04 NCAC 16A .0105 RESTRICTIONS: PAYMENT OF DIVIDENDS AND REPURCHASE OF STOCK

(a) A stock savings institution shall not declare or pay a cash dividend on or repurchase any of its capital stock if the effect would be to reduce the net worth of the savings institution to an amount that is less than the minimum required by the federal regulatory authority pursuant to 12 U.S.C. 1831o(d) or an amount less than the minimum required by G.S. 54C-163, whichever is greater. 12 U.S.C. 1831o(d) is hereby incorporated by reference, including subsequent amendments or editions, and may be found free of charge as follows: https://www.gpo.gov/fdsys/pkg/USCODE-2010-title12/html/USCODE-2010-title12-chap16-sec1831o.htm.

(b) Without the prior written approval of the Commissioner of Banks, a stock savings institution that has been in operation or converted from mutual form for less than five years shall not repurchase any of its capital stock. Such approval shall be granted only upon a showing that the proposed repurchase will not adversely affect the safety and soundness of the savings institution.

(c) A stock savings institution that has been in operation or converted from mutual form for less than five years shall obtain the written approval of the Commissioner of Banks before declaring or paying a cash dividend on its capital stock in an amount in excess of one-half of the greater of:

(1) the savings institution's net income for the most recent fiscal year end; or

(2) the average of the savings institution's net income after dividends for the most recent fiscal year end and not more than two of the immediately preceding fiscal year ends.

(d) For a period of three years following the date of completion of a conversion from mutual to stock form, no person shall, directly or indirectly, offer to acquire or acquire the beneficial ownership of more than 10 percent of any class of an equity security of a converted savings institution without the prior written approval of the Commissioner of Banks. Such approval shall be granted only as follows:

(1) upon a finding by the Commissioner of Banks that during the first year following the date of completion of the conversion to protect the safety and soundness of the institution; or

(2) during the second and third years following the date of completion of the conversion upon a finding by the Commissioner of Banks that:

(A) such acquisition:

(i) is necessary to protect the safety and soundness of the institution; or

(ii) is supported by the board of directors of the converted savings institution; and

(B) the person acquiring in excess of 10 percent of any class of an equity security of the converted institution is of good character and integrity, possesses satisfactory managerial skills, after the acquisition such person will be a source of financial strength to the converted savings institution, and the interests of the public will not be adversely affected.

(e) Securities owned in violation of Paragraph (d) of this Rule in excess of 10 percent of any class of securities shall not be counted as shares entitled to vote and shall not be voted by any person or counted as voting shares in connection with any matters submitted to the stockholders for a vote.

(f) Paragraphs (d) and (e) shall not apply to:

(1) any offer with a view toward public resale made to the savings institution, the institutions underwriters, or the selling group acting on the institution's behalf; or

(2) any offer to acquire or acquisition of beneficial ownership of more than 10 percent of the common stock of a savings institution by a corporation whose ownership is or will be substantially the same as the ownership of the savings institution, provided that the offer or acquisition is made more than one year following the date of completion of the conversion.

History Note: *Authority G.S. 54B-43; 54B-55; 54C-44; 54C-53;*
Eff. August 31, 1981;
Amended Eff. July 1, 1990; November 1, 1985;
Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;
Amended Eff. November 1, 2017; December 1, 2011; April 15, 1993; February 15, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.