

# THE BANK OF NOVA SCOTIA

## STOCK OPTION PLAN\*

### 1. PURPOSE

The purpose of The Bank of Nova Scotia Stock Option Plan is to provide to selected employees of the Bank, its Subsidiaries and its Affiliates, compensation opportunities that are compatible with shareholder interests, that will encourage share ownership (in the case of Options) and that will enhance the Bank's ability to retain key personnel and reward significant performance achievements.

This Plan is not applicable to any director on the Board of Directors of the Bank, or of a Subsidiary or Affiliate, who is not an officer or, in any other capacity, an employee of the Bank or any Subsidiary or Affiliate.

### 2. DEFINITIONS

The following terms, when used in the Plan, shall have the respective meanings set forth below, unless the context specifically requires otherwise:

- (a) *Affiliate*: An affiliate within the meaning in the *Bank Act* (Canada).
- (b) *Agreement*: The written agreement between the Bank and each Participant governing each Grant, as described in Section 5(b) hereof.
- (c) *Approval Date*: The date of approval of the Plan by the shareholders of the Bank.
- (d) *Bank*: The Bank of Nova Scotia.
- (e) *Base Price*: The base dollar amount used to calculate the amount, if any, payable to a Participant with respect to a SAR upon settlement thereof, which base dollar amount shall be determined in accordance with Section 7(b).
- (f) *Board*: The Board of Directors of the Bank.
- (g) *Cause*: The existence of cause for termination of employment at common law as determined by the applicable employment standards legislation, including, but is not limited to, for fraud, theft, dishonesty, illegality, breach of statute or regulation, conflict of interest, or gross incompetence and whereby a Participant is terminated by the employer without the requirement to give any notice of the termination of employment to the Participant or provide pay in lieu of such notice,

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\* 1994 Stock Option Plan established January 18, 1994, as amended as at March 2, 1999, October 7, 2003, January 13, 2004, March 2, 2004, April 7, 2004, March 6, 2007, May 27, 2008, April 5, 2011, and October 29, 2019 the "2011 Stock Option Plan" ~~and~~, November 30, 2021 [and April 5, 2022](#).

including, but not limited to, statutory notice of termination or pay in lieu of such notice.

- (h) *Committee*: The Human Capital and Compensation Committee of the Board of the Bank or such other committee or persons designated by the Board for the purpose of administering the Plan.
- (i) *Employee*: An individual in a Senior-Vice President level role or a job classification more senior than that of a Senior Vice-President.
- (j) *Exercise Price*: The exercise price of an Option as determined in accordance with Section 7 hereof.
- (k) *Expiry Date*: With respect to each Option and SAR granted, as applicable, a fixed date upon which the Option or the SAR, as applicable, and all rights to exercise or settle, as the case may be, same will expire and terminate.
- (l) *Grant*: A grant of an Option or SAR as determined from time to time in accordance with the Plan.
- (m) *Option*: An option to purchase Shares granted under the Plan.
- ~~(n) *Optionee*: A person who has been granted an Option under the Plan.~~
- ~~(o)(n) *Participant*: A person who has received a Grant under the Plan.~~
- ~~(p)(o) *Plan*: The Bank of Nova Scotia Stock Option Plan as set forth herein, as amended from time to time.~~
- ~~(q)(p) *Rules*: Rules and regulations established by the Board or the Committee with respect to implementation and administration of the Plan.~~
- ~~(r)(q) *Shares*: The common shares in the capital of the Bank.~~
- ~~(s)(r) *SARs*: Stand-Alone Stock Appreciation Rights granted without reference to any related Option.~~
- ~~(t)(s) *Subsidiary*: A subsidiary of the Bank within the meaning in the *Bank Act* (Canada).~~
- ~~(u)(t) *Termination Date*: In respect of any Participant:
  - (i) the Participant's date of death;
  - (ii) in the case of the Participant's retirement from or termination of employment by the Bank or its Subsidiary or Affiliate without Cause (whether such termination is lawful or unlawful), the later of: (i) the last day~~

worked by the Participant; and, (ii) the last day of the applicable statutory notice required under applicable minimum employment standards legislation, which shall not be extended by any period of common-law, reasonable, or contractual notice;

(iii) in the case of termination of the Participant's employment by the Bank or its Subsidiary or Affiliate for Cause, the date on which the Participant is given written notice of termination by the Bank or its Subsidiary or Affiliate; and

(iv) in the case of resignation, the last day worked by the Participant.

~~(v)~~(u) TSX: The Toronto Stock Exchange, or successor thereto.

### 3. ADMINISTRATION

(a) The Plan shall be administered by the Committee. The Committee may make and may from time to time amend such Rules and provisions for the implementation and administration of the Plan as it shall deem appropriate.

(b) The interpretation and construction by the Committee of any provisions of the Plan, any Rules, resolutions related to the Plan and/or Rules, and of the Options and SARs granted thereunder, unless otherwise determined by the Board, shall be final and conclusive and shall be applicable with respect to and binding upon all persons having any interest thereunder.

(c) Subject to the provisions of the Plan, the Rules and to any relevant resolutions of the Board, the Committee shall, in its discretion, determine, or designate a method to determine, which Employees shall be granted Options and/or SARs, and the terms and conditions of such Options and/or SARs. The judgment of the Committee in the designation of Participants and the extent of their Grant shall be final and conclusive.

(d) The Committee shall make such Rules and establish such terms, conditions and limitations with respect to the grant or exercise of Options and/or the grant or settlement of SARs including, without limitation, determining the number of Options and/or SARs to be granted from time to time, the Employees to be eligible and otherwise, as may be necessary or desirable in order to ensure that the Plan achieves its objectives in compliance with all laws applicable. In particular, without limiting the foregoing, the Committee may make such Rules and establish such terms, conditions and limitations in relation to the Grant to any Employee who is not a resident of Canada as it determines to be necessary or advisable having regard to any securities, tax or other laws, regulations or other regulatory provisions which may be applicable to the Bank, or to any Subsidiary or Affiliate of the Bank, or to such Employee in connection with the Grant or the Shares to be delivered upon the exercise of an Option.

- (e) The Committee may appoint the Chief Executive Officer and/or the Chief Human Resources Officer, to act on its behalf and in accordance with its determinations and Rules to administer the Plan and implement its decisions and the Committee may delegate its authority under the Plan, including the power to make discretionary decisions, to either of them; provided, however, that the Chief Executive Officer and the Chief Human Resources Officer, may not make discretionary decisions with respect to their own participation and options granted to them, respectively, on an individual basis, except as they may be affected by decisions applicable to Plan participants generally.
- (f) The Board may exercise any power that the Committee may exercise pursuant to the Plan.
- (g) The Bank shall pay all costs of administering the Plan.

#### 4. ELIGIBILITY

Employees of the Bank, its Subsidiaries and Affiliates, are eligible to be granted Options and/or SARs. The Committee shall, in its sole discretion, establish Rules or procedures to select those Employees to receive a Grant from time to time and the number of Options or SARs to be included in any Grant.

#### 5. GRANT OF OPTIONS & SARs

- (a) The Committee from time to time may grant Options and/or SARs to eligible persons as and in the manner as it shall determine subject, however, to the grant of any SARs being in compliance with applicable regulatory requirements. Each Grant shall be subject to the terms and conditions contained herein and may be subject to additional terms and conditions (not inconsistent herewith) determined by the Committee or the Board from time to time, including, without limiting the generality of the foregoing, terms and conditions such as a vesting period or periods of time during which all or part of the Option or SAR, as applicable, is not exercisable or settleable, as applicable, events resulting in early expiry of the Option or SAR, as applicable, and/or securities resale restrictions.
- (b) Each Grant shall be evidenced by a written agreement between the Bank and the Participant. Such agreements shall contain such provisions as are required by and in accordance with the Plan and any other provisions (not inconsistent with the Plan) as the Committee in its discretion may prescribe.

#### 6. NUMBER OF SHARES SUBJECT TO OPTION

The total number of Shares which have been authorized for issuance as of the date hereof, pursuant to exercise of Options which may be granted under the Plan, is One Hundred and ~~Twenty-Nine~~Forty-One Million (~~429,141,000,000~~) Shares, subject to adjustments as provided in Section 12 hereof. These Shares may be authorized but unissued Shares available for delivery to the Participant upon exercise of an Option and

may be Shares reserved for or related to an Option previously granted to the extent that the Option, or a portion thereof, has expired, been forfeited or terminated or been cancelled for any reason without having been exercised in full. The aggregate number of Shares subject to Options granted to any single Participant shall not at any time exceed 5% of the number of then issued and outstanding Shares (on a non-diluted basis). The number of Shares which may be issued to Bank insiders within any one-year period and issuable to insiders at any time, shall not exceed 10% of the Bank's total number of Shares outstanding. This limit shall be applied to Shares to be issued under the Plan combined with any Shares to be issued pursuant to all other Bank security-based compensation arrangements, if any. The term "security-based compensation arrangements" shall be as such term is defined by applicable stock exchange rules.

## 7. EXERCISE PRICE & BASE PRICE

- (a) The purchase price for Shares under each Option granted shall be fixed by the Committee at the time of grant and shall be not less than the closing price of the Shares on the TSX on the last date on which Shares were traded on such exchange before the date the Option was granted. Once granted, Options may not be repriced, or forfeited in exchange for Options with a lower Exercise Price, except in accordance with authorized adjustments pursuant to Section 12 hereof.
- (b) The Base Price of each SAR granted shall be fixed by the Committee at the time of grant and shall be not less than the closing price of the Shares on the TSX on the last date on which Shares were traded on such exchange before the date the SAR was granted. Once granted, SARs may not be repriced, or forfeited in exchange for SARs with a lower Base Price, except in accordance with authorized adjustments pursuant to Section 12 hereof.

## 8. NON-ASSIGNABILITY

Each Option and SAR is non-assignable and non-transferable and, except in the case of the Participant's death or appointment of a legal representative for a Participant who becomes incapable, shall be exercisable only by the Participant. Each Option and SAR and any rights thereunder shall not be transferable otherwise than by will and the laws of succession and shall not be subject to attachment, execution or other similar process; provided, however, that to the extent permitted by applicable law, with respect to any Option or SAR, the Committee may establish procedures pursuant to which the Participant may designate a beneficiary. In the event of any attempt by the Participant to alienate, assign, pledge, hypothecate or otherwise dispose of an Option, SAR or of any right under the Plan, except as herein provided, or in the event of any levy or attachment, execution or similar process upon any rights or interest conferred pursuant to the Plan, the Bank may terminate the Option or SAR, as applicable, by notice to the Participant and the Option or SAR, as applicable, shall thereupon be cancelled.

## 9. EXERCISE PERIOD & PERIOD FOR SETTLEMENT

- (a) The Expiry Date shall be determined by the Committee with respect to each Option and SAR at the time of the Grant and such Expiry Date shall not be later than the tenth anniversary of the date of the Grant.
- (b) At the time of the Grant, the Committee may determine dates only after which Options may be exercised, or SARs may be settled, in whole or in part; provided, however, that no Option or SAR may be exercised or settled, as the case may be, after its Expiry Date. The Committee may amend any Option or SAR to accelerate the date after which such Option or SAR may be exercised in whole or in part.
- (c) Notwithstanding the foregoing, if the Expiry Date of an Option or SAR occurs during a Blackout Period, or within ten business days after the last day of a Blackout Period, to which the Participant is subject, the Expiry Date of the Option or SAR, as applicable, shall automatically be extended to the date which is ten business days after the last day of the Blackout Period.

For purposes of the foregoing, "Blackout Period" means a period during which trading in Bank securities is restricted in accordance with the policies of the Bank, its Subsidiaries and Affiliates.

## 10. TERMINATION/SUSPENSION OF OPTIONS & SARS

- (a) *Death of Participant.* In the event of the death of a Participant, each Option and SAR will be immediately fully vested and exercisable or settleable, as applicable, as of the Participant's Termination Date and will only be exercisable or settleable, as applicable, by the Participant's legal representative, or designated beneficiary, as the case may be, during the period following the Termination Date as fixed by the Committee at the time of the Grant, which period shall not exceed one year from the Termination Date. At the end of said period, each such Option and SAR will expire and terminate and all unexercised or unsettled rights will be forfeited; and provided, however, that in no event will the Option or SAR be exercisable or settleable, as applicable, after the Expiry Date.
- (b) *Retirement.* In the event of the retirement of the Participant (as defined in the Rules), each Option and SAR, as of the Participant's Termination Date, will thereafter continue to vest and become exercisable or settleable, as applicable, in accordance with its terms and will only continue to vest and be exercisable or settleable, as applicable, during the period thereafter as fixed by the Committee at the time of the Grant in accordance with Clause 9(a) above. At the end of said exercise or settlement period the Option or SAR, as applicable, will expire and terminate and all unexercised or unsettled rights will be forfeited; and provided, however, that in no event will the Option or SAR be exercisable or settleable, as applicable, after the Expiry Date.

- (c) *Termination of Employment Without Cause.* In the event that the employment of the Participant is terminated by the Bank, or its Subsidiary or Affiliate, Without Cause, unless otherwise determined by the Committee as hereinafter provided, any unvested portion of each Option and SAR will immediately expire, terminate and be forfeited on the Termination Date and any vested portion of the Option or SAR will only remain exercisable or settleable, as applicable, during the period after the Termination Date, if any, as fixed by the Committee at the time of the Grant, which period shall not exceed three months from the Termination Date. At the end of said period the Option or SAR, as applicable, will expire and terminate and all unexercised or unsettled rights will be forfeited; provided, however, that in no event will the Option or SAR be exercisable or settleable, as applicable, after the Expiry Date. Notwithstanding the foregoing, it is further provided that in the event described in this paragraph 10(c), the Committee may, in its sole and absolute discretion, amend the Option or SAR, as applicable, to accelerate or permit the vesting of all or part of the Option or SAR and/or extend the period during which the Option or SAR will remain exercisable or settleable, as applicable, to a period not exceeding three years from the date of such termination; provided, however, that in no event will the Option or SAR be exercisable or settleable, as applicable, after the Expiry Date.
- (d) *Termination of Employment for Cause.* In the event that the employment of the Participant is terminated by the Bank, or its Subsidiary or Affiliate, for Cause, any unexercised Option and unsettled SAR, both vested and unvested portions, will immediately expire and terminate on the Termination Date and all unexercised or unsettled rights will be forfeited. For greater certainty, in no event will the Participant receive less than what is required by applicable minimum employment standards legislation.
- (e) *Resignation.* In the event that the employment of the Participant is terminated as a result of the Participant's resignation, any unexercised Option and unsettled SAR, both vested and unvested portions, will immediately expire and terminate on the Termination Date and all unexercised or unsettled rights will be forfeited, unless otherwise determined by the Committee in its sole and absolute discretion at the time of the Grant; and provided, however, that in no event will the Option or SAR be exercisable or settleable, as applicable, after the Expiry Date.
- (f) *Leave of Absence.* In the event that the Participant commences an approved leave of absence (as determined in accordance with the applicable policies of the Bank, or its Subsidiary or Affiliate, and the Rules), the Options and SARs which are at that date fully vested and exercisable or settleable, as applicable, will continue to be so in accordance with their terms during the duration of the leave. Any Options or SARs portion thereof which are unvested or unexercisable or unable to be settled at the commencement of such leave will continue to vest and become exercisable or settleable, as applicable, in accordance with their terms during the duration of the leave. Any termination of employment during an approved leave of absence will be dealt with in accordance with the applicable

provision of this Section 10 and Options and SARs may become exercisable or settleable, as applicable, as provided in the applicable provision.

## 11. CHANGE OF CONTROL

Notwithstanding any provision of the Plan to the contrary, in the event that a Change of Control (as defined below) of the Bank shall occur, the following provisions shall be applicable:

- (a) If a Change of Control shall occur and, within the period of two years immediately following such Change of Control, the employment of the Participant is terminated by the Bank, or its Subsidiary or Affiliate, or by a Merged Entity (as defined in Appendix A to this Plan), for any reason other than dismissal for Cause, all Options or SARs held by such Participant not vested or exercisable or settleable, as applicable, at the Termination Date shall, immediately and without notice to such Participant, be fully vested and exercisable or settleable, as applicable, in accordance with the terms of the Plan.
- (b) Upon the exercise of any Option following the occurrence of a Change of Control, certificates for Shares issued or to be delivered pursuant to such exercise shall be delivered directly to the Participant exercising the Option and registered in the name of the Participant, subject to any arrangements to the contrary required with respect to any loans made by the Participant from the Bank in connection with such exercise.
- (c) For purposes of this Section, "Change of Control" shall have the meaning set forth in Appendix A to this Plan.

## 12. ADJUSTMENTS

- (a) Subject to any relevant resolutions of the Board, appropriate adjustments shall be made by the Committee, with respect to Options and SARs granted or to be granted, in the number of Shares subject to the Option and in the number of SARs granted and/or in the Exercise Price of the Option or Base Price of the SAR in order to adjust for the effect of subdivision or consolidation of the Shares, payment of dividends in stock (other than dividends in the ordinary course), reclassification or conversion of the Shares, recapitalization, reorganization, or any other event which, in the judgment of the Committee necessitates action by way of adjustment to the terms of the outstanding Options and SARs.
- (b) Subject to regulatory compliance, and to any relevant resolutions of the Board, the judgment of the Committee with respect to any such adjustments shall be conclusive and binding upon each Participant and the Participant shall accept, at the time of exercise of the Option, such lesser or greater number of Shares or other securities as shall result from the adjustment.
- (c) No fractional Shares may be issued under the Plan.



### 13. EXERCISE OF OPTIONS

- (a) The Shares to be purchased upon each exercise of any Option shall be paid for in full at the time of exercise.
- (b) The obligation of the Bank to deliver Shares for Options exercised under the Plan shall be subject to all applicable laws, regulations, rules, orders, approvals and regulatory provisions which shall then be in effect and required by regulatory authorities, including any stock exchanges on which the Shares are traded. Without limiting the generality of the foregoing, the Bank shall not, upon the exercise of any Option, be required to issue or deliver any Shares prior to (i) the admission of such Shares to listing on any stock exchanges on which the Shares may then be listed, and (ii) the completion of such reporting, registration or other qualification of such Shares under any law, rule, or regulation as the Committee shall determine to be necessary or advisable.
- (c) The Bank may require a Participant to pay to the Bank the amount that the Bank deems necessary to satisfy its obligation, if any, to withhold federal, provincial, state or local income or other taxes arising in respect of the grant of Options or their exercise. Such amount must be paid to the Bank, prior to which there will be the withholding by the Bank of Shares which would otherwise be delivered upon the exercise of an Option, and which, following notice to the Participant, may be sold, the proceeds of which may be used to satisfy the payment of such amount.
- (d) In exercising any Option, the Participant shall be obliged to comply with all insider trading, reporting, resale restriction and other regulatory requirements as may be applicable thereto and to the securities acquired pursuant thereto.
- (e) The Bank and/or its Affiliates may, in their sole discretion and on such terms and conditions as they may determine from time to time, provide financial assistance in connection with the exercise of Options.

### 14. SETTLEMENT OF SARS

Subject to the Rules established by the Committee, each SAR granted hereunder shall be settleable, following the applicable vesting period and prior to the specified expiry date, by payment by the Bank in cash of an amount equal to the excess of the market value of one Share, at the settlement date, over the Base Price, subject to applicable tax and any other applicable withholdings, as required.

### 15. AMENDMENT AND TERMINATION OF PLAN

- (a) The Board may at any time, or from time to time, suspend or terminate the Plan [and/or an existing Option or SAR agreement](#) in whole or in part and may amend

it in such respects as the Board may deem appropriate, subject to applicable laws, regulations, rules, by-laws or policies of applicable stock exchanges and other regulatory authorities; provided, however, that (i) no amendment, suspension or termination of the Plan and/or an existing Option or SAR agreement shall, without the ~~Optionee's Participant's~~ consent, impair any of the rights or obligations under any Option or SAR previously granted, except as may be permitted by the provisions of Sections 12 and 17 hereof, and (ii) notification of the amendment is sent to holders of outstanding Options or SARs, as applicable, previously granted if the amendment is applicable to such Options or SARs.

- (b) Notwithstanding the foregoing, the Board may not, without the approval of the Bank's shareholders of Shares, make the following types of amendments to the Plan:
- (i) an increase in the maximum number of Shares issuable under the Plan or a change from a fixed maximum number of Shares to a fixed maximum percentage of issued and outstanding Shares;
  - (ii) a reduction in the Exercise Price of outstanding Options or the Base Price of outstanding SARs or a cancellation for the purpose of exchange for reissuance at a lower Exercise Price or Base Price, as applicable, to the same person;
  - (iii) an extension of the Expiry Date of an Option or SAR;
  - (iv) an expansion of the class of eligible recipients of Options or SARs under the Plan that would permit inclusion of non-employee Directors;
  - (v) an expansion of the transferability or assignability of Options or SARs, other than to permitted assigns or for estate planning and estate settlement purposes. For purposes of the above, "permitted assigns" of an eligible person under the Plan may include: the spouse or other family member of the person; an entity controlled by the person or spouse; an RRSP or RRIF of the person, spouse or family member; a trustee, custodian or administrator acting on behalf of, or for the benefit of, the person, spouse or family member; and any party recognized as a permitted assign in such circumstances in securities or stock exchange regulatory provisions; and
  - (vi) any amendment to the amending provisions.
- (c) Notwithstanding the foregoing, the Board is not required to obtain shareholder approval ~~will not be required~~ for any adjustments made pursuant to Section 12 of the Plan and the adjustments included below, which include, but are not limited to the following:

- (i) amendments of an administrative or housekeeping nature;
- (ii) terms, conditions, mechanics, processes and procedures in the granting of Options or SARs;
- (iii) amendments to vesting, exercising or early expiry of Options or SARs;
- ~~(vii)~~(iv) amendments that are designed to comply with the law, tax or accounting provision requirements or regulatory requirements.

#### 16. RIGHTS NOT CONFERRED

- (a) A Participant shall not have any rights as a shareholder in respect of any Share issuable subject to an Option granted, unless and until and except to the extent that such Share has been issued and delivered upon the proper exercise of the Option.
- (b) The Plan and any Options or SARs granted thereunder shall not be construed to confer any right to employment. The right of the Bank or its Subsidiary to terminate (whether by dismissal, discharge or otherwise) any Participant's employment with it at any time is specifically reserved.

#### 17. APPROVALS/EFFECTIVE DATE

The Plan shall become effective on the date when it has been adopted by the Board and confirmed by the shareholders (the "Effective Date"). However, if the necessary stock exchange and other regulatory approvals are not obtained within one year after the Effective Date, the Plan and all Options and SARs outstanding thereunder shall terminate. Any Options or SARs granted prior to such regulatory approval shall be conditional upon such approval and no such Option or SAR may be exercised or settled, as applicable, unless and until such approval is given.

#### 18. GOVERNING LAW

The Plan and each Option agreement thereunder shall be construed in accordance with the laws applicable in the Province of Ontario, Canada and the parties shall agree that they shall attorn to the jurisdiction of the Ontario Court of Justice or any successors thereto with respect to any and all actions brought in relation thereto.

## APPENDIX A

### Change of Control

1. For the purposes of this Appendix A:
  - (a) "acting jointly or in concert" means an agreement, commitment or understanding contemplated by section 9 of the *Bank Act*;
  - (b) "affiliate" has the meaning ascribed to it in section 6(1) of the *Bank Act*;
  - (c) "associated" has the meaning ascribed to it in section 371 of the *Bank Act*;
  - (d) "Bank Act" means the *Bank Act* (Canada) as in force on June 1, 2003;
  - (e) "control" has the meaning ascribed to it in section 3 of the *Bank Act*;
  - (f) "entity" has the meaning ascribed to it in section 2 of the *Bank Act*, but includes a joint venture or pooling of assets;
  - (g) "person" has the meaning ascribed to it in section 2 of the *Bank Act*;
  - (h) "voting securities" means (i) a security of any class of securities of a body corporate or (ii) an interest in an entity that is not a body corporate, in each case carrying voting rights under all circumstances or by reason of an event that has occurred and is continuing or by reason of a condition that has been fulfilled, and includes (y) any securities or interests convertible into or exchangeable for such securities or interests and (z) any such securities or interests that are unissued but which may be deemed to be outstanding; and
  - (i) "voting share" has the meaning ascribed to it in section 2 of the *Bank Act*.
2. Subject to paragraph 3 below, "Change of Control" means the occurrence of one or more of the following:
  - (a) the acquisition, directly or indirectly and by any means whatsoever, by any person, or by two or more persons acting jointly or in concert, or by two or more affiliated or associated persons, of voting shares of the Bank representing more than 20% of the outstanding shares of a class of voting shares of the Bank;
  - (b) the replacement by way of election or appointment at any time of one-half or more of the total number of the then incumbent members of the board of directors of the Bank, unless such election or appointment is approved by all of the members of the board of directors of the Bank in office

immediately preceding such election or appointment in circumstances where such election or appointment is to be made other than as a result of a dissident public proxy solicitation, whether actual or threatened;

- (c) any transaction, whether by way of reconstruction, reorganization, consolidation, arrangement, merger, liquidation, transfer, exchange, sale or otherwise, whereby one or more entities (each, a "Successor Entity") acquires legal or beneficial ownership of (x) more than 50% of the assets of the Bank (whether at book or market value), (y) assets of the Bank which give rise to more than 50% of the revenues of the Bank or (z) all or substantially all of the assets of the Bank, unless:
  - (i) the Bank or persons who were holders of voting securities of the Bank immediately before such transaction hold, after such transaction, in the aggregate voting securities of each Successor Entity that would entitle the holders thereof to cast more than 80% of the votes attaching to all voting securities of each Successor Entity;
  - (ii) a majority of the members of the board of directors or similar governing body of each Successor Entity is comprised of individuals who were members of the board of directors of the Bank immediately prior to such transaction; and
  - (iii) after such transaction, no person, or two or more persons acting jointly or in concert, or two or more affiliated or associated persons (other than the Bank) controls any Successor Entity,

except that this paragraph 2(c) shall not apply to any transfer of any assets of the Bank to one or more wholly-owned subsidiaries of the Bank;

- (d) the amalgamation of the Bank with one or more entities to form an amalgamated entity (a "Merged Entity"), or an arrangement or merger whereby the Bank ceases to exist as a separate legal entity and all or substantially all of the assets of the Bank become the property of any successor entity (a "Merged Entity"), unless:
  - (i) persons who were holders of voting securities of the Bank immediately before such transaction hold, after such transaction, in the aggregate voting securities of the Merged Entity that would entitle the holders thereof to cast more than 80% of the votes attaching to all voting securities of the Merged Entity;
  - (ii) a majority of the members of the board of directors or similar governing body of the Merged Entity is comprised of individuals

who were members of the board of directors of the Bank immediately prior to such transaction; and

- (iii) after such transaction, no person, or two or more persons acting jointly or in concert, or two or more affiliated or associated persons controls the Merged Entity; or
  - (e) the completion of any transaction or series of transactions which would have the same or similar effect as any transaction referred to in paragraphs 2(a) to (d) above.
3. The occurrence of one or more of the following shall not constitute a "Change of Control":
- (a) the acquisition of all, but not less than all, of the voting shares of the Bank by a bank holding company following an application by the Bank under section 677 or 678 of the *Bank Act*, provided that persons who were holders of voting shares of the Bank immediately before such acquisition hold, after such acquisition, in the aggregate voting securities of the bank holding company that would entitle the holders thereof to cast more than 80% of the votes attaching to all voting securities of the bank holding company; or
  - (b) the acquisition of voting securities of the Bank by an underwriter or member of a banking or selling group solely in the course of a good faith distribution of such voting securities.