48.09 DIVIDENDS; SURPLUS.

Subdivision 1. **Creation of surplus fund.** At the end of each dividend period, after deducting all necessary expenses, losses, amounts receivable more than one year overdue and not well secured, interest, and taxes due or levied, all of the remaining net profits for the period shall be set aside as a surplus fund, if the surplus fund of the banking institution is not then equal to one-fifth of the capital stock. If the surplus fund is more than one-fifth of the capital stock, ten percent of the remaining net profits for the period shall be set aside as a surplus fund until it equals 50 percent of the capital stock. The directors may then declare a dividend of so much of the remainder as they may think expedient, subject to the commissioner's approval. When in any way impaired the surplus fund shall be raised to this percentage in like manner.

Subd. 2. **Undeclared net profits, prior dividend periods.** Any amount of remaining net profits qualifying for dividend declaration in subdivision 1 and not declared at the end of each annual dividend period may be subject to dividend declaration under the requirements of subdivision 1 during any of the three subsequent annual dividend periods.

Subd. 3. **Qualified subchapter S subsidiary.** A bank that has met the eligibility requirements under title I, subtitle C of the Small Business Job Protection Act of 1996 or related state of Minnesota tax law may apply to the commissioner for approval of a plan and agreement for a distribution of earnings to the shareholder(s) of the bank on a basis other than a dividend under subdivisions 1 and 2. Approval of a plan of distribution under this subdivision may be rescinded by the commissioner upon 90-day prior notice to the bank. Failure to comply with this notice or qualification of a distribution under subdivisions 1 and 2 is considered a violation subject to the commissioner's action under section 45.027 or 46.24.

History: *(7671) RL s 2987; 1939 c 38 s 1; 1957 c 601 s 9; 1993 c 257 s 16; 1996 c 414 art 1 s 12; 1997 c 157 s 21*