

02-029

CHAPTER 130

Regulation #30

DISTRIBUTION OF ANNUITIES THROUGH FINANCIAL INSTITUTIONS

SUMMARY: Title 9-B MRSA §443 (11) and §467 (4) and (5) as enacted under PL 1993 Chapter 322, authorize Maine financial institutions to sell directly, or arrange for the sale of, through a licensed third party, annuities purchased from a licensed insurance company. These statutory provisions became effective October 13, 1993.

In addition to the changes made to the Banking Code, certain provisions in the Insurance Code found at Title 24-A, §§1514-A, 1517, 1531, and 1875 were also amended. These statutory provisions establish the framework within which a Maine financial institution may plan a program and obtain licensure for the distribution and sale of annuities products.

In late 1985, the Bureau promulgated Regulation #23 governing the leasing of space in a financial institution to licensed insurance professionals for the sale of insurance products. The purpose of Regulation #23, established under the statutory guidelines that were in place at that time, was to provide the regulatory framework for financial institutions to enter into lease arrangements with an insurance agent, broker or consultant for the distribution of insurance products. Recent enactment of PL 1993, Chapter 322 has substantially altered some of those statutory provisions which served as a foundation for Regulation #23.

Regulation #30 establishes the framework within which a financial institution that has a limited annuities license may sell, or arrange for the sale of annuities purchased from a licensed insurance company and share in the commissions. Any arrangements between a Maine financial institution and a licensed insurance agent, broker, or consultant to lease space for the sale of other insurance products will continue to be governed by Banking Regulation #23. As used in this regulation, the words "sell annuities" and "arrange for the sale of annuities" do not include the underwriting of those products, an activity that is not presently permissible for Maine chartered financial institutions.

I. AUTHORITY

Title 9-B MRSA Section 111 declares that it is a policy of the state to supervise financial institutions in a manner to assure their strength, stability, and efficiency and encourage development and expansion of financial services advantageous to the public welfare.

Title 9-B MRSA Section 241 gives the Superintendent authority to promulgate rules and regulations defining, limiting, or proscribing acts and practices which are deemed to be anticompetitive, unfair, deceptive, or otherwise injurious to the public interest.

Title 9-B MRSA Section 443 authorizes Maine financial institutions to sell, or arrange for the sale of, annuities purchased from a licensed insurance company.

II. PURPOSE

The purpose of this regulation is to provide the regulatory framework for a financial institution to enter into arrangements with an annuity agent for the sale of annuities on the financial institution's premises in order to:

- Bring about parity between state and federally-chartered financial institutions;
- Promote public convenience and advantage in the sale of annuities by state-chartered financial institutions;
- Provide uniformity in the disclosure of annuities products to assist the public to distinguish between a deposit product that is insured by the Federal Deposit Insurance Corporation ("FDIC") or by the National Credit Union Administration ("NCUA") and an annuity that is not insured by the FDIC or NCUA; and
- Ensure that financial institutions that market annuities on their premises do so in a safe and sound manner.

III. DEFINITIONS

For purposes of this regulation, the following terms have the following meanings:

- "Affiliate" means a financial institution holding company as defined in Title 9-B MRSA §1011, any subsidiary of a financial institution or financial institution holding company as defined in Title 9-B MRSA §131(39) or any credit union service corporation as defined in Title 9-B MRSA §864.
- "Annuity" has the same meaning as set forth in Title 24-A MRSA §703.
- "Annuity agent" means an insurance agent whose license is limited to the sale of annuities under Title 24-A MRSA §1531(1)(F).
- "Financial institution" means a financial institution as defined by Title 9-B MRSA §131(17) and a credit union as defined by Title 9-B MRSA §131(12).
- "Retail area" means all space occupied by a financial institution where the "business of banking" as defined in Title 9-B MRSA §131(5) may occur.

IV. GENERAL PROVISIONS OF THE REGULATION

- A. A financial institution may engage in the sale of annuities subject to the following:
1. The financial institution and its employees must be licensed to the extent required by the Maine Insurance Code (Title 24-A MRSA);
 2. The financial institution must provide and retain the disclosures in accordance with Section VIII of this regulation; and
 3. The financial institution may not sell, or provide to any person, the name of any person that has purchased annuities through that financial institution. This does not limit the financial institution's obligation to provide information to the insurer in the sale of an annuity product.
- B. A financial institution or its affiliate may enter into an arrangement with an annuity agent under which the financial institution may refer customers directly to the annuity agent for the sale of annuities. A financial institution or its affiliate may enter into arrangements with an annuity agent to provide space on financial institution premises for sale of annuities. No such arrangements may be entered into with an annuity agent who is a director of the financial institution or with an agency if a director of the financial institution has a financial interest in the agency. This prohibition shall not apply to arrangements between a financial institution or a financial institution holding company and its affiliate if the affiliate is the annuity agent selling annuities on behalf of the financial institution.

Any arrangement between a financial institution or its affiliate and an annuity agent that utilizes space on the premises of a financial institution to facilitate the sale of annuities shall be subject to the following general condition:

1. The financial institution and the annuity agent must enter into an Agreement addressing any commission-sharing arrangements. In addition, this agreement shall:
 - a. Require that annuities may be sold only by an annuity agent;
 - b. Reserve the right of the financial institution to disapprove the placement or retention of any annuity agent;
 - c. Require the annuity agent to provide and retain disclosures in accordance with Section VIII of this regulation.
 - d. Require the annuity agent to receive prior approval of the financial institution before engaging in any advertising/solicitation of annuities products on behalf of the financial institution.
2. When the annuities sales program is operated by a person that is not an affiliate of the financial institution and annuities are sold on the premises of the financial institution, the financial institution

must include in an Agreement or a Lease Agreement with the annuity agent language that expressly:

- a. Negates a partnership or joint venture between the financial institution and the annuity agent; and
 - b. States that the financial institution has no right to, and may not attempt to, exercise control over the sale of annuities by the annuity agent other than as expressly permitted by this Regulation.
- C. A financial institution shall serve written notice to the Bureau when it has entered into an Agreement and/or Lease Agreement required by this Regulation. When a financial institution has a single program for the sale of both mutual funds and annuities, the agreements that must be adopted, entered into, and/or filed under Regulations #29 and #30 need not be duplicative, but may be combined.

V. FINANCIAL INSTITUTION RESPONSIBILITIES

The financial institution has on-going responsibility to ensure that the annuities sales program is in compliance with the provisions of this regulation and is consistent with the institution's strategies and objectives.

- A. The financial institution shall establish a policy addressing the management of the sale of annuities. Such policy must contain provisions to insure compliance with the limitations and restrictions enumerated in this regulation. The compliance function should be independent of the operating sales program, and reported directly to the financial institution's board of directors or a designated committee thereof. The policy shall specifically prohibit the financial institution from selling or providing to any person the name of an individual that has purchased annuities through that financial institution.
- B. The financial institution shall formulate, prior to engaging directly in the sale of annuities or prior to entering into an Agreement with an annuity agent, written objectives, and strategies to achieve those objectives, and shall designate an executive officer to be responsible for oversight of the on-premises annuities sales program. Policy objectives, including the process for selecting and continuing review of the contracted annuity agent, and strategies to achieve those objectives should be reviewed at least annually by the financial institution's board of directors.

VI. ADVERTISING AND PROMOTION

The promotion and sale of annuities must be conducted in such a manner as to avoid confusion between federally-insured deposit products offered by the financial institution and the annuities sold on the premises of the financial institution.

- A. Advertisements or other promotional material prepared or distributed by the financial institution must be accurate and not misleading or deceptive.
- B. Advertising materials prepared by the annuity agent may be included with mailings by the financial institution.
- C. Advertisements and promotional materials prepared or distributed by the financial institution with regards to annuities sold on the premises of the financial institution must include the disclosures enumerated in Section VIII(C).
- D. Any marketing efforts engaged in, or marketing materials distributed by, the annuity agent relating to the arrangement between a financial institution and the annuity agent must first receive the prior approval of the financial institution.

VII. ADEQUATE SEPARATION OF FACILITIES

- A. The space utilized by the annuity agent to transact business with the public must be separated from the retail area of the financial institution in such a manner as to prevent confusion in the public's mind between the financial institution and the annuity agent.
- B. The space utilized by the annuity agent to transact business with the public must be separately identified through the use of signs, labelling, etc. so that the public will understand that it is doing business with an annuity agent and not with the financial institution.
- C. The space utilized by the annuity agent shall contain the notice, conspicuously posted, required in Section VIII(C)(1).

VIII. DISCLOSURES

A financial institution or its affiliate or any third-party annuities agent that sells, or arranges for the sale of annuities on the premises of a financial institution, shall:

- A. Conspicuously post a notice that is clearly visible to anyone who may purchase annuities that annuities are not deposit accounts insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.
- B. Orally inform a prospective purchaser of annuities that annuities are not deposit accounts insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.
- C. Before a sale of annuities is completed, provide a written disclosure to the customer containing the following statements:
 - 1. Annuities are not bank (or credit union) deposits and are not insured by the Federal Deposit Insurance Corporation or National Credit Union Administration;

2. Annuities are not obligations of, or guaranteed by, the financial institution; and
 3. Annuities may involve investment risks, including possible loss of principal.
- D. Before a sale of annuities is completed, the financial institution or the annuity agent must obtain a written statement signed by the purchaser of the annuities stating that the purchaser has received the oral and written notices required by this section.

IX. FEDERAL/STATE REGULATIONS

It is recognized that the Federal Deposit Insurance Corporation, the Federal Reserve System, the Comptroller of the Currency, the National Credit Union Administration, and the Maine Bureau of Insurance have promulgated, or may, in the future, promulgate regulations governing the manner in which a financial institution or any of its affiliates and an annuity agent may engage in the sale of annuities. It is further recognized that there may exist differences in scope and coverage between this regulation and those promulgated by federal regulatory agencies or the Maine Bureau of Insurance. It is not the intent of this regulation to permit any practice which is not permitted by the appropriate state or federal agency. To the contrary, besides any other restriction or limitation stated herein, each financial institution or any of its affiliates and each annuity agent must fully comply with the regulations of the applicable state or federal regulatory agency.

X. EFFECTIVE DATE: January 1, 1995

BASIS STATEMENT

With the changes in state law under PL 993 Chapter 322, which became effective October 13, 1993, Maine financial institutions were authorized to sell, or arrange for the sale of, annuities purchased from licensed insurance companies. The purpose of this regulation is to establish uniform rules under which Maine's financial institutions may participate in the sale of annuities. This regulation distinguishes between arrangements made by a financial institution to lease space to a licensed insurance agent for the sale of all lines of insurance, which is subject to the provisions of Bureau of Banking Regulation #23, and plans under which the financial institution receives part of the commission from the sale of annuities products pursuant to recently enacted legislation.

A notice to interested parties of proposed Chapter 130 (Regulation #30) was mailed and published on or about June 22, 1994 and comments were solicited through July 22, 1994. Comments were received from:

- Maine Bankers Association (MBA) on behalf of its 22 members;
- Maine Association of Community Banks (MACB) on behalf of its 19 state-chartered members;

- Key Bank of Maine (Key);
- Perkins, Thompson, Hinckley & Keddy (Perkins); and
- Maine Bureau of Insurance (BOI)

After careful consideration to these comments, the Bureau provides the following responses:

GENERAL

The BOI suggested two revisions to the proposed regulation: (1) the term "limited annuity agent" should be replaced throughout the rule by the term "annuity agent" to be consistent with the terminology being utilized by the Licensing Division of the BOI, and (2) the reference to "licensed insurance professional" found in Section II PURPOSE should be replaced with "annuity agent".

The final rule has been changed accordingly.

SUMMARY

Key pointed out that recently enacted legislation (PL 1993 Chapter 322) authorized Maine financial institutions to directly sell annuities and suggested that the **SUMMARY** introductory paragraph should be clarified. In addition, the final paragraph of the **SUMMARY** contained a double negative that was confusing.

*Both paragraphs in the **SUMMARY** have been clarified accordingly.*

IV. GENERAL PROVISIONS

Key commented that the reference to "employees engaged in the sale of annuities" in **Section IV(A)(1)** adds an unnecessary ambiguity and offered a simpler statement referring to licensees under the Maine Insurance Code.

***Section IV(A)(1)** has been changed accordingly.*

Perkins was concerned that **Paragraph (A)(3)** could effectively prohibit a financial institution, that is licensed to sell annuities, from communicating pertinent information to an insurance company that is underwriting an annuity product sold by the financial institution.

*Clearly, an annuities purchase transaction cannot be completed without the underwriting insurance company receiving information on the purchaser of the product. **Paragraph (A)(3)** mirrors the language found in Title 9-B MRSA §467(5), which was designed to prohibit the distribution of customer lists. **Paragraph (A)(3)** has been clarified accordingly.*

MBA, MACB, and Perkins questioned whether the prohibition with respect to interlocks between the financial institution directors and the annuity agent

contractor (**Section IV(B)**) may be too broad in that any stockholder, however small their holding, may be prohibited from representing that institution.

The prohibition contained in this Section has its foundation in Title 9-B MRSA §467(4). Both in statute and in this Regulation, this provision was designed to effectively address potential insider abuse in this area. The term "has a financial interest" as used in this section of law is not defined otherwise in the statute. However, in the context of Section 467(4), and in the enforcement of

Section IV(B) the Bureau would consider a significant ownership or financial interest by a bank director in an agency as warranting regulatory concern. Other sections of the Maine Banking Code relate "financial interest" to "control" for purposes of any limitations or restrictions; the Bureau will consider these guidelines in enforcement of Regulation #30. **Section IV(B)** has been changed to more closely parallel statute in this area.

MBA and Key commented that the wording of **Section IV(B)(1)(d)** is ambiguous and would force the financial institution to review virtually all advertising in the State of Maine by a third-party marketer. It was suggested that a more specific standard such as advertising by the marketer that uses the name of the financial institution may be more appropriate.

*State law stipulates that advertising utilized by Maine's financial institutions may not be inaccurate, misleading, or misrepresent financial products and/or services. If a third-party contractor offers annuity products on behalf of a financial institution, there must be a mechanism to assure that any advertising of such products meets the standards set forth in state law/regulation governing advertising. **Section IV(B)(1)(d)** was designed with this in mind. The Bureau, however, is swayed by the comments regarding the ambiguity of **Section (IV)(B)(1)(d)** and appropriate clarification has been made.*

MBA suggested that **Section IV(C)**, with its requirement to enter into a Lease Agreement, places an unnecessary contractual burden on a financial institution that desires to market annuities through a third party provider not affiliated with the financial institution. MBA does not object to the requirements under **Section IV(C)**, but suggests that **Paragraphs 1 and 2** be combined and that the Bureau should require an Agreement between these parties not a Lease Agreement.

*The Bureau agrees with MBA that the contractual obligations contained in **Section IV(C)** may be embodied in either an Agreement or a Lease Agreement and the language of this Section has been changed and renumbered accordingly. With respect to **Paragraphs 1 and 2**, the Bureau is not requiring specific language in any Agreement to effect compliance with this Section, only that these issues be addressed. MBA does not identify specific issues with these*

*provisions other than from a construction basis. Therefore, **Paragraphs 1 and 2** are finalized as proposed.*

MBA, MACB, Key, and Perkins are concerned that proposed **Section IV(D)**, which requires that Agreements or Lease Agreements be filed with the Bureau of Banking, may potentially subject these documents to a Freedom of Information Act request, risking public disclosure of confidential business information. It was suggested that these documents could be reviewed at the time of examination. In addition, Key, MACB, and MBA comment that Bureau of Banking Regulation #29 requires similar Agreements and/or Lease Agreements for the distribution of mutual funds on the premises of a financial institution and that **Section IV(D)** should be clarified that the agreements that must be adopted, entered into, and/or filed under Regulation #29 and Regulation #30 need not be duplicative, but can be combined, if appropriate.

*The Bureau recognizes that many financial institutions may be entering into arrangements with third party contractors for the sale of mutual funds and annuities. **Section IV(D)** was not intended to require that separate Agreements and/or Lease Agreements be prepared if these products are distributed by the same third party contractor. In response to comments, the Bureau has clarified **Section (D)** in that regard.*

*We are also sensitive to commenters' concerns with respect to the confidential nature of business information contained in Agreements and/or Lease Agreements which must be filed pursuant in proposed **Section (D)**. The Maine Banking Code (Title 9-B MRSA §226) provides that information communicated to the Bureau may not be disclosed or made public; the Bureau would conclude that sensitive business documents could be considered confidential pursuant to §226 if the Bureau decides that such document filing is necessary. However, it is recognized that Agreements and Lease Agreements will be reviewed at the time of the Bureau's on-site examination; therefore, this provision has been modified to require that the financial institution must serve written notice to the Bureau of their plan to sell annuities. The Bureau may either request a copy of any Agreements associated with this activity or plan to review them at the time of its on-site examination. This Section has been renumbered to **Section IV(C)**.*

SECTION V. FINANCIAL INSTITUTION RESPONSIBILITIES

Perkins offers concerns with respect to the policy requirements found in **Section V(A)** prohibiting a financial institution from selling or providing to any person the name of an individual who has purchased annuities from that financial institution.

*This is the same issue raised by Perkins with respect to Section **IV(A)(3)** and the Bureau responds accordingly. No change to this section is deemed necessary.*

With respect to **Section V(B)**, Key suggested language that clarifies the intent of this regulation in requiring a financial institution to prepare written goals and objectives prior to either engaging directly in the sale of annuities or entering into a third party arrangement. (emphasis supplied) In addition, Key queried the level of authority intended by the term "executive officer" to be responsible for the oversight of the on-premise annuity sales program.

*The Bureau has incorporated the language change suggested by Key in **Section V(B)**. In response to Key's other comment, "executive officer" does not refer to a specific job title in a financial institution, but is intended require that the responsibility for oversight of the annuity sales program be vested with an officer of authority in the organization. No further changes are deemed necessary to this Section.*

Finally, MACB observes that, while it is typical for the Bureau to require that a bank have reasonable and prudent policies for loans or investment, it is not very common for an agency to require that a regulated entity develop and share objectives and strategies, as it would appear in **Section V(B)**.

***Section V(B)** was formulated to provide minimal guidelines for written policies and objectives to be developed by a financial institution prior to an annuities program being initiated. The Bureau is in general agreement that it is the responsibility of the financial institution to create policies, strategies, and objectives, and the Bureau's responsibility to examine the appropriateness of the such actions. No change is necessary.*

VI. ADVERTISING AND PROMOTION

Key pointed out that **Section VI(C)** contained an incorrect reference to Section VIII(A)(3) which should have been Section VIII(C) and further suggested that the word "disclaimers" should be replaced with the word "disclosures". Perkins questioned whether **Section VI(C)** was intended to cover all advertising and promotional material mentioning annuities, even if an advertisement merely mentioned that an annuities agent was located on the premises of a financial institution.

*The changes suggested by Key have been made to **Section VI(C)**. With respect o Perkins' comment, **Section VI(C)** is designed to assure that annuities sold on the premises of a financial institution are not confused with federally-insured deposit products. This provision is not intended require that signs, yellow page listings and the like must contain the detailed disclosures found in **Section VIII(C)**. However, advertisements and promotional materials seeking to entice the public to the location a third party annuity agent should contain the disclosures required in this regulation.*

VII. ADEQUATE SEPARATION OF FACILITIES

Key and MBA comment that the physical separation requirement articulated in **Section VII(A)** may result in the unavailability of nondeposit investment products in rural areas and that, in smaller branches, clear signage or other communication techniques may need to be substituted for actual physical separation from retail space. Key further suggests that the language of **Section VII(A)** appears only to require physical separation where there is an "annuity agent" transacting business on the bank's premises and where the financial institution is the annuity agent, **Section VII(A)** appears not to apply. Similarly, Key comments, **Section VII(B)** requires signage that separately identifies the agent from the bank. In some cases, the agent is the bank.

***Section VII** requires the financial institution to establish adequate separation of areas in which an individual may access products distributed on the premises of the financial institution as a means by which to prevent confusion in the public over whether they are purchasing an insured deposit product or an uninsured investment vehicle. An appropriate combination of signage, disclosures, and physical separation from the deposit-taking activities of the financial institution is critical to aid the public in making this distinction. To suggest that the requirements of **Section VII(A)** does not apply where the financial institution is the annuity agent, as Key does in its comments, is counter to the intent of this rule. Those financial institutions that directly engage in the sale of annuities should be doubly concerned about public perception regarding the insured (or uninsured) status of products being sold on premise.*

*This regulation does not stipulate that there be physical barriers between the space utilized by an annuity agent selling annuities to the public and the retail area from which an individual conducts his/her banking business. It does, however, require that space utilized by the annuity agent be clearly identified, including a notice stating that annuities are not deposit accounts insured by the FDIC (or NCUA). The Bureau rejects the notion advanced by Key that a financial institution employee can accept or solicit deposits and sell or solicit the sale of annuity products at the same location as long as these activities are not conducted simultaneously and can do so without effecting the public perception. The language found in Regulation #30 **Section VII(A)** regarding adequate separation of facilities is identical to that found in a similar provision of Regulation #29 for distribution of mutual funds on bank premises. The Bureau is not convinced to modify this requirement.*

VIII. DISCLOSURES

Key noted that the preamble to **Section VIII** did not clearly extend the disclosure requirements to third-party annuities agent acting on behalf of a financial institution.

***Section VIII** has been modified accordingly.*

Perkins comments that **Section VIII(D)** requires that the financial institution obtain a written statement signed by the purchaser of annuities that the purchaser has received the oral and written notices required by Regulation #30. This requirement should be extended to include annuity agents acting on behalf of the financial institution.

Section VIII(D) has been so clarified.