

## CHAPTER 31

### ORGANIZATION AND MANAGEMENT OF INVESTOR-OWNED INSTITUTIONS

#### §311. Applicability of chapter

The provisions of this chapter govern the organization and management of financial institutions operating as corporations, limited liability companies, limited partnerships and limited liability partnerships. Unless otherwise indicated in this Title, the provisions of Title 13-C apply to financial institutions operating as corporations; Title 31, chapter 19 applies to financial institutions operating as limited partnerships; Title 31, chapter 21 applies to financial institutions operating as limited liability companies; and Title 31, chapter 15 applies to financial institutions operating as limited liability partnerships. [PL 2009, c. 629, Pt. A, §3 (AFF); PL 2009, c. 629, Pt. B, §1 (AMD).]

#### SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 1991, c. 670, §3 (AMD). PL 1997, c. 398, §C2 (AMD). RR 2001, c. 2, §B7 (COR). RR 2001, c. 2, §B58 (AFF). PL 2005, c. 543, §D1 (AMD). PL 2005, c. 543, §D18 (AFF). PL 2009, c. 629, Pt. A, §3 (AFF). PL 2009, c. 629, Pt. B, §1 (AMD).

#### §312. Permission to organize

##### 1. Incorporators.

[PL 1997, c. 398, Pt. C, §3 (RP).]

**2. Application.** A corporation, limited liability company, limited partnership, limited liability partnership or the organizers of the entity shall apply to the superintendent to seek permission to conduct business as a financial institution. The application must contain the following information:

A. The name by which the financial institution is to be known; [PL 1997, c. 398, Pt. C, §4 (RPR).]

B. The purpose for which it is to be formed, including whether a certificate of public convenience and advantage is sought to conduct business as a universal bank, a nondepository trust company, a merchant bank or an uninsured bank; [PL 1997, c. 398, Pt. C, §4 (RPR).]

C. The city or town within this State where the institution's principal office is to be located; [PL 1997, c. 398, Pt. C, §4 (RPR).]

D. The amount of its capital; [PL 1997, c. 398, Pt. C, §4 (RPR).]

E. The names, addresses and occupations of the governing body or organizers of the institution; [PL 1997, c. 398, Pt. C, §4 (RPR).]

F. The organizational documents appropriate to the proposed institution's organizational structure; and [PL 1997, c. 398, Pt. C, §4 (RPR).]

G. Any additional information, including the reasons why an institution of the type specified in paragraph B is needed in the proposed location, as the superintendent may require by rule. Application for permission to conduct business as a financial institution may not be considered complete unless accompanied by an application fee as determined by the superintendent, payable to the Treasurer of State, to be credited and used as provided in section 214. In no event may that fee be less than \$1,000 or greater than \$5,000. [PL 1997, c. 398, Pt. C, §4 (RPR).]

[PL 1997, c. 398, Pt. C, §4 (RPR).]

**3. Publication of notice.** After determining that the application required in subsection 2 is complete, the superintendent shall advise the corporation, limited liability company, limited

partnership, limited liability partnership or the organizers of the entity to publish, within 15 days of such advice, a notice in such form as the superintendent may prescribe. Such notice must 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 must specify the names, addresses and occupations or businesses of each of the organizers or members of the governing body, 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 conduct business as a financial institution. 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 252, subsection 2.

[PL 1997, c. 398, Pt. C, §5 (AMD).]

#### **4. Permission from superintendent.**

A. [PL 1987, c. 81, §4 (RP).]

B. In determining whether or not a certificate of public convenience and advantage that permits the corporation, limited liability company, limited partnership or limited liability partnership to conduct business as a financial institution should be granted, the superintendent shall make the decision in accordance with the requirements of section 253, pursuant to the procedures set forth in section 252. [PL 1997, c. 398, Pt. C, §6 (AMD).]

C. A grant of a certificate of public convenience and advantage may include such terms and conditions as the superintendent determines necessary. These may include, but are not limited to, conditions regarding the organizational form of the financial institution under this chapter. [PL 1997, c. 398, Pt. C, §6 (AMD).]

[PL 1997, c. 398, Pt. C, §6 (AMD).]

#### **5. Minimum capital required.**

A. The certificate of public convenience and advantage and the superintendent's order granting permission to organize must set forth the minimum amount of paid-in capital that a financial institution must have to begin business. [PL 1997, c. 398, Pt. C, §7 (AMD).]

B. The minimum amount of paid-in capital must be determined by the superintendent, but in no event may it be less than \$100,000. [PL 1997, c. 398, Pt. C, §7 (AMD).]

C. In determining the minimum paid-in capital required, the superintendent may set different requirements for banks, nondepository trust companies, merchant banks and uninsured institutions 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, the projected volume and type of business to be conducted, the inherent risks in the business to be conducted and the need to protect depositors and other creditors of the institution. [PL 1997, c. 398, Pt. C, §7 (AMD).]

D. All initial and subsequent capital contributions must be in the form of cash, unless otherwise approved by the superintendent. [PL 2005, c. 82, §5 (AMD).]

[PL 2005, c. 82, §5 (AMD).]

**6. Effect of denial.** If the superintendent 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 the refusal.

[PL 1987, c. 81, §6 (AMD).]

#### **SECTION HISTORY**

PL 1975, c. 500, §1 (NEW). PL 1979, c. 663, §§33,34 (AMD). PL 1987, c. 81, §§1-6 (AMD). PL 1997, c. 398, §§C3-7 (AMD). PL 2005, c. 82, §5 (AMD).

#### **§312-A. Expedited authority**

Notwithstanding any other provision of law, the superintendent may grant a certificate of public convenience and advantage for a corporation, limited liability company, limited partnership or limited liability partnership to conduct business as a financial institution effective immediately if the superintendent determines that such action is necessary for the protection of depositors or the public. This action may be taken only in conjunction with transactions processed under section 354-A or 355-A. [PL 1997, c. 398, Pt. C, §8 (AMD).]

#### SECTION HISTORY

PL 1991, c. 34, §1 (NEW). PL 1997, c. 398, §C8 (AMD).

### §313. Organization

#### (REPEALED)

#### SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 1987, c. 81, §§7,8 (AMD). PL 1997, c. 398, §C9 (RP).

### §313-A. Certificate to commence business

**1. Requirements.** A corporation, limited liability company, limited partnership or limited liability partnership that has received a certificate of public convenience and advantage to conduct business as a financial institution may not commence business until the superintendent certifies in writing that the required capital has actually been paid in and that all other terms and conditions contained in the certificate of public convenience and advantage have been satisfied.

[PL 1997, c. 398, Pt. C, §10 (NEW).]

**2. Failure to commence business.** The following provisions apply to an entity authorized to conduct business as a financial institution that fails to commence business.

A. Any corporation, limited liability company, limited partnership or limited liability partnership authorized to conduct business as a financial institution that fails to commence business as a financial institution within one year after receiving a certificate of public convenience and advantage forfeits that certificate and any other certificate to commence business and shall cease all activities. The superintendent shall certify to the Secretary of State that the certificate of public convenience and advantage and any certificate to commence business have been forfeited so that the institution's organizational documents may be terminated by the Secretary of State. [PL 1997, c. 398, Pt. C, §10 (NEW).]

B. Upon a forfeiture pursuant to paragraph A, the subscribers to the stock of the institution are entitled to a return of any amounts they have paid to the institution as consideration for its shares. The original incorporators shall bear the expenses incurred in the organization. [PL 1997, c. 398, Pt. C, §10 (NEW).]

C. Upon the failure to commence business within one year and the forfeiture of the certificate of public convenience and advantage and any other certificate to commence business, the corporation, limited liability company, limited partnership or limited liability partnership or the organizers of the entity may not submit another application for permission to conduct business as a financial institution under section 312 for at least one year from the date of this forfeiture. [PL 1997, c. 398, Pt. C, §10 (NEW).]

D. Notwithstanding the time limitation in paragraph A, the superintendent may extend the period in which business must be commenced for a period not to exceed 6 months upon written application by the institution setting forth the reasons for the extension. If an extension is granted by the superintendent, the superintendent shall notify the Secretary of State. [PL 1997, c. 398, Pt. C, §10 (NEW).]

[PL 1997, c. 398, Pt. C, §10 (NEW).]

## SECTION HISTORY

PL 1997, c. 398, §C10 (NEW).

**§314. Corporate finance**

**(REPEALED)**

## SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 1997, c. 398, §C11 (RP).

**§314-A. Organizational documents**

**1. Financial institutions organized as corporations.** The following provisions apply to financial institutions organized as corporations.

A. The articles of incorporation must contain the following statement:

"The purpose of this corporation is to conduct the business of a financial institution as limited by the Maine Revised Statutes, Title 9-B or any rules, orders or certificates under Title 9-B."

Articles of incorporation or amendments to articles of incorporation must have the prior written approval of the superintendent. [PL 2003, c. 344, Pt. D, §2 (RPR).]

B. The original bylaws of the financial institution must be approved by the superintendent in writing. Amendments to bylaws must be submitted to the superintendent and become effective 10 days after receipt unless the superintendent indicates otherwise to the institution. [PL 1997, c. 398, Pt. C, §12 (NEW).]

[PL 2003, c. 344, Pt. D, §2 (AMD).]

**2. Financial institutions organized as limited liability companies.** The following provisions apply to financial institutions organized as limited liability companies.

A. The articles of organization of a limited liability company must contain the following statement: "The purpose of this limited liability company is to conduct the business of a financial institution as limited by the Maine Revised Statutes, Title 9-B or any rules, orders or certificates under Title 9-B." Articles of organization or amendments to articles of organization must have the prior written approval of the superintendent. [PL 1997, c. 398, Pt. C, §12 (NEW).]

B. The original operating agreement of the financial institution must be approved by the superintendent in writing. Amendments to the operating agreement must be submitted to the superintendent and become effective 10 days after receipt unless the superintendent indicates otherwise to the institution. [PL 1997, c. 398, Pt. C, §12 (NEW).]

[PL 1997, c. 398, Pt. C, §12 (NEW).]

**3. Financial institutions organized as limited partnerships.** The following provisions apply to financial institutions organized as limited partnerships.

A. A financial institution organized as a limited partnership shall register with the Secretary of State. The certificate of limited partnership must contain the following statement: "The purpose of this limited partnership is to conduct the business of a financial institution as limited by the Maine Revised Statutes, Title 9-B or any rules, orders or certificates under Title 9-B." Certificates of limited partnership or amendments to certificates of limited partnership must have the prior written approval of the superintendent. [PL 1997, c. 398, Pt. C, §12 (NEW).]

B. A financial institution organized as a limited partnership shall operate pursuant to a written partnership agreement. The original partnership agreement of the financial institution must be approved by the superintendent in writing. Amendments to a partnership agreement must be submitted to the superintendent and become effective 10 days after receipt unless the superintendent indicates otherwise to the institution. [PL 1997, c. 398, Pt. C, §12 (NEW).]

[PL 1997, c. 398, Pt. C, §12 (NEW).]

**4. Financial institutions organized as limited liability partnerships.** The following provisions apply to financial institutions organized as limited liability partnerships.

A. A financial institution organized as a limited liability partnership shall register with the Secretary of State. The certificate of limited liability partnership must contain the following statement: "The purpose of this limited liability partnership is to conduct the business of a financial institution as limited by the Maine Revised Statutes, Title 9-B or any rules, orders or certificates under Title 9-B." Certificates of limited liability partnership or amendments to certificates of limited liability partnership must have the prior written approval of the superintendent. [PL 1997, c. 398, Pt. C, §12 (NEW).]

B. A financial institution organized as a limited liability partnership shall operate pursuant to a written partnership agreement. The original partnership agreement of the financial institution must be approved by the superintendent in writing. Amendments to a partnership agreement must be submitted to the superintendent and become effective 10 days after receipt unless the superintendent indicates otherwise to the institution. [PL 1997, c. 398, Pt. C, §12 (NEW).]

[PL 1997, c. 398, Pt. C, §12 (NEW).]

#### SECTION HISTORY

PL 1997, c. 398, §C12 (NEW). PL 2003, c. 344, §D2 (AMD).

#### §315. Stockholders

**(REPEALED)**

#### SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 1979, c. 663, §35 (AMD). PL 1997, c. 398, §C13 (RP).

#### §316. Board of directors

**(REPEALED)**

#### SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 1979, c. 663, §36 (AMD). PL 1983, c. 63, §1 (AMD). PL 1983, c. 480, §§B9,211 (AMD). PL 1985, c. 642, §§1,2 (AMD). PL 1987, c. 81, §9 (AMD). PL 1993, c. 257, §1 (AMD). PL 1997, c. 182, §§A2,3 (AMD). PL 1997, c. 398, §C14 (RP).

#### §316-A. Governing body

Except as provided in this section, the management and operations of a financial institution organized under this chapter are governed by Title 13-C; Title 31, chapter 19; Title 31, chapter 21; or Title 31, chapter 15, as appropriate, depending upon the organizational form of the financial institution operating under this chapter. The institution's organizational documents must address the powers and duties of the governing body. [PL 2009, c. 629, Pt. A, §3 (AFF); PL 2009, c. 629, Pt. B, §2 (AMD).]

**1. Number of directors.** The governing body of a financial institution must consist of at least 5 directors, except that the superintendent may approve fewer directors for good cause shown. [PL 1999, c. 218, §10 (AMD).]

**2. Executive committee.** The governing body of a financial institution organized as a corporation may appoint by majority vote of the governing body an executive committee of no less than 5 members and may delegate to the committee the powers of the governing body in regard to the ordinary operations of the business of the institution. The superintendent may approve fewer members for good cause shown.

[PL 1997, c. 398, Pt. C, §15 (NEW).]

**3. Frequency of meetings.** A governing body of a financial institution organized as a corporation that has appointed an executive committee shall meet at least 6 times a year, including once each quarter, if the executive committee meets during the months in which the governing body does not meet. Minutes of executive committee meetings must be ratified by the governing body. The governing body of a financial institution organized as a corporation that has not appointed an executive committee or the governing body of any other financial institution shall meet at least monthly. The superintendent may approve less frequent meetings for good cause shown.

[PL 1997, c. 398, Pt. C, §15 (NEW).]

#### SECTION HISTORY

PL 1997, c. 398, §C15 (NEW). PL 1999, c. 218, §10 (AMD). RR 2001, c. 2, §B8 (COR). RR 2001, c. 2, §B58 (AFF). PL 2005, c. 543, §D2 (AMD). PL 2005, c. 543, §D18 (AFF). PL 2009, c. 629, Pt. A, §3 (AFF). PL 2009, c. 629, Pt. B, §2 (AMD).

#### §317. Officers and employees

**(REPEALED)**

#### SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 1979, c. 170, §1 (AMD). PL 1979, c. 429, §6 (AMD). PL 1979, c. 663, §37 (AMD). PL 1981, c. 501, §30 (AMD). PL 1993, c. 257, §2 (AMD). PL 1997, c. 398, §C16 (RP).

#### §317-A. Officers

Except as provided in this section, the powers and duties of officers of a financial institution organized under this chapter are governed by Title 13-C; Title 31, chapter 19; Title 31, chapter 21; or Title 31, chapter 15, as appropriate, depending upon the organizational form of the financial institution operating under this chapter. The institution's organizational documents must address the powers and duties of officers. [PL 2009, c. 629, Pt. A, §3 (AFF); PL 2009, c. 629, Pt. B, §3 (AMD).]

**1. Appointment.** The governing body of a financial institution shall appoint from its members or otherwise one or more officers to manage the day-to-day affairs of the institution. One of these officers must be designated the chief executive officer. The governing body shall report the name of the designated chief executive officer to the superintendent within 10 days of designation.

[PL 1997, c. 398, Pt. C, §17 (NEW).]

**2. Bonds.** The governing body of a financial institution shall require security for the fidelity and faithful performance of duties by its officers, employees and agents in an amount that the governing body considers necessary or that the superintendent requires. This security must consist of a bond executed by one or more surety companies authorized to transact business in this State. The superintendent may increase this amount from time to time as circumstances may require.

[PL 1997, c. 398, Pt. C, §17 (NEW).]

#### SECTION HISTORY

PL 1997, c. 398, §C17 (NEW). RR 2001, c. 2, §B9 (COR). RR 2001, c. 2, §B58 (AFF). PL 2005, c. 543, §D3 (AMD). PL 2005, c. 543, §D18 (AFF). PL 2009, c. 629, Pt. A, §3 (AFF). PL 2009, c. 629, Pt. B, §3 (AMD).

#### §318. Dividends, distributions and withdrawals

**1. Limitation.** A financial institution organized pursuant to this chapter may not authorize dividends, distributions or withdrawals that reduce capital below the higher of the amount required under the certificate of public convenience and advantage or section 412-A without the prior approval of the superintendent.

[PL 1997, c. 398, Pt. C, §17 (NEW).]

**2. Form.** Dividends, distributions and withdrawals must be in cash or in additional shares, members' interests or partnership interests unless otherwise authorized by the superintendent.

[PL 1997, c. 398, Pt. C, §17 (NEW).]

#### SECTION HISTORY

PL 1997, c. 398, §C17 (NEW).

### §319. Special provisions for subsidiary banks of mutual holding companies

**1. Restriction.** A subsidiary bank established pursuant to a reorganization under chapter 105 must be organized as a corporation.

[PL 1997, c. 398, Pt. C, §17 (NEW).]

**2. Board of directors.** With respect to a subsidiary bank established pursuant to a reorganization under chapter 105 from and after the time that subsidiary bank includes stockholders other than the mutual holding company, the articles of incorporation of the subsidiary bank must be amended to provide for proportionate representation of the minority stockholders on the board of directors of the subsidiary bank based on the percentage of common stock owned by the minority stockholders in the aggregate relative to the total amount of common stock then issued and outstanding, except that the minority stockholder representatives on the board of directors of the subsidiary bank may not be fewer than 2. A director or officer of a mutual holding company or subsidiary bank or any affiliate of that company or institution is prohibited from serving as a designated minority stockholder representative on the board of directors of the subsidiary bank. Shares of stock of the subsidiary bank owned directly or indirectly by an individual director or officer of the mutual holding company are deemed to be owned by the mutual holding company for purposes of determining proportionate representation of minority stockholders on the board of directors of the subsidiary bank. Representatives of the mutual holding company that serve on the board of directors of the subsidiary bank must be selected in accordance with chapter 105.

[PL 1997, c. 398, Pt. C, §17 (NEW).]

#### SECTION HISTORY

PL 1997, c. 398, §C17 (NEW).

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