

TC8 Dividends [Section 11-109-501, C.R.S.]

A. Purpose

This Rule applies restrictions to the declaration and payment of dividends by a state chartered trust company.

B. Definitions

For the purposes of this Rule, the following definitions apply:

1. Capital surplus means the total of surplus as reported ~~ed~~able in the trust company's Report of Condition and Income and surplus on perpetual preferred stock.

2. Retained net income means the net income of a specified period less the total amount of all dividends declared in that period.-

3. Undivided profits means retained earnings as reported in the trust company's Report of Condition and Income.

C. Earnings Limitation on Payment of Dividends

Subject to paragraph D(1) of this Rule, a trust company may declare and pay dividends of so much of the undivided profits as they judge to be expedient. However, uUnless the dividend is approved by the Banking Board, a trust company shall not declare a dividend if the total amount of all dividends, including the proposed dividend, declared by such trust company in any calendar year exceeds the total of the trust company's ~~retained~~-net income of that year to date, combined with its retained net income of the preceding two years. The trust company's net income during the current year and its retained net income from the prior two calendar years is reduced by any net losses incurred in the current or prior two years, and any required transfers to surplus or to a fund for the retirement of preferred stock.

D. Capital Limitation on Payment of Dividends

1. General limitation. A trust company may not declare a dividend in excess of undivided profits.

2. Restrictions on undercapitalized institutions. Notwithstanding any other provision in this Rule, a trust company may not declare or pay any dividend if, after making the dividend, the trust company would be "undercapitalized" as defined in TC13.5(D) or as determined according to Code of Federal Regulations Title 12 – Banks and Banking Chapter III – Federal Deposit Insurance Corporation Subchapter B – Regulations and Statements of General Policy Part 324 Capital Adequacy of FDIC-Supervised Institutions - Subpart H Prompt Corrective Action ("12 CFR 324 FDIC, Subpart H").

3. Incorporation by Reference

Code of Federal Regulations Title 12 - Banks and Banking Chapter III - Federal Deposit Insurance Corporation Subchapter B - Regulations and Statements of General Policy Part 324 Capital Adequacy of FDIC-Supervised Institutions - Subpart H Prompt Corrective Action ("12 CFR 324 FDIC, Subpart H") as effective on June 27, 2024, is hereby incorporated by reference. No later amendment or edition of 12 CFR 324 FDIC, Subpart H is incorporated into this Section TC8. All referenced laws and regulation shall be available for copying or public inspection during regular business hours from the Division of Banking, Department of Regulatory Agencies, 1560 Broadway, Suite 975, Denver, CO 80202. The Division of Banking will provide a certified copy of the material incorporated at cost or will provide the requester with information on how to obtain a certified copy. 12 CFR 324 FDIC, Subpart H is also available at: <https://banking.colorado.gov/banking-home/rules-statutes>.

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Date of Declaration of Dividend

The trust company shall use the date a dividend is declared for the purposes of determining compliance with this Rule.