BUREAU OF BANKING
Department of Professional and Financial Regulation
State of Maine
January 17, 1995

BULLETIN #60 DIRECTORS/TRUSTEES COMPENSATION IN MUTUAL FINANCIAL INSTITUTIONS

To the Chief Executive Officer Addressed:

During the past 18 months, it has become apparent that some confusion exists with respect to the statutory provisions governing approval of compensation of directors in mutual financial institutions. The Bureau of Banking has discovered that some institutions have provided retirement and other benefits to directors/trustees without the requisite approval of the board of corporators or the Superintendent of the Bureau of Banking ("Superintendent") as required by Title 9-B M.R.S.A. Section 326(1)(E).

Bulletin #60 is being issued to define what constitutes director/trustee compensation, to establish guidelines for seeking approval, and to establish consistent reporting, supervision and enforcement among all state-chartered mutual institutions operating in this State.

I. COMPENSATION

Director/trustee compensation includes not only fees/stipends for service on the board and/or attending meetings, but employee benefits as well. Specifically, Title 9-B M.R.S.A. Section 326(1)(E) permits the payment of health benefits to directors/trustees provided that they participate on the same basis as officers and employees of the bank. Although life insurance benefits are not specifically addressed in the statute, the Bureau views these benefits as permissible as long as directors/trustees participate on the same basis as officers and employees.

Title 9-B M.R.S.A. Section 412(8) authorizes financial institutions to establish pension plans, profit-sharing plans, incentive plans, etc. for the benefit of any or all of its directors, officers, and employees. The plans described in this section also constitute compensation, but plans for trustees/directors are not specifically subject to the provisions that their participation be on the same basis as officers and employees. These benefits, however, are subject to approval pursuant to Title 9-B M.R.S.A. Section 326(1)(E).

Many mutual institutions have arrangements with their directors/trustees, particularly with chairmen of the board, whereby directors/trustees provide services considered beyond the scope of the normal duties of a director/trustee, such as consulting, appraising collateral, legal advice, etc., for fees, stipends, salaries, or other compensation. While these arrangements are not subject to prior approval, as described below, the Bureau of Banking expects that these arrangements be in the form of a written contract, or clearly delineated in the board minutes; be subject to periodic review by the board; and, that the director/trustee have the experience and maintain sufficient qualifications to perform the duties contemplated.

II. APPROVAL PROCESS

The public policy of the State of Maine, as embodied in Title 9-B M.R.S.A. Section 326(1)(E) prohibits directors/trustees of mutual financial institutions from authorizing their own compensation. This responsibility is specifically delegated, in statute, to the corporators or members of the financial institution, or may be set by the directors/trustees subject to the prior written approval of the Superintendent. This statutory approval process applies to all forms of compensation, not just fees and stipends.

It is incumbent upon the directors/trustees of a mutual financial institution to assure that any increases, or changes in fees/stipends or benefits, within the control of the financial institution, that result in increases in directors/trustees compensation receive the prior approval of its incorporators or members, at a duly constituted meeting thereof, or of the Superintendent.

Requests to the Bureau or to the corporators or members for approval for director/ trustee compensation must contain a description of the total compensation package, the annual cost, including all benefits, as determined under generally accepted accounting principles, by each individual director/trustee and in the aggregate, so that the request may be properly evaluated. This description should include separate line items for each component of the compensation package.

III. STANDARDS FOR APPROVAL

The following standards will be applied by the Bureau in reviewing directors/trustees compensation packages:

1. Director/trustee compensation shall be reasonable; commensurate with the responsibilities of the position, with the time spent executing these duties, and with length of service; consistent with directors/trustees' duty of undivided loyalty to the financial institution; and, appropriate for the size and complexity of the financial institution served. These principles are particularly important with respect to pension and incentive plans.
2. Except in the context of a qualified plan with defined pension benefits established for the financial institution's officers and employees and in which directors/trustees participate in the same manner as officers and employees, the Superintendent will not look favorably on plans for which the institution provides guarantees of performance, rates of return, or

defined benefits with respect to plans in which the directors/trustees participate, if such guaranty results in a rate of return to the directors/trustees that exceeds rates of return provided to its depositors.

3. The Superintendent will not look favorably upon situations in which the financial institution compensates officers, who are otherwise provided salaries and employee benefits in that capacity, for also serving on the board of directors/trustees.

Should you have any questions regarding this Bulletin, or wish to inquire about the process for obtaining Bureau approval of director/trustee compensation, please contact Deputy Superintendent, Donald Groves.

/s/Donald W. Groves
Deputy Superintendent