§ 9009. Other provisions affecting indemnification of directors and officers. 1. All expenses incurred in defending a civil or criminal action or proceeding which are advanced by the corporation under subdivision three of section nine thousand seven or allowed by a court under subdivision three of section nine thousand eight shall be repaid in case the person receiving such advancement or allowance is ultimately found, under the procedure set forth in this article, not to be entitled to indemnification or, where indemnification is granted, to the extent the expenses so advanced by the corporation or allowed by the court exceed the indemnification to which he is entitled.

2. No indemnification, advancement or allowance shall be made under this article in any circumstance where it appears:

(a) That the indemnification would be inconsistent with a provision of the organization certificate, a by-law, a resolution of the board or of the shareholders, an agreement or other proper corporate action, in effect at the time of the accrual of the alleged cause of action asserted in the threatened or pending action or proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) If there has been a settlement approved by the court, that the indemnification would be inconsistent with any condition with respect to indemnification expressly imposed by the court in approving the settlement.

3. If any expenses or other amounts are paid by way of indemnification, otherwise than by court order or action by the shareholders, the corporation shall, not later than the next annual meeting of shareholders unless such meeting is held within three months from the date of such payment, and, in any event, within fifteen months from the date of such payment, mail to its shareholders of record at the time entitled to vote for the election of directors a statement specifying the persons paid, the amounts paid, and the nature and status at the time of such payment of the litigation or threatened litigation.

4. If any action with respect to indemnification of directors and officers is taken by way of amendment of the by-laws, resolution of

directors, or by agreement, then the corporation shall, not later than the next annual meeting of shareholders, unless such meeting is held within three months from the date of such action and, in any event within fifteen months from the date of such action, mail to its shareholders of record at the time entitled to vote for the election of directors a statement specifying the action taken.

5. No payment of indemnification, advancement or allowance under this article shall be made unless a notice has been filed with the superintendent, not less than thirty days prior to such payment, specifying the persons to be paid, the amounts to be paid, the manner in which such payment was authorized, and the nature and status at the time of the notice of the litigation or threatened litigation.