

This rule was filed as 12 NMAC 16.2.1.

**TITLE 12 TRADE, COMMERCE AND BANKING**  
**CHAPTER 16 BANKING**  
**PART 21 AUTHORITY OF STATE BANKS TO ISSUE PREFERRED STOCK**

**12.16.21.1 ISSUING AGENCY:** Financial Institutions Division of the Regulation and Licensing Department, P.O. Box 25101, Santa Fe, New Mexico 87504.  
[1-19-87; 3-15-97; Recompiled 10/15/01]

**12.16.21.2 SCOPE:** All banks chartered by the state of New Mexico.  
[3-15-97; Recompiled 10/15/01]

**12.16.21.3 STATUTORY AUTHORITY:** Section 58-1-54 NMSA 1978.  
[1-19-87; Recompiled 10/15/01]

**12.16.21.4 DURATION:** Permanent.  
[3-15-97; Recompiled 10/15/01]

**12.16.21.5 EFFECTIVE DATE:** January 19, 1987, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective March 15, 1997.  
[1-19-87; 3-15-97; Recompiled 10/15/01]  
[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

**12.16.21.6 OBJECTIVE:** The objective of this sub-part [now part] is to allow state chartered banks to issue preferred stock. This sub-part [now part] parallels 12 U.S.C. 51a, 51b and 51b-1, and Section 325.2(p) of Subchapter B of the regulations of the federal deposit insurance corporation [12 C.F.R. Section 325.2].  
[1-19-87; 3-15-97; Recompiled 10/15/01]

**12.16.21.7 DEFINITIONS:** The term "perpetual preferred stock" means a preferred stock that does not have a stated maturity date or that cannot be redeemed at the option of the holder. It includes those issues of preferred stock that automatically convert into common stock at a stated date. It excludes those issues, the rate on which increases, or can increase, in such a manner that would effectively require the issuer to redeem the issue; provided, however, that banks may issue floating rate preferred stock issues where the rate is constant in relation to some base rate.  
[1-19-87; Recompiled 10/15/01]

**12.16.21.8 AUTHORITY OF STATE BANKS TO ISSUE PREFERRED STOCK:**

A. Subject to the provisions of this regulation, any state chartered bank may issue perpetual preferred stock.

B. Any state chartered bank may, with the prior approval of the director of the financial institutions division (director) and by vote of shareholders owning two-thirds of the voting stock of such bank, upon not less than five days notice given by registered mail or by certified mail pursuant to action taken by its board of directors, issue preferred stock of one or more classes, in such amount and with such par value, or change the amount or par value of previously authorized preferred stock as approved by the director, and make such amendments to its articles of incorporation as may be necessary for this purpose; but, in the case of preferred stock as approved by the director, and make such amendments to its any newly organized bank which has not yet issued common stock, the requirement of notice to and vote of shareholders shall not apply. No issue of preferred stock shall be valid until the par value of all stock so issued shall be paid in and notice thereof, duly acknowledged before a notary public by the president, vice president or cashier of the bank, has been transmitted to the director and his certificate obtained specifying the amount of such issue of preferred stock and his approval, and that the amount has been duly paid in as a part of the capital of such bank; which certificate shall be deemed to be conclusive evidence that such preferred stock has been duly and validly issued.

C. The director in his discretion may withhold or grant approval as required by this Sub-Part [now part] after considering the factors set forth in Section 58-1-62 NMSA 1978 and whether the issue would unduly enrich insiders, contain dividend rates or other terms which are inconsistent with safe and sound banking practices, and in general whether the bank's actions would be consistent with safe and sound banking practices.

D. The holders of such preferred stock shall be entitled to receive such cumulative dividends and shall have such voting and conversion rights and such control of management, and such stock shall be subject to retirement in such manner and upon such conditions, as may be provided in the articles of incorporation with the approval of the director.

E. If any part of the capital of bank consists of preferred stock, the determination of whether or not the capital of such bank is impaired and the amount of such impairment shall be based upon the par value of its stock even though the amount which the holders of such preferred stock shall be entitled to receive in the event of retirement or liquidation shall be in excess of the par value of such preferred stock. The holders of preferred stock shall be entitled to receive such cumulative dividends on the purchase price received by the bank for such stock and, in the event of the retirement price, not in excess of such purchase price plus all accumulated dividends, as may be provided in the articles of incorporation with the approval of the director. If the association is placed in voluntary liquidation, or if a conservator or a receiver is appointed therefor, no payment shall be made to the holders of common stock until the holders of preferred stock shall have been paid in full such amount as may be provided in the articles of incorporation with the approval of the director, not in excess of such purchase price of such preferred stock plus all accumulated dividends.

F. Perpetual preferred stock legally issued by any bank shall be treated as capital for the purpose of computing the loan limits prescribed in Section 58-1-24 NMSA 1978, for determining the amount of money a state bank may borrow for temporary purposes as provided in Section 58-1-28 NMSA 1978, and for computing the amount that may be invested in banking premises under the provisions of Section 58-1-26 NMSA 1978.  
[1-19-87; Recompiled 10/15/01]

**HISTORY OF 12.16.21 NMAC:**

Pre-NMAC History: The material in this part is derived from that previously filed with the State Records C: Regulation No. 87-2, Authority of State Banks to Issue Preferred Stock, filed 1/19/87.

History of Repealed Material: [RESERVED]