

BUREAU OF BANKING
Department of Professional and Financial Regulation
State of Maine
October 14, 1993

BULLETIN #58 ANNUITY SALES ON FINANCIAL INSTITUTION PREMISES

To the Chief Executive Officer Addressed:

Title 9-B MRSA §443 (11) and §467 (4)(5) as enacted under PL 1993 Chapter 322, authorize Maine financial institutions to sell, or arrange for the sale of, through a licensed third party, annuities purchased from a licensed insurance company. These statutory provisions will become 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 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. That rule was established under the statutory guidelines that were in place at that time; recent enactment of PL 1993, Chapter 322 has substantially altered some of those statutory provisions. This has given rise to certain inconsistencies between the provisions of Regulation #23 and recently enacted legislation, which has caused considerable confusion in the regulated industry as they formulate plans for sale and distribution of annuities.

The Bureau recognizes that the following provisions of Regulation #23 appear to conflict with recently enacted statutory parameters for the sale of annuities:

Regulation #23	Statutory Provisions
The lease must be executed on the basis of an arm's length transaction;	9-B MRSA §443 permits a financial institution, holding company, or its subsidiaries to sell, or arrange for the sale, of annuities. Lease arrangement made between any of these parties, by virtue of common ownership, may not fall within the parameters of an arm's length transaction.
Rental payment cannot exceed fair market value of the space occupied and cannot be directly related to the tenant's commissions	Title 24-A §1514-A specifically permits the sharing of commissions in the sale of annuities through arrangements made with a financial institution, holding company, or any subsidiaries of same.

The lease shall contain a clause expressly negating a partnership or joint venture between the lessee and the lessor;

Written notice must be provided, and signed by each customer, stating that there is no affiliation between the financial institution and the insurance agent selling insurance on premises.

Lease arrangements between a financial institution and subsidiary of its principal shareholder are prohibited;

A financial institution is prohibited from displaying any material on premise that is advertising or promoting the insurance agent;

Advertising materials of the insurance agent must contain a statement that the insurance agent is not affiliated with the financial institution or express or imply any connection between the financial institution or its services and the insurance agent or its services.

New provisions in the Banking Code contemplate that lease arrangements could involve affiliates of financial institutions and/or holding companies; such lease arrangements could not contain the disclaimer required in Regulation #23.

Arrangements for sale of annuities (which may include leasing of space) are specifically authorized in Title 9-B §467 contemplates that arrangements can be made between financial institutions, holding companies and their affiliates to sell annuities. It specifically prohibits arrangements for the sale of annuities between a financial institution and an insurance agent if the agent is a director of the financial institution or if a financial institution director has a financial interest in the agency. This is a much narrower limitation than that which is prescribed in current Regulation #23

Title 24-A Section 1514-A specifically permits a financial institution to be licensed, or arrange through licensed third party contractors, for the sale of annuities. Title 9-B §467 gives financial institutions the authority to sell annuities either directly or through contracts with others, including affiliated companies. Direct sale of annuities undoubtedly contemplates that advertising and promoting of such products would be part of the program for distribution.

Annuities products fall within two specific categories: fixed rate annuities and variable rate annuities. Title 24-A MRSA (The Maine Insurance Code) does not make a distinction between the two types of annuities, recognizing only that an individual must hold an insurance license in order to sell either fixed or variable rate annuities.

Fixed rate annuities contain features that are very similar to other insurance products. Variable rate annuities, however, are more like mutual funds; individuals who wish to sell variable rate annuities must, under federal law, be registered with the National Association of Securities Dealers. The Bureau is concerned that sale of variable rate annuities by financial institutions can create considerable customer confusion that will not necessarily be alleviated through the disclosure requirements found in Title 9-B MRSA §443(11). To that end, the Bureau plans to establish specific guidelines, through rule-making, for the sale of annuities by financial institutions.

In the absence of said rule-making, the Bureau urges the regulated community to consider the following in establishing any program for the distribution of annuity products:

1. Look to the provisions of PL Chapter 322 as the prevailing regulatory guidelines for establishing programs for the sale of annuities;
2. In areas not addressed under new statutory language, be guided by applicable provisions of Regulation #23; and
3. Consider proposed Regulation #29 governing sale of mutual funds on premises of financial institutions. This may add additional insight as to the regulatory concerns that are elicited from the sale of investment products (similar to variable rate annuities) on premises where insured deposit products are distributed.

In this interim period, the Bureau will be guided by the provisions of Chapter 322 in its review of programs established for the sale of annuities on premises of a financial institution and may take no action with regard to deviations from the requirements of Regulation #23 to the extent that current law permits the conduct proscribed in the regulation. The provisions of Regulation #23 remains in full force and effect with regards to leasing arrangements with fully licensed insurance professionals. Should you have any questions regarding the foregoing, please contact Colette Mooney at the Bureau.

/s/H. Donald DeMatteis
Superintendent