

BUREAU OF BANKING
Department of Professional and Financial Regulation
State of Maine
October 25, 1995

BULLETIN #64 RESOLUTION OF DISPUTES INVOLVING EXAMINATION FINDINGS AND CONCLUSIONS

To the Chief Executive Officer Addressed:

POLICY

It has been a long-standing Bureau of Banking policy to encourage open and constructive dialogue with the industry with respect to all aspects of supervision and regulation. Since 1992, the Superintendent has given institutions the opportunity to provide feedback with respect to the examination process and the conduct of the examination in a post-examination questionnaire. Maine is one of the few states that has such a process. Although informal, the Bureau of Banking has also employed a process for resolving disputes relating to examination findings, conclusions, and recommendations. The purpose of this bulletin is to formalize the process and communicate that process to the industry.

PROCEDURE

- Step 1: The first step in resolving disagreements over examination findings, conclusions, and/or recommendations is with the Examiner-in-Charge ("EIC") while the examination is on-going. Bureau examination policies and procedures require that the EIC keep management informed as to his/her progress and findings during the examination and to summarize all findings and conclusions during the exit interview with senior management. If management disagrees with the facts, conclusions, and/or recommendations presented during the examination, management should attempt to resolve these disagreements before the EIC concludes the on-site examination. It is expected that most disagreements can be resolved with the EIC.
- Step 2. If, after discussions with the EIC, management continues to dispute examination findings, conclusions, and/or recommendations, management may request that the Deputy Superintendent - Examination and Supervision review the issue(s). The request may be made orally or in writing before, or shortly after, the conclusion of the examination. The Deputy's review will consist of a review of examination workpapers and other documentation, review of procedures and application of examination policies, discussions with the EIC, and discussions with senior management. The Deputy Superintendent and the EIC will meet with senior management to convey the results of his review. If requested by senior management, the Deputy Superintendent will also convey these results in writing.

- Step 3. If, after the Deputy Superintendent's review, management continues to disagree with examination findings, conclusions, and/or recommendations, management may request that the Superintendent review the issue(s). This request should be made orally or in writing promptly after the Deputy Superintendent's review so that the examination may be held open pending the Superintendent's review. While management may present its views regarding the disputed findings, conclusions, and/or recommendations to the Superintendent orally, it is advisable that management articulate its position in writing, particularly if the issues are complex. The Superintendent's review will consist of a review of management's position, a review of the draft examination report, and discussions with the Deputy Superintendent. If the Superintendent deems necessary, he/she may request that another member of the Bureau's staff, who did not participate in the examination or the Deputy Superintendent's review, assist in the Superintendent's review of the disputed issues. The Superintendent will communicate the results of his/her review in writing to senior management.

ENFORCEMENT ACTIONS

If the disputes involve the possibility of the Bureau of Banking issuing an enforcement action, such as a cease and desist order, the Superintendent may not be able review the matter in the context of this appeals process as such may compromise his ability to act as the hearing officer at an adjudicatory hearing as contemplated under the Banking Code. Therefore, the Superintendent may delegate the responsibility to conduct a review at Step 3 of the appeals process to the Deputy Superintendent - Research and Administration.

If the Bureau of Banking chooses to seek to impose a cease and desist order (which compels an institution to take specific action) or an order to remove an officer or director under Title 9-B M.R.S.A. Sections 231 and 232, the institution may request a hearing at which the institution can present its evidence and views with respect to the disputed issues. If a cease and desist or removal order is issued as result of such a hearing and the institution disagrees, it may request judicial review of the final action by Maine Superior Court pursuant to Section 256 of the Banking Code.

/s/H. Donald DeMatteis
Superintendent

NOTE: This bulletin is intended solely for informational purposes. It is not intended to set forth legal rights, duties or privileges nor is it intended to provide legal advice. Readers are encouraged to consult applicable statutes and regulations and to contact the Bureau of Banking if additional information is needed.