holding companies subject to the laws of this State shall be subject to chapters 24 and 46.

(b) Penalties. Any company violating any provision of this chapter, or any regulation promulgated thereunder, shall be subject to a penalty of not more than $100 per day for each day the violation continues, to be recovered in a civil action in the name of the State.

CHAPTER 1010

MUTUAL TRUST INVESTMENT COMPANIES

Sec.

§1010. Definition

As used in this chapter, the term "mutual trust investment company" means a corporation which is an investment company as defined by an Act of Congress entitled "Investment Company Act of 1940", as amended; and incorporated in compliance with this chapter to constitute a medium for the common investment of trust funds held in a fiduciary capacity, and for true fiduciary purposes, either alone or with one or more co-fiduciaries, by State banks with trust powers, trust companies and national banks with trust powers which are located in this State.

See §1271

§1011. Authority to incorporate

Any 5 or more State banks with trust powers, trust companies and national banks with trust powers located in this State are authorized to cause a mutual trust investment company to be organized and incorporated, subject to the approval of the superintendent and subject to such regulations as he may prescribe.

See §1272

§1012. Application of general corporation law; articles of incorporation

(a) Except as otherwise provided in this chapter, such a mutual trust investment company shall be incorporated under and shall be subject to the provisions of Title 13-A of the laws of this State.

(b) The incorporators subscribing to and acknowledging the articles of incorporation shall consist of 5 or more persons who are officers or directors of the banks and trust companies causing such mutual trust investment company to be incorporated.

See §1273

§1013. Corporate powers; stock ownership

(a) Ownership. The stock of a mutual trust investment company shall be owned only by State banks with trust powers, trust companies and national banks with trust powers located in this State, acting as fiduciaries, and their individual co-fiduciaries, if any, but may be registered in the name of their nominee or nominees.

(b) Transfer or assignment. The stock of a mutual trust investment company shall not be subject to transfer or assignment except to the mutual trust investment company or to a fiduciary or co-fiduciary which becomes successor to the stockholder or its nominee; provided that such successor fiduciary or co-fiduciary or its nominee is qualified to hold such stock under (a) hereof.

(c) Directors. A mutual trust investment company shall have not less than 5 directors who need not be stockholders but shall be officers or directors of banks or trust companies located in this State.

(d) Investments; assets. A mutual trust investment company may invest its assets only in those investments in which a trustee may invest under the laws of this State, and its assets shall constitute personal property held in trust. Such company shall make no investment in:

(1) The note of an individual or individuals, whether or not it is secured;

(2) The note, bond or other obligation of any firm, corporation or other issuer if the total original issue of such notes, bonds or other obligations is less than $500,000;

(3) Any stocks, bonds or other obligations issued or guaranteed by any one firm, corporation or other issuer in excess of 10 percent of the total assets of the mutual trust investment company, as increased by the proposed investment; provided that this limitation shall not apply to obligations of the United States, or for the payment of the principal and interest of which the full faith and credit of the United States is pledged; and

(4) Shares of stock of any one corporation which would cause the total number of such shares held by the mutual trust investment company to exceed 10 percent of the number of such shares outstanding.

(e) Stock acquisition. A mutual trust investment company may acquire, purchase or redeem its own stock and shall by means of contract or of its bylaws bind itself to acquire, purchase or redeem its own stock, but it shall not vote upon shares of its own stock.

(f) Responsibility, liability, accountability. A mutual trust investment company shall not be responsible for ascertaining the investment powers of any fiduciary who may purchase its stock, and shall not be liable for accepting funds from a fiduciary in violation of the restrictions of the will, trust indenture or other instrument under which such fiduciary is acting in the absence of actual knowledge of such violation, and shall be accountable only to the superintendent and the fiduciaries who are the owners of its stock.

See §1274

§1014. Purchase of stock by fiduciaries; authority and restrictions

(a) Investment in shares of stock. State banks with trust powers, trust companies and national banks with trust powers located in this State, acting in a fiduciary capacity and for true fiduciary purposes, either alone or with one or more individual co-fiduciaries, may, if exercising the care of a prudent investor and with the consent of such individual co-fiduciary or co-fiduciaries, if any, invest and reinvest funds held in such fiduciary capacity in the shares of stock of a mutual trust investment company except where the will, trust indenture or other instrument under which such fiduciary is acting prohibits such investment. No investment in the stock of a mutual trust investment company may be made by any bank or trust company which operates its own common trust fund under the laws of this State. The stock shall not be subject to chapter 13 of Title 32 of the laws of this State.

(b) Limitation. No funds of any estate, trust or fund shall be invested in the stock of a mutual trust investment company in an amount which would result in any bank or trust company having an aggregate holding in excess of 25 percent of the total issued and outstanding stock of such mutual trust investment company, as increased by the amount of the proposed investment. In the event that by reason of reduction of the holdings of stock by other banks or trust companies, mergers of banks or trust companies, or for other reasons, the aggregate holding of stock in the mutual trust investment company by any bank or trust company shall become greater than 25 percent of the total issued and outstanding stock, such bank or trust company may retain the stock then held by it but may not make further investments in such stock until its aggregate holdings have become less than such 25 percent.

(c) Responsibility. A mutual trust investment company shall be permitted to rely on the written statement of any bank or trust company purchasing its stock that the purchase complies with the foregoing requirements, except that the mutual trust investment company shall be responsible to see that the limit on the holding of stock by any one bank or trust company as provided in subsection (b) is not exceeded.

See §1275

§1015. Powers of the superintendent

(a) Rules and regulations. The superintendent shall have authority to adopt and issue regulations to govern the conduct and management of all mutual trust investment companies formed pursuant to this chapter, and to prescribe, among other things:

(1) The records and accounts to be kept by the mutual trust investment company;

(2) The methods and standards to be employed in establishing the value of the shares of stock in the mutual trust investment company and of its assets; and

(3) The procedure to be followed in the sale and redemption of its stock.

(b) Examination. The superintendent shall at least once in each calendar year, and whenever he deems it necessary or expedient, examine every such mutual trust investment company. On every such examination of a mutual trust investment company, the superintendent shall make inquiry as to its financial condition, the policies of its management, whether it is complying with the laws of this State and such other matters as the superintendent may prescribe. The reasonable expenses of each examination of a mutual trust investment company pursuant to this section shall be charged to the company in accordance with the provision of section 203.

(c) Power and authority. In the enforcement of this chapter and the fulfillment of his responsibilities hereunder, the superintendent shall have the same power and authority over and with respect to mutual trust investment companies and their directors, officers and employees, including the power to compel the attendance of witnesses and the production of books, records, documents and testimony, the power to require the submission to him of reports and information in such form and at such times as he may prescribe, the power to direct the discontinuation of any practice which he may consider illegal, unauthorized or unsafe; and all other powers and authorities, whether or not specifically mentioned herein, as are given the superintendent by the laws of this State with respect to financial institutions in the same

manner and with like effect as if mutual trust investment companies were expressly named therein.

See §1276

§1016. Short title

This chapter may be cited as the "Mutual Trust Investment Company Act."

See §1277