OFFICE OF THE SECRETARY OF STATE
BEV CLARNO
SECRETARY OF STATE

JEFF MORGAN
INTERIM DEPUTY SECRETARY OF STATE

ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

# TEMPORARY ADMINISTRATIVE ORDER

INCLUDING STATEMENT OF NEED & JUSTIFICATION

## FSR 21-2020

CHAPTER 441
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
FINANCE AND SECURITIES REGULATION

**FILED**
06/18/2020 2:17 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Temporary authorization to allow Oregon chartered banks to pay dividends in excess of retained earnings.

EFFECTIVE DATE: 06/18/2020 THROUGH 12/14/2020

AGENCY APPROVED DATE: 06/18/2020

CONTACT: Karen Winkel
503-947-7694
karen.j.winkel@oregon.gov

350 Winter Street NE
Salem,OR 97301

Filed By:
Karen Winkel
Rules Coordinator

NEED FOR THE RULE(S):

Under ORS 706.795, the DCBS director has the authority to adopt rules that achieve parity among Oregon chartered banks, national banks, and banks chartered in other states doing business in Oregon. Absent the proposed temporary rule, Oregon chartered banks suffer a clear and immediate competitive disadvantage vis-à-vis national banks and banks chartered in California and Washington in paying dividends to shareholders, attracting investors, and raising capital to fund their business operations. The inability to make dividend payments when otherwise financially healthy Oregon chartered banks desire to do so, places a restriction on those institutions that is not applicable to national banks and banks chartered in Washington and California that do business in Oregon. The proposed rule will enhance and maintain competition among Oregon chartered banks, national banks, and banks chartered in California and Washington by enabling Oregon chartered banks to pay dividends on terms that are currently available to other financial institutions.

JUSTIFICATION OF TEMPORARY FILING:

The proposed rule allows Oregon chartered banks that satisfy safety and soundness requirements to make shareholder distributions, the aggregate amount of which may exceed the bank's retained earnings, subject to receiving prior approval from the director of the Department of Consumer and Business Services. The COVID-19 pandemic requires the adoption of a temporary rule, because the failure to act promptly will result in serious prejudice to the interests of Oregon chartered banks, their shareholders, and Oregon borrowers. But for the temporary financial disruption caused by the COVID-19 pandemic, most Oregon chartered banks would be in a position to pay a dividend to their shareholders from the bank's retained earnings. The rule is needed to ensure that Oregon chartered banks are not a competitive disadvantage, vis-a-vis national banks and banks chartered in California and Washington doing business in Oregon, in regards to their ability to alleviate the financial impact of COVID-19 as well as to attract and retain capital.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

National Bank Act, 12 USC § 60; Washington Revised Code (RCW) 30A.04.180; California Financial Code, § 1133; https://corpgov.law.harvard.edu/2020/05/03/covid-19-and-capital-allocation/ (recommending that companies, including banking institutions, pay dividends during the pandemic if they can do so without compromising their long-term financial stability).

---

ADOPT: 441-505-2010

RULE TITLE: Dividend Excess of Retained Earnings

RULE SUMMARY: Adopted to authorize Oregon chartered banks to pay dividends in excess of retained earnings with administrator approval.

RULE TEXT:
An institution may not pay dividends in an amount that exceeds the institution's retained earnings except with the prior written approval of the director of the Department of Consumer and Business Services.

STATUTORY/OTHER AUTHORITY: ORS 706.790, 706.795

STATUTES/OTHER IMPLEMENTED: ORS 706.580