

exempted from the provisions of section 16(c) by this section. The performance of the functions of manager of a distributing group and the receipt of a bona fide payment for performing such functions shall not, however, preclude an exemption that would otherwise be available under this section.

§ 12.10 Exemption from section 16(c) of the Securities Exchange Act of sales of securities to be acquired.

(a) Whenever any person is entitled, as an incident to his ownership of an issued equity security of a bank and without the payment of consideration, to receive another security of the bank "when issued" or, "when distributed," the security to be acquired shall be exempt from the operation of section 16(c) if

(1) The sale is made subject to the same conditions as those attaching to the right of acquisition;

(2) Such person exercises reasonable diligence to deliver such security to the purchaser promptly after his right of acquisition matures; and

(3) Such person reports the sale on the appropriate form for reporting transactions by persons subject to section 16(a).

(b) This section shall not be construed as exempting transactions involving both a sale of a security "when issued" or "when distributed" and a sale of the security by virtue of which the seller expects to receive the "when-issued" or "when-distributed" security, if the two transactions combined result in a sale of more units than the aggregate of those owned by the seller plus those to be received by him pursuant to his right of acquisition.

§ 12.11 Arbitrage transactions under section 16 of the Securities Exchange Act.

It shall be unlawful for any director or principal officer of a bank to effect any foreign or domestic arbitrage transaction in any equity security of the bank unless he shall include such transaction in the statements required by section 16(a) of the Securities Exchange Act and § 12.1 and shall account to such bank for the profits arising from such transaction, as provided in section 16(b). The provisions of section 16(c) shall not

apply to such arbitrage transactions. The provisions of § 12.1 and of section 16 shall not apply to any bona fide foreign or domestic arbitrage transaction insofar as it is effected by any person other than such director or principal officer of the bank issuing such security.

PART 13—EMPLOYEE STOCK OPTION AND STOCK PURCHASE PLANS

Sec.

13.1 Scope and application.

13.2 Source of shares.

13.3 Terms and procedures.

AUTHORITY: The provisions of this Part 13 issued under R.S. 324 et seq., as amended; 12 U.S.C. 1 et seq.

SOURCE: The provisions of this Part 13 appear at 31 F.R. 6953, May 12, 1966, unless otherwise noted.

§ 13.1 Scope and application.

Any national bank may grant options to purchase, sell, or enter into agreements to sell, shares of its capital stock to its employees, whether or not such transactions qualify for special tax treatment under the Internal Revenue Code of 1954, as amended, and regulations promulgated thereunder, provided that the following conditions are met:

(a) Application for approval shall be made to the Comptroller of the Currency, Washington, D.C. 20220, in the form of a letter accompanied by the following information:

(1) Description of all material provisions of the plan.

(2) Proposed notice of shareholders' meeting, proxy and proxy statement.

(3) Number of shares of authorized but unissued stock to be allocated to the plan.

(4) Proposed amendments to articles of association creating authorized but unissued stock and eliminating preemptive rights as to the shares reserved under the plan;

(b) The plan is administered by a committee, none of whose members may participate in the plan;

(c) The number of shares allocable to any person under the plan is reasonable in relation to the purpose of the plan and the needs of the bank; and

(d) In the case of a stock option plan, the number of shares subject to the plan

is not unreasonable in relation to the bank's capital structure and anticipated growth.

§ 13.2 Source of shares.

Shares issued to employees pursuant to this part may be authorized but unissued stock which has been authorized by stockholders in accordance with the procedures outlined in Part 14 of this chapter.

§ 13.3 Terms and procedures.

(a) Employee stock option and stock purchase plans or agreements may provide that options may be exercisable or that shares may be purchased on any business day. Stock certificates representing the shares purchased pursuant to the exercise of options may be validly issued to such purchasers upon receipt of the purchase price.

(b) The increase in capital represented by stock certificates issued pursuant to this section will not be applicable, however, for the purposes of permitted investment in banking premises, 12 U.S.C. 371d, permitted indebtedness, 12 U.S.C. 82, lending limits, 12 U.S.C. 84, branches, 12 U.S.C. 36 and other like purposes, until a notarized notice specifying the amount paid into the bank therefor, shall be executed by the president, vice president or cashier of the bank and filed with the Regional Administrator of National Banks, and until the Comptroller's Certificate has been obtained specifying the amount of such increase of capital stock, and his approval thereof, and that it has been duly paid in as part of the capital of such association.

PART 14—CHANGES IN CAPITAL STRUCTURE

- Sec. 14.2 Authorized but unissued stock.
- 14.3 Stock dividends.
- 14.4 Preferred stock.
- 14.5 Capital debentures.
- 14.6 Other increases of capital.
- 14.7 Applications for approval.
- 14.8 Effectiveness of increase.

AUTHORITY: The provisions of this Part 14 issued under R.S. 324 et seq., as amended; 12 U.S.C. 1 et seq.

SOURCE: The provisions of this Part 14 appear at 31 F.R. 6954, May 12, 1966, unless otherwise noted.

§ 14.2 Authorized but unissued stock.

Any national banking association, with the approval of the Comptroller and by vote of stockholders owning two-thirds of the stock of the bank entitled to vote, may authorize an increase in the common stock of the bank in the category of authorized but unissued stock. Such authorized but unissued stock may be issued from time to time to employees of the bank pursuant to a stock option or stock purchase plan adopted in accordance with Part 13 of this chapter, or in exchange for convertible preferred stock or convertible capital debentures in accordance with the terms and provisions of such securities. Authorized but unissued stock may also be issued from time to time for such other purposes and considerations as may be approved by the board of directors of the bank, and by the Comptroller.

§ 14.3 Stock dividends.

(a) It is the policy of the Comptroller of the Currency not to discourage the retention of earnings by national banking associations in the form of stock dividends. However, recurring stock dividends will not be approved where the market or book value of the stock dividend being proposed, whichever is greater, exceeds 100 percent of the bank's retained profits since the declaration of the last stock dividend. For the purpose of this policy, the term "retained profits" shall mean the remainder of all earnings from current operations plus actual recovery on loans and investments and other assets, after deducting from the total thereof, all current operating expenses, actual losses, cash dividends, accrued dividends on preferred stock, if any, and all Federal and State taxes.

(b) As a general policy, stock dividends which are considered a realignment of capital accounts will not be subject to the above restrictions.

(c) Subject to the provisions of 12 U.S.C. 57, any national banking association may increase its capital stock by the declaration of a stock dividend, with the approval of the Comptroller. For such approval, applications on Form 1904-C shall be filed with the appropriate Regional Administrator of National Banks. The Regional Administrator will com-