for the present year combined with the retained net profits of the preceding 2 years. This statute is made applicable to State member banks by the sixth paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 324).

(b) The purpose of this provision is to prevent the depletion of the capital structure of a bank by the payment of excessive dividends. Since a stock dividend does not result in the distribution of cash or assets, the Board does not consider the term *dividend* in this statute as including stock dividends. Consequently, the Board's approval for the declaration of a stock dividend is not required.

(12 U.S.C. 60)

[33 FR 9866, July 10, 1968. Redesignated at 55 FR 52987, Dec. 26, 1990]

§ 208.126 Payment of dividends; effect of net losses.

(a) Section 5199(b) of the Revised Statutes (12 U.S.C. 60), as amended in 1959: *Provides*, That:

> The approval of the Comptroller of the Currency shall be required if the total of all dividends declared by [a national bank] in any calendar year shall exceed the total of its net profits of that year combined with its retained net profits of the preceding 2 years * * *

Under the sixth paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 324), member State banks are required ''to conform to the provisions of section 5199(b) * * * with respect to the payment of dividends'', except that the approval of the Board of Governors is required in lieu of the approval of the Comptroller.

(b) The question has arisen whether it is necessary in determining whether a bank's dividends in a particular year ''exceed the total of its net profits of that year combined with its retained net profits of the preceding two years'', to take into consideration the amount of a net loss in the current year or in one or both of the preceding 2 years.

(c) The purpose of the 1959 amendment of section 5199(b) was to prevent a bank from paying a dividend (except with supervisory approval) unless it has on hand, from operations during the 3 latest years, sufficient net profits to cover the proposed dividend. If a net loss for one or more of those 3 years was disregarded in making the calculation called for by section 5199(b), a member State bank could pay dividends, without the approval of the Board of Governors, even though the aggregate results of the 3 latest years' operations was a net deficit. This was precisely the sort of situation in which Congress intended to prevent the payment of a dividend unless the supervisory authority was satisfied that special circumstances justified the proposed dividend.

(d) Accordingly, it is the position of the Board that, in making the calculation required by section 5199(b), it is necessary to take into consideration the actual results of operations during the current year and the 2 preceding years, whether the figures for those years are plus or minus figures. For example, if a bank had

(1) Retained net profits of $30,000 from 1959;

(2) A net loss of $40,000 in 1960 (and dividends of $10,000 were paid in that year, with the Board's approval); and

(3) Net profits of $20,000 in 1961,

It could not pay any dividend in 1961 without the Board's approval, since the calculation required by section 5199(b) would result in a zero figure ($30,000 minus $50,000 plus $20,000). It will be noted that, for the purposes of section 5199, any dividends paid in a loss year must be included in the ''net loss'' for that year, just as dividends paid in a profitable year must be deducted from ''net profits'' in calculating ''retained net profits''.

(12 U.S.C. 60)

[33 FR 9866, July 10, 1968. Redesignated at 55 FR 52987, Dec. 26, 1990]

§ 208.127 Payment of dividends exceeding net profits to date of declaration.

(a) Section 5199(b) of the Revised Statutes of the United States (12 U.S.C. 60) and the sixth paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 324), provide in effect that ''the approval of the Comptroller of the Currency (or the Board of Governors) shall be required if the total of all dividends declared by such association (a national bank or a member State bank) in any calendar year shall exceed the