

02-029

CHAPTER 123 (Reg. 23)

INSURANCE ACTIVITIES IN FINANCIAL INSTITUTIONS

SUMMARY: In recent years the separation between the product lines of financial institutions, other types of financial service companies (such as securities brokers and insurance companies), and commercial firms has blurred. For example, the nation's largest retailers, such as Sears, Montgomery Ward and J.C. Penney, are now providing insurance services on the premises of their retail outlets. Maine's financial institutions have begun to facilitate the delivery of insurance products to persons using their premises, by entering into leases of portions of their premises to licensed insurance agents, brokers or consultants. At present, there are no restrictions or limitations upon these leasing arrangements.

AUTHORITY

- Title 9-B M.R.S.A. 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 the development and expansion of financial services advantageous to the public welfare.
- Title 9-B M.R.S.A. Section 416 grants to the Superintendent the authority to allow by regulation a financial institution to engage in any activity which has been authorized under federal law for financial institutions chartered or otherwise subject to the jurisdiction of the federal government.
- Title 9-B M.R.S.A. 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.

PURPOSE

The purpose of this regulation is to provide the regulatory framework for financial institutions to enter into lease arrangements with an insurance agent, broker or consultant, who would distribute insurance products, so as to:

- bring about the greatest possible uniformity of regulation and encourage parity between federally-chartered and state-chartered financial institutions; and
- provide public access to insurance products on bank premises.

DEFINITIONS

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

- "Financial institution" means a financial institution as defined by Title 9-B M.R.S.A. Section 131(17) including credit unions organized pursuant to the laws of this state.
- "Subsidiary" means a subsidiary as defined in Title 9-B M.R.S.A. Section 131(39-A).
- "Insurance agent" has the meaning set forth in Title 24-A M.R.S.A. Section 1506, and includes, without limitation, organizations licensed as insurance agents pursuant to Title 24-A M.R.S.A. Section 1517.
- "Insurance broker" has the meaning set forth in Title 24-A M.R.S.A. Section 1506, and includes, without limitation, organizations licensed as insurance brokers pursuant to Title 24-A M.R.S.A. Section 1517.
- "Insurance consultant" has the meaning set forth in Title 24-A M.R.S.A. Section 1508, and includes, without limitation, organizations licensed as insurance consultants pursuant to Title 24-A M.R.S.A. Section 1517.
- "Retail area" means all space occupied by a financial institution where the "business of banking," as defined in Title 9-B M.R.S.A. Section 131(5) may occur.
- "Regulated institution" means a financial institution as defined by Title 9-B M.R.S.A. Section 131(17), a financial institution holding company as defined in Section 1011, and any subsidiary of a financial institution or financial institution holding company.
- "Insurer" has the meaning set forth in Title 24-A M.R.S.A. § 4.

PROVISIONS OF THE REGULATION

Subject to the following restrictions and limitations, regulated institutions are authorized to enter into leases with an insurer, insurance agent, broker or consultant for a portion of the premises of the various financial institutions. However, any arrangement between a regulated institution and an insurer, insurance agent, broker or consultant pursuant to which an insurer, insurance agent, broker or consultant utilizes space in the retail area of a regulated institution in order to engage in the business of insurance is subject to the following conditions.

RESTRICTIONS AND LIMITATIONS

- Nature of lease:

- Any lease agreement or other office space-sharing agreement executed by a regulated institution, and an insurer, insurance agent, broker, or consultant shall be executed on the basis of an arm's length transaction.
- The agreement to lease may include terms that are usual and customary in the leasing of commercial office space, except that the rental payment may not be directly related to the tenant's commissions. At no time may the return to the regulated institution/lessor exceed fair market value of the space occupied.
- The agreement to lease shall contain a clause expressly negating a partnership or joint venture between the lessee and the regulated institution/lessor.
- The agreement to lease shall contain a clause expressly stating that the regulated institution has no right to and may not attempt to exercise control over the insurance business affairs of the lessee.
- Regulated institutions are prohibited from leasing office space to their employees, officers, directors, principal shareholders, or members of their immediate families including firms owned or controlled by these parties for the purpose of conducting insurance business.
- Physical location/separation of facilities:
 - The rental space occupied by the insurance agent, broker or consultant must be separated from the retail area of the regulated institution in such a manner as to prevent confusion in the public mind between the regulated institution and the insurance agent, broker or consultant.
 - Rental space occupied by the insurance agent, broker or consultant must be separately identified through the use of signs, labelling, etc. so that the public will understand that it is not buying insurance from the bank.
- Advertising and promotion:
 - A regulated institution may state publicly that an insurer, insurance agent, broker or consultant is a tenant in the regulated institution's building. No other material advertising or promoting the insurer, insurance agent, broker or consultant may be displayed on the premises of the regulated institution, except that such material may be maintained within the office space of the insurer, insurance agent, broker or consultant.
 - Advertising materials of the insurer, insurance agent, broker or consultant may be included with mailings by regulated institutions to its customers. Such material must contain a statement that the tenant/insurer, insurance agent, broker or consultant is in no way affiliated with the regulated institution, and the use of such

advertising mechanism does not carry an endorsement of the tenant/insurer, insurance agent, broker or consultant or his products by the regulated institution.

- The regulated institution shall not, in any manner, advertise or promote the tenant/insurer, insurance agent, broker or consultant. The regulated institution may not endorse the tenant/insurer, insurance agent, broker or consultant or express or imply any connection between the regulated institution or its services and the tenant/insurer, insurance agent, broker or consultant or its services.

- Disclosure:

The regulated institution shall require, as a condition of its lease with a tenant/insurer, insurance agent, broker or consultant, that the tenant provide each customer with a written disclosure bearing a space for the customer's signature and containing the following: (a) a disclaimer of any affiliation or other connection between the regulated institution and the tenant, (b) a verification that the customer has received all the notices required by law including that the customer is free to purchase insurance from other insurance agents, brokers or consultants, and (c) a verification that the regulated institution has not promoted the tenant/insurer, insurance agent, broker or consultant in any manner.

The lease shall also provide that the tenant shall have each of its customers read, sign and date the disclosure and that the tenant shall retain a copy of each disclosure for at least two years.

- Federal regulations:

It is recognized that the Federal Home Loan Bank Board, through the Federal Savings and Loan Insurance Corporation, and the Federal Deposit Insurance Corporation, have promulgated or may, in the future, promulgate regulations controlling the manner in which they will permit financial institutions they insure to engage in insurance activities. It is further recognized that there may exist differences in scope and coverage between this regulation and those promulgated by the said federal insuring agencies. It is not the intent of this regulation to permit any practice which is not permitted by the appropriate federal agency. To the contrary, besides any other restriction or limitation stated herein, each financial institution must fully comply with the regulations of the applicable federal insuring agency.

EFFECTIVE DATE: December 14, 1985

BASIS STATEMENT: In recent years the separation between the product lines of financial institutions, other types of financial service companies (such as securities brokers and insurance companies), and commercial firms has blurred. For example, the nation's largest retailers, such as Sears, Montgomery Ward and J.C. Penney, are now providing insurance services on the premises of their retail outlets. Some of Maine's financial institutions have expressed interest in meeting this competition by entering various types of commercial relationships with insurance carriers and their agents. These institutions argue that it is only equitable to permit them to conduct activities which are already being conducted by the commercial retailers. They further assert that if they cannot meet the competition in this manner, their financial strength will eventually suffer.

The Banking Bureau perceives a distinction between commercial retailers and financial institutions. Unlike commercial retailers, Maine's financial institutions are specifically prohibited by Section 1514-A of the Maine Insurance Code (Title 24-A) from conducting the business of an insurance agent, broker or consultant. In addition, pursuant to Section 2168 of the Insurance Code, persons engaging in the business of financing the purchase of property (lenders) are prohibited from requiring, as a condition of financing, that the purchaser or borrower obtain insurance from a particular insurer, or insurance agent, broker or consultant. Indeed, pursuant to Section 2169 of the Insurance Code, the prospective lender must inform the prospective borrower of his right of free choice in the selection of an agent or insurer.

The provisions of the Insurance Code clearly indicate that there is a need to regulate any long-term connections between financial institutions and providers of insurance products so as to ensure conformity with both the letter and the spirit of the Insurance Code. On the other hand, the Insurance Code does not prohibit any and all business connections between insurer and their agents and banks. Banks have been providing credit insurance in Maine in a satisfactory manner for over 30 years.

In promulgating the present chapter of rules, Chapter 123 (Regulation 23), the Bureau of Banking is mindful of its responsibilities, pursuant to the Banking Code, to supervise financial institution in a manner to assure their strength, stability and efficiency and to encourage the development and expansion of financial services advantageous to the public welfare. Chapter 123 (Regulation 23) would strengthen financial institutions by enabling them to share a portion of their building expenses with their insurance agency tenants. Chapter 123 (Regulation 23) would also allow financial institutions, through leasing arrangements, to have a full array of insurance products made available on bank premises by their tenants. The public is benefitted through Chapter 123 by the convenience of "one stop shopping" for financial services.

Following consideration of the factors described above, the Banking Bureau has decided, at this time, to reject the entreaties of those financial institutions which

desire to promote or advertise insurance agents or to engage directly or indirectly in furnishing insurance products to their customers. The

Banking Bureau has agreed, however, subject to the numerous restrictions and limitations described below, to permit financial institutions to enter into leases with licensed insurance agents, brokers or consultants whereby the latter parties could offer insurance products at offices located on bank premises. In the opinion of the Bureau of Banking, the track record of financial institutions in marketing "credit insurance" in Maine as well as the leasing experience of New York's financial institutions suggests that leasing arrangements between banks and insurance providers can be restricted so as to comply with the Insurance Code while permitting sufficient latitude to ensure commercial feasibility. In Chapter 123 (Reg. 23), the Bureau of Banking attempted to set forth a fair framework for the leasing of bank premises to insurance providers.

On or about March 5, 1985, the Bank Superintendent issued a notice to interested parties in which he proposed Chapter 123 (Regulation 23). A hearing on this rule was held on Wednesday, April 3, 1985, at which time the Bureau received considerable oral testimony. Written comments were received during this hearing and through the end of the comment period which terminated on April 16, 1985. These comments are summarized and answered below by reference to the respective sections of Regulation 23 to which the comments were addressed.

SUMMARY: The summary section of the first draft of Chapter 123 (Regulation 23) suggested that affiliation between banks and insurance agents could provide customers more ready access to insurance products. The Independent Insurance Agents Association of Maine ("Insurance Agents") as well as Maine's Bureau of Insurance found fault with the specific language and the tenor of the summary. These parties suggested that in view of the number of insurance agents in Maine, there was no need to provide additional access to insurance products. These parties also objected to the last sentence of the summary which, they felt, raised the implication that financial institutions could directly provide insurance products to the public. For their part, certain financial institutions objected to that portion of the summary which suggested that, absent specific guidelines and restrictions, the wholesale expansion of financial institutions into the insurance business could create undue risks. It was not the purpose of the Banking Bureau either to imply that financial institutions could directly sell any and all insurance products to the public or to suggest that financial institutions have proved themselves to be untrustworthy providers of those insurance products which they are presently permitted by law to market. The summary section of Regulation 23 has been revised to eliminate the offending language.

PURPOSE

The Insurance Agents objected to the purpose section of Regulation 23 and specifically to subsection 2.B. of the purpose section. They argued that this section raises an implementation that the insurance products would be offered only to customers of the financial institutions rather than the public at large. Section 2.B. has been amended to address this comment by emphasizing that it is the purpose of this regulation to "provide public access to insurance products on bank premises."

DEFINITIONS

In subsection 3.C. of the proposed Regulation 23, "insurance agency" was defined by reference to Title 24-A M.R.S.A. Section 1502. The Bureau of Insurance observed that "insurance agent" was defined at 24-A M.R.S.A. Section 1502 rather than "insurance agency" and that the definition of insurance agent set forth at Section 1502 was not consistent with that set forth at Section 3.C. of proposed Regulation 23. The Bureau of Insurance also suggested that Regulation 23 should also apply to insurance consultants and insurance brokers as well as to insurance agents. Section 3.C. of Regulation has been revised to define "insurance agent" by reference to 24-A M.R.S.A. Section 1502. In addition, in subsections 3.D. and 3.E., "insurance broker" and "insurance consultant" have also been defined by reference to Title 24-A Sections 1506, 1508 and 1517.

PROVISIONS OF THE REGULATION

Section 4 of the proposed Regulation 23 empowered financial institutions, subject to the restrictions and limitations set forth in section 5 of Regulation 23, to contract, directly or through their subsidiaries, with an insurance agency to provide insurance products to bank customers at facilities located on bank premises. The Insurance Agents and the Bureau of Insurance asserted that section 4 implied that financial institutions could provide insurance products directly to bank customers and further argued that any direct provision of insurance products by a financial institution is prohibited by the Insurance Code at 24-A M.R.S.A. Section 1514-A.

The Bureau of Banking acknowledges the authority of the above-cited Section 1514-A of the Insurance Code, but it was not the intent of the Banking Bureau in Section 4 of proposed Regulation 23, to authorize financial institutions to provide precluded insurance products. Section 4 merely authorizes banks to contract with insurance providers. Nevertheless, section 4 of Regulation 23 has been amended, to eliminate any mention of the provisions of insurance products by financial institutions either directly or indirectly.

RESTRICTIONS AND LIMITATIONS

- Restriction to Lease

- 5.A. of proposed Regulation 23 stated that "until such time as statutory authority specifically allows financial institutions to directly distribute insurance products, the activity provided for in this rule may only be accomplished through an arrangement whereby a licensed insurance agency has leased space on bank premises." The Insurance Bureau strongly objected to the language in section 5.A.

The Insurance Bureau argues that Section 5.A. implies that 24-A M.R.S.A. Section 1514-A will be changed in the future to allow financial institutions to directly distribute insurance products. According to the Insurance Bureau this implication is at best arguable and in any event a potential change in statutory law cannot be used as support for changing a statute by regulation prior to enactment of a new statute by the legislature. Of course, it was not the intention of the Banking Bureau, in section 5.A., or in any other portion of Regulation 23 to repeal by regulation Section 1514-A of the Insurance Code. Indeed, the preamble of section 5.A. was intended to alert regulatees as to the limits of the leasing arrangements. However, in view of the comments of the Bureau of Insurance, section 5 has been amended to delete any reference to possible statutory changes.

- 5.B. Agreements to Lease
 - Section 5.B.1. of proposed Regulation 23 stated that "it is recognized that a financial institution may acquire an interest in an agency as a prudent investment." This sentence was meant as a preamble to the succeeding portion of 5.B.1. which required that any lease executed between a financial institution and an insurance agency in which the financial institution owned an interest had to be executed on the basis of an arm's length transaction. The Insurance Bureau objected to the quoted portion of 5.B.1. stating that even though a financial institution might acquire an interest in an insurance agency as a prudent investment, it could not acquire a controlling interest without violating 24-A M.R.S.A. Section 1514-A. In order to avoid any confusion, the quoted portion of 5.B.1. has been deleted in this amendment.

The Insurance Bureau and the Insurance Agents also objected to the second sentence of section 5.B.1. The objecting parties argued that the arm's length requirement should apply to all insurance agencies whether or not owned in part by the financial institution whose premises they are leasing. In drafting proposed Regulation 23, the Banking Bureau has presumed that an insurance agency which was

not owned, even in part, by a financial institution would deal with any financial institution in an arm's length manner. Nevertheless, in order to address the comments of the Insurance Bureau, to the fullest extent possible, section 5.B.1. of the regulation has been amended to cover all insurance agencies, whether or not owned in part by the financial institutions, as well as all brokers or consultants. Section 5.B.1. has become Section 5.A.1. in the amended Regulation 23.

- 5.B.2. Percentage Leasing

Section 5.B.2. of proposed Regulation 23 precluded leases predicated upon a percentage of the business conducted by the insurance agency. The Insurance Bureau suggests that the requirements of 5.B.2. are necessary to avoid Section 1614 and 1676 of the Insurance Code, which sections prohibit the sharing of commissions between insurance agents, brokers or consultants and unlicensed entities. On the other hand, the percentage leasing restrictions of 5.B.2. was strongly opposed by Financial Institutions Service Corporation, the Maine Savings and Loan League, Citicorp, Morse, Payson and Noyes, as well as the Savings Banks Association of Maine. All of these parties asserted that percentage lease provisions is standard usage for shopping centers and other commercial areas (such as the portions of Sears retail outlets leased to Allstate) and would cause no tying or conflict of interest problems in the present situation. Indeed, Citicorp argued that financial institutions have a constitutionally protected right to lease their premises with the percentage leasing method. In support of their arguments, the opponents of section 5.B.2. proffered letters dated December 2, 1983 and December 4, 1984 in which the Comptroller of the Currency approved percentage leasing arrangements between national banks and tenant insurance agencies.

Superintendent Robert Burgess of the Bureau of Consumer Credit Protection supported a restriction on percentage leasing such as contained in Section 5.B.2. Superintendent Burgess, on the basis on an analysis comparing the sale of credit insurance by Maine's financial institutions to extensions of credit thereby, concluded that the high percentage of credit insurance sales compared to loans approved by Maine's financial institutions was evidence of a tying of these products so that care should be exercised to prevent tying or conflict of interest in the future.

After weighing the comments for and against section 5.B.2., the Bureau of Banking has decided to modify this section. In the view of the Bureau, the tying and conflict of interest issues raised, in part by Sections 2168 and 2169 of the Insurance Code, are adequately addressed by the disclosure requirements that appear at section 5.,D. of this amended Regulation 23, as well as the direct prohibitions contained in section 5.A., 5.B., and 5.C. of amended Regulation 23. In addition, the Bureau of Banking finds that percentage leasing does not necessarily run afoul of Sections 1614 and 1676 of the Insurance Code which sections prohibit commissions, splitting between insurance agents and any unlicensed person. In this regard, the Bureau of Banking notes that while some other states have imposed a blanket prohibition on percentage leasing, several states authorize the existence of percentage leases by statute, (e.g. Iowa, Wisconsin), regulation (e.g. Missouri) and approval (e.g. New York).

Furthermore, many other states do not prohibit percentage leases between state-chartered banks and insurance agencies per se. Instead, these states review the lease with careful scrutiny to determine whether commissions are being shared by unlicensed entities, or whether a mere percentage of net or gross profits is being paid. These state are careful to require that no referrals to the agency are being made by bank personnel, that the lease is the product of an arm's length transaction (not of collusion or subterfuge), and that commissions are not being split. Of course, amended Regulation 23 contains all of these protections and more.

Essentially, a distinction may be made between sharing commissions and payment of a percentage of net profits. Generally, an agent earns a commission upon the completion of a sale or the renewal of a premium. Provided the agent receives this commission as an expense item (wage, salary, cost of goods sold) on the agency's books, it would not be reflected in the net or gross profit column on an income statement.

Thus, if rental payments are calculated according to these figures on an income statement, valid argument could be made against any sharing of commissions. Essentially, rent due to a net profit percentage lease would be calculated after all commissions had been paid, thus negating any sharing or splitting of commissions with an unlicensed entity.

Those states that permit leases have done so by statute, regulation and approval. Some states, such as Iowa and Wisconsin, have permissive statutes that allow state-chartered banks to own and operate insurance agencies. In New York, such an arrangement presently exists between AIG and Citibank, and that state is presently considering a proposal for an insurance agency and bank to operate as a partnership. In Illinois, approval may be given to a percentage lease provided it is based upon an arm's length transaction and that the leased space is not in the lobby of the bank.

Missouri has adopted regulations effective as of November 15, 1984, that permit state-chartered banks and insurance agencies to enter percentage leases. The regulations assume that transactions between these entities will be negotiated at arms-length. However, if an insider (officer, director, employee, affiliate or principal) of a bank is negotiating on behalf of the insurance agency or vice versa, the regulations require that rent be equal to at least twenty percent of commissions and for a one year term. In Nebraska, banks may engage in insurance activities if the population of the city is less than 200,000. In Connecticut, a percentage lease should have a cap established for maximum annual rents due on a strict square footage basis.

As amended, section 5.B.2. is intended to permit leases to be negotiated upon any commercially reasonable basis, included a percentage lease tied to the tenant's net profits, provided that these leases are not directly related to the commissions earned by the insurance tenant and provided, further, that the rental return to the regulated institution/lessor cannot exceed the fair market value of the space occupied.

The Bureau of Banking is confident that percentage leases which satisfy these two qualifications (the latter of which was recently adopted in California) will also comply with Section 1614 and 1676 of the Insurance Code. However, counsel for regulated institutions are advised to carefully consider the implications of the Insurance Code when drafting leases for insurance tenants.

- 5.B.3. Insider Leases Prohibited

Section 5.B.3. of Regulation 23 prohibited a financial institution from leasing office space to its employees,

directors, principal shareholders or members of their immediate families. The Insurance Bureau and the Insurance Agents agreed with the thrust of 5.B.3. but suggested that section 5.B.3. be expanded to include firms owned or controlled by the parties named in Section 5.B.3. This has been done in the amended Regulation 23 wherein the original 5.B.3. has become 5.A.5.

Also in addressing concerns of anti-tying and potential conflicts, the Bureau added two new sections to amend Regulation 23, Sections 5.A.3. and 5.A.4. require that clauses be inserted in the lease agreement specifically negating a partnership or joint venture between the lessee and the regulated institution/lessor and further stating that the regulated institution has no right to, nor may it attempt to exercise control over, the insurance business affairs of the lessee.

The Insurance Agents also objected to the preamble of 5.B.3. This preamble has been eliminated in 5.C. of the amended Regulation 23.

Physical Location/Separation of Facilities

- 5.C Distinctly Separate Facilities
 - 5.C.1. of proposed Regulation 23 required that the space rented by an insurance agency on bank premiss must be "distinctly separated" from the "retail banking area." Both of the above-quoted phrases were objected to as being too vague by various parties including the Maine Savings and Loan League and the Insurance Agents as well as the Bureau of Insurance and Citibank. In this area, as in various other areas, Citibank phrased its objection in constitutional terms, asserting that the above-quoted phrases were so vague as to be unconstitutionally infirm.

Section 5.C.1. has been deleted in the amended Regulation 23 and replaced by 5.B.1. which requires that the rental space occupied by a tenant-insurance agent, broker or consultant must be separated from the retail area of the regulated institution in such a manner as to prevent confusion in the public mind between the regulated institution and the tenant-insurance agent, broker or consultant. As rephrased 5.B.1., which necessarily calling for judgment in its application, is not unconstitutionally vague. The phrase "confusion in the public mind" is well known in commercial

practice and is utilized, for example, in the law of trademarks.

- 5.C.2. Separate Labelling

No parties objected to 5.C.2. of Regulation 23 which required that the tenant's leased premises must be separately identified by the use of signs or labels so that the public will understand that it is not buying insurance from the financial institution. This restriction has been continued in Section 5.B.2. of the amended regulation.

- 5.C.3. Hidden Office Provision

Section 5.C.3. of Regulation 23 was strongly opposed by a number of parties. The original 5.C.3. required that the offices of the tenant insurance agency had to be positioned so that employees of the financial institution could not regularly observe the transaction of insurance business including the traffic of customers to and from the leased premises. The impracticality of 5.C.3. was pointed out by a number of parties. In addition, Citibank submitted evidence demonstrating that the lease of the bank premises to insurance agencies has worked in a commercially reasonable manner in the State of New York without onerous restrictions such as set forth in 5.C.3. Further, as discussed in more detail below, tying and conflict problems tangentially addressed by section 5.C.3. are dealt with directly through a disclosure provision which did not appear in the original regulations. For these reasons, section 5.C.3. has been deleted in the amended Regulation 23.

- 5.D No Advertising and Promotion of Tenant in Lobby

- Section 5.D.1. of Regulation 23 precluded any material advertising or promoting the insurance agency from being displayed or maintained within the retail area of the financial institution. Despite substantial objection to this provision, it has been carried forward in the amended regulation, at 5.C.1., provided, however, that pursuant to 5.C.1., as amended, financial institutions are permitted to state publicly that an insurance agent, broker or consultant is a tenant of the financial institution's building.
- 5.D.2. No Advertising or Promotion - In General Section 5.D.2. of Regulation 23 precluded a financial institution from advertising the existence of or promoting in any manner a tenant-insuring agency. As carried forward in section 5.C.3., this prohibition has been maintained over the objections of

numerous opponents. The requirement of 5.C.3. is softened to some extent by 5.C.2. in the amended Regulation 23, which permits advertising materials of the insurance agent, broker or consultant to be included with mailings by a financial institution to its customers. It is important to note that only the agent may advertise in this manner (not the financial institution) and that even such material must contain a statement notifying the bank's customers that the tenant-insurance agent, broker or consultant is in no way affiliated with the financial institution and that the use of such advertising mechanism does not carry an endorsement of the tenant-insurance agent, broker or consultant or his products by the regulated financial institution.

- 5.D.4. No Assistance Clause

Section 5.D.4. of Regulation 23 precluded a financial institution from providing any assistance to its tenant insurance agent. This prohibition included, but was not limited to, the use of the financial institution's customers list by the insurance agency unless those lists were made available for use by other insurance agencies on similar terms. Section 5.D.4. drew strong opposition from representatives of the financial institutions. The opponents argued that section 5.D.4., in conjunction with the other restrictions of Regulation 23, effectively precluded financial institutions from taking commercial advantage of the leasing provision of Regulation 23.

No party has asserted to the Banking Bureau that furnishing customer lists to tenant insurance agents will violate any portion of the Insurance Code or any other applicable law. Thus, section 5.D.4. has been deleted from the amended regulations.

- 5.F. Disclosure

All of the restrictions and limitations described above (all of which were in Regulation 23) were intended to protect against violations of the Insurance Code while yet permitting leasing to take place in a commercially reasonable manner. In view of the comments of the Bureau of Insurance, the first draft of Chapter 123 (Regulation 23) failed to fully calm that Bureau's fears. Therefore, in order to directly address the concerns raised by the Bureau of Insurance and the Insurance Agents, the Bureau of Banking has added to the various restrictions and limitations described above. In

addition, under the section now designated 5.D., the regulated financial institution must require, as a condition of its lease with a tenant-insurance agent, broker or consultant that the tenant provide each customer with a written disclosure.

Each disclosure must contain at least a disclaimer of any affiliation or other connection between the regulated financial institution and the tenant-insurance provider, as well as notice that the customer is free to purchase insurance from any other insurance agent, broker or consultant, and further notice that the financial institution is not permitted to condition, in any manner, extension of credit to any borrower, on the basis of purchasing insurance through any particular insurer, insurance agent or broker. Finally, each disclosure must contain notice that the regulated financial institution is not permitted to promote the tenant-insurance agent, broker or consultant in any manner.

The lease must also require that the tenant-insurance provider have each of its customers read, sign and date each disclosure and must require the tenant to retain a copy of each disclosure for at least two years.

The Bureau of Banking recognizes that any disclosure program has inherent limitations. For example, disclosures must be read and understood by a customer if they are to properly protect that person. However, the entire truth-in-lending program is based upon the disclosure of required information to consumers as are the various requirements of securities law and consumer protection in general.

Ultimately, all the restrictions and limitations contained in these regulations, as well as those proposed by the Bureau of Insurance, in its parallel rulemaking proceedings, are designed to insulate the tenant-insurance agent, broker or consultant from the lessor financial institution in such a manner as to avoid confusion between these entities in the public mind. It seems to the Banking Bureau that the clearest and most effective manner of avoiding such confusion is to require notices of the separation to be given directly to each customer of the tenant-insurance agent, broker or consultant. In this manner, the customer need not infer the separation from a separation of facilities or a lack of advertising or promotion. Rather, it will be directly explained to him and he must sign a disclosure document to

acknowledge that he has understood this separation.

The Banking Bureau asserts that if any set of regulations is truly going to permit the leasing of bank premises to insurance agent, brokers or consultants, these regulations must not be so detailed or so restrictive as to take away with the left hand what the right hand appears to give. The Bank Superintendent submits that the amended Regulation 23 provides a delicate balance between a need to protect consumers from violations of the Insurance Code as well as generally from tying and conflicts of interest problems while at the same time permitting financial institutions to enter into leases with insurance agents, brokers or consultants in a commercially reasonable manner.

- 5.E. Federal Regulations

Section 5.E. in proposed Regulation 23 alerted regulatees of their continuing duty to comply with the requirements of federal law and those federal agencies which insure and regulate them as well as the requirements of Regulation 23. The Insurance Bureau suggested that section 5.E. be amended to include the duty to comply with State law and State regulations.

The Bureau of Insurance's suggestions has been declined because it was felt that it might confuse the regulatees of the Banking Bureau. These regulatees are familiar with the rules of the federal agencies which insure and regulate them and thus these rules may be broadly referred to as in section 5.E.

The language suggested by the Insurance Bureau, however, implies that other Maine laws might apply to financial institutions - by virtue of incorporation through Regulation 23. there has been no request to the Banking Bureau that any laws be so incorporated and it is not the intent of the Banking Bureau by promulgating Regulation 23 to alter, in any respect, the duties owed by Maine's financial institutions.