

Article 4.

Governance of Banks.

§ 53C-4-1. Banks – Form of organization.

(a) A bank shall be formed as, and shall maintain the form of, a corporation formed under the laws of this State.

(b) The provisions contained in Chapter 55 of the General Statutes shall apply to banks, except where provisions of this Chapter provide differently or where the Commissioner determines that any provision of Chapter 55 is inconsistent with the business of banking or the safety and soundness of banks. (2012-56, s. 4.)

§ 53C-4-2. Banks controlled by boards of directors.

(a) The corporate powers of a bank shall be exercised by or under the authority of, and the business and affairs of the bank shall be managed by or under the direction of, its board of directors.

(b) A bank's board of directors shall consist of not fewer than five individuals. For good cause shown, the Commissioner may approve boards of directors consisting of fewer than five individuals to the extent consistent with other applicable law.

(c) The board of directors shall meet at least quarterly, provided that the executive committee shall meet in any month in which there is no meeting of the board of directors, and the loan committee shall meet monthly.

(d) Except to the extent the provisions of this Chapter or other applicable federal or state laws and regulations impose a different standard, bank directors shall have the duties, authority, and liabilities of directors of corporations organized under Chapter 55 of the General Statutes.

(e) The board of directors of a bank may appoint directors with respect to such of the bank's branches as it deems useful to the business of the bank. No such advisory director shall be liable for acts or omissions undertaken as an advisory director under the laws applicable to the performance of the duties of a director of a bank, unless and only to the extent he or she undertakes or is delegated authority as a director of the bank. (2012-56, s. 4.)

§ 53C-4-3. Committees of boards of directors.

(a) The board of directors shall appoint, at a minimum, an audit committee, an executive committee, and a loan committee (which may be the executive committee or the board of directors as a whole) and may appoint such other committees as it deems appropriate to provide for the safe and sound operation of the bank in a manner consistent with applicable laws and regulations.

(b) The Commissioner may require the board of directors of a bank to establish one or more additional committees if, in the judgment of the Commissioner, such committees are reasonably necessary or appropriate for good corporate governance, for the safe and sound operation of the bank, or to ensure the bank's compliance with applicable laws and regulations. In the exercise of his or her judgment under this subsection, the Commissioner may consider, among other factors, the asset size of the bank, the range and complexity of the activities in which the bank is engaged, the various risks undertaken by the bank, the experience and abilities of the bank's directors and officers, and the adequacy of the bank's existing policies, procedures, and internal controls. (2012-56, s. 4.)

§ 53C-4-4. Minutes of meetings of directors and committees.

Minutes shall be recorded and retained for all meetings of the board of directors and board committees and kept on file at the bank. The minutes shall show a record of actions taken. (2012-56, s. 4.)

§ 53C-4-5. Qualifications of bank directors.

(a) At least three-fourths of the directors of a bank shall be citizens of the United States of America.

(b) A director must satisfy eligibility requirements for bank directors imposed by federal law, including Section 19 of the Federal Deposit Insurance Act, 12 U.S.C. § 1829(a).

(c) Following a director's election or appointment as a director, the director shall, solely for purposes of any action or proceeding that may thereafter be brought by the Commissioner, and on a form satisfactory to the Commissioner, do all of the following:

- (1) Consent to the jurisdiction of the Commissioner and the General Court of Justice for the State of North Carolina in any such action or proceeding.
- (2) Consent to venue in Wake County, North Carolina, in any such action or proceeding.
- (3) Unless the director appoints an agent pursuant to subsection (f) of this section, appoint the Commissioner as the director's agent for service of process in any such action or proceeding and authorize and instruct the Commissioner or the Commissioner's duly appointed deputy or agent to accept service of process for the director in any such action or proceeding.

(d) When service of legal process in an action or proceeding brought by the Commissioner is made on a director by service and acceptance of service of process in the manner provided in subdivision (3) of subsection (c) of this section, the Commissioner shall, within three business days thereafter, give notice to the director of such service and acceptance of service of process by depositing a copy of the process served and accepted, together with any pleading, order, or other item accompanying the process, with a "designated delivery service" as defined in 26 U.S.C. § 7502(f)(2) and directed to the director's last known address in the Commissioner's records. The Commissioner shall keep a record which shall show the day and hour of such acceptance of service of process, any pleading, order, or other item accompanying the process, and the date upon which the above notice was given. When service of process is made pursuant to subdivision (3) of subsection (c) of this section, the time within which the director may file a responsive pleading or similar response, as provided by Chapter 1A or Chapter 150B of the General Statutes, shall be extended by 12 days.

(e) The consent and appointment described in subsections (c) and (f) of this section shall be deemed irrevocable and shall not be affected by the termination of the director's service as a director.

(f) In lieu of meeting the requirements of subdivision (3) of subsection (c) of this section, a director may appoint an agent for service of such process in Wake County, North Carolina. (2012-56, s. 4; 2013-29, s. 4.)

§ 53C-4-6. Liability of directors.

(a) The standard of conduct for directors shall be as set forth in G.S. 55-8-30.

(b) Any director of any bank who shall knowingly violate, or who shall knowingly permit to be violated by any officers, agents, or employees of the bank, any of the provisions of this Chapter shall be held personally and individually liable for all damages which the bank, its

shareholders, or any other person shall have sustained in consequence of such violation. Any aggrieved shareholder of any bank in liquidation may prosecute an action for the enforcement of the provisions of this section. Only one such action may be brought. (2012-56, s. 4.)

§ 53C-4-7. Directors may declare distributions.

Provided a bank does not make distributions that reduce its capital below its applicable required capital, the board of directors of a bank may declare such distributions as it deems proper. (2012-56, s. 4.)

§ 53C-4-8. Officers and employees shall give bond.

(a) A bank shall require security in the form of a bond for the fidelity and faithful performance of duties by its officers and employees. The bond shall be issued by a bonding company authorized to do business in this State and upon such form as may be approved by the Commissioner. Otherwise, the amount, form, and terms of the bond shall be such as the board of directors may require. The premium for the bond is to be paid by the bank.

(b) To provide for the safety and soundness of a bank, the Commissioner may require an increase in the amount of the bond or additional or different security. (2012-56, s. 4.)

§ 53C-4-9. Affiliate transactions.

A bank may extend credit to, and engage in transactions with, its affiliates, directors, executive officers, principal shareholders, and their respective immediate family members only to the extent permitted by, and subject to such restrictions and conditions as are imposed by, applicable State and federal laws and regulations. (2012-56, s. 4.)

§ 53C-4-10. Examination of board composition, structure, and conduct.

(a) As part of its examinations of a bank, the OCOB may assess the competence, composition, structure, and conduct of such bank's board of directors, including the following:

- (1) The number of directors.
- (2) The independence of directors.
- (3) The committee structure of the board.
- (4) The education and training of board members.
- (5) Compliance with the bank's code of ethics.

(b) In making the assessment authorized by subsection (a) of this section, the OCOB shall take into consideration publicly issued regulations and guidance of the Commissioner and the bank's primary federal supervisor and may consider, among other factors, the asset size of the bank, the range and complexity of the activities in which the bank is engaged, the various risks undertaken by the bank, the experience and abilities of the bank's directors and officers, and the adequacy of the bank's existing policies, procedures, and internal controls. (2012-56, s. 4.)

§ 53C-4-11. Reserve fund.

(a) Each bank shall maintain a reserve fund as follows:

- (1) If the bank is a member of the Federal Reserve System, it shall maintain a reserve fund in accordance with the requirements of the Federal Reserve Board.
- (2) All other banks shall maintain a reserve fund as required by the Commissioner.

(b) The Commissioner may require a level of reserve fund for nonmember banks as provided in subsection (a)(2) of this section, taking into consideration the level of liquidity the Commissioner deems necessary for the safe and sound operation of the banks.

(c) In establishing the required level of reserve fund, the Commissioner shall include the following types of liquid reserves:

- (1) Cash on hand, which shall include both United States currency and exchange of any clearinghouse association or similar intermediary, and balances maintained at any federal reserve bank, either directly or on a pass-through basis, to meet federal reserve system reserve requirements.
- (2) Balances payable on demand from designated depository institutions.
- (3) Obligations of the United States Treasury, any agency of the United States government that is guaranteed by the United States government, and any general obligation of this State or any political subdivision thereof that has an investment grade rating of A or higher by a nationally recognized rating service.

(d) Notwithstanding any other provision of this Chapter, in the event the reserve fund of a bank falls below the level required under subsection (b) of this section, the Commissioner may require the bank to do the following:

- (1) Discontinue making any new extension of credit.
- (2) Promptly restore its reserve fund to the applicable required level.

(e) In the event a bank shall fail to promptly restore its reserve fund to the applicable level required within 10 days after the Commissioner directs it to do so, the Commissioner may take such actions under Article 8 of this Chapter as the Commissioner deems necessary. (2012-56, s. 4; 2013-29, s. 5.)

§ 53C-4-12. Compliance review committee.

(a) For purposes of this section, the following definitions apply:

- (1) "Compliance review committee" means (i) a bank's board of directors, (ii) a committee authorized by the bank's board of directors, or (iii) any other committee or person to the extent the committee or person acts at the direction of or reports to the bank's board of directors or a committee authorized by the bank's board of directors when any part of the functions of the board, committee, or person is to audit, evaluate, report, or determine compliance with any of the following standards or requirements:
 - a. Loan underwriting standards.
 - b. Asset quality.
 - c. Financial reporting to federal or State regulatory agencies.
 - d. Adherence to the bank's investment, lending, accounting, ethical, or risk assessment, and financial standards.
 - e. Compliance with federal or State statutory or regulatory requirements.
 - f. Cybersecurity requirements.
- (2) "Compliance review documents" means documents prepared for or created by a compliance review committee.
- (3) "Government agency" means a state or federal regulatory body that is not a bank supervisory agency that has jurisdiction over a bank's compliance with state or federal laws or regulations, including those dealing with taxes, securities, or financial reporting.

- (4) "Loan review committee" means a person or group of persons who, on behalf of a bank, reviews assets, including loans held by the bank, for the purpose of assessing the credit quality of the loans or the loan application process, compliance with the bank's investment and loan policies, and compliance with applicable law and regulations.

(b) Banks shall maintain complete records of compliance review documents, and the documents shall be available for examination by the Commissioner or any bank supervisory agency or government agency having jurisdiction. Notwithstanding Chapter 132 of the General Statutes or any other provision of the General Statutes, compliance review documents in the custody of a bank, the Commissioner, a government agency, or a bank supervisory agency are confidential, are not open for public inspection, and are not discoverable or admissible in evidence in a civil action against a bank, its directors, officers, or employees, unless the court finds that the interests of justice require that the documents be discoverable or admissible in evidence. (2012-56, s. 4; 2017-165, s. 4.)

§ 53C-4-13. Immediate report of changes in directors and certain officers.

Each bank shall report to the Commissioner any changes in its (i) directors, (ii) president, (iii) chief executive officer, (iv) chief financial officer, (v) chief loan officer, or (vi) chief credit officer by the close of the second day on which the bank is open for business following such change. (2013-29, s. 6.)