

02-029

CHAPTER 109

Regulation #9

## ADVERTISING BY FINANCIAL INSTITUTIONS, FINANCIAL INSTITUTION HOLDING COMPANIES AND SUBSIDIARIES OR SERVICE CORPORATIONS

**SUMMARY:** In 1986, the Bureau of Financial Institutions (t/k/a the Bureau of Banking) revised Regulation #9 to reflect changes resulting from deregulation and competition within the industry. At that time, changes in both State and federal law broadened the scope of products and services that could be provided by the regulated industry to include nondeposit investment products such as insurance and securities. Since 1986, a number of State and federal laws governing distribution of nondeposit investment products or services have been promulgated.<sup>[1]</sup> Disclosure and advertising requirements for credit-related products also have been strengthened.<sup>[2]</sup> Finally, federal rules implementing the Truth in Savings Act have been promulgated. <sup>[3]</sup>

The current iteration of Regulation #9 includes restrictions on advertising of commercial deposits and related services not found in federal law. The Bureau of Financial Institutions proposes to repeal and replace Regulation #9, narrowing its application to the advertising of deposit accounts and related services consistent with federal law, while retaining relevant guidelines for all types of deposit accounts. Guidance for advertising of consumer deposit accounts is similar to rules issued under federal law. Advertising of any product or service by regulated industry will continue to be generally subject to regulation pursuant 9-B M.R.S.A. §§ 231, 241 and 242.

### **I. Authority**

Title 9-B M.R.S.A. § 215 states that the Superintendent shall have the power to implement by rule any provision of law relating to the supervision of financial institutions and their subsidiaries or financial holding companies and their subsidiaries.

Title 9-B M.R.S.A. § 241 gives the Superintendent the power to promulgate rules defining, limiting or proscribing acts and practices which, when engaged in by a financial institution or its subsidiary or by a financial institution holding company or its subsidiary, are determined to be anticompetitive, unfair, deceptive or otherwise injurious to the public interest.

Title 9-B M.R.S.A. § 242 gives the Superintendent the authority to promulgate rules defining, limiting or proscribing false, misleading or deceptive advertising or representations by a financial institution authorized to do business in this

State, a credit union authorized to do business in this State, an association of such institutions or a financial institution holding company.

## **II. Purpose**

The purpose of this rulemaking is to repeal and replace Bureau of Financial Institution Regulation #9 (Chapter 109). This rule sets forth guidelines for advertising of deposit accounts by financial institutions, subsidiaries of financial institutions, financial institution holding companies, subsidiaries of financial institution holding companies and representatives of financial institutions or financial institution holding companies, to provide guidance on advertising that is considered to be false, misleading or deceptive.

## **III. Definitions**

- A. "Advertising" means a commercial message appearing in any medium that directly or indirectly promotes availability of a deposit account or service of a financial institution. Advertising includes, but is not limited to, Internet banners or "pop-ups," signage, either interior or exterior, pre-recorded telephone messages and displays.
- B. "Consumer deposit account" means a deposit account at a financial institution that is held by, or offered to, a natural person who holds or will hold, the account primarily for personal, family, or household purposes. The term "consumer deposit account" includes an account at a financial institution that is held by or on behalf of a deposit broker as defined by 12 U.S.C. 1831f(g), if any interest in the account is held by or offered to a consumer. The term "consumer deposit account" does not include a deposit account held by a natural person who holds the account for another in a professional capacity or an account held by an unincorporated non-business association of natural persons.
- C. "Deposit account" means a "deposit," "demand deposit," "time deposit," "nonpersonal time deposit", "savings deposit" and "transaction account" as defined in Federal Reserve Board Regulation D, "Reserve Requirements of Depository Institutions," 12 C.F.R. Part 204.2 (October 21, 2005).<sup>[4]</sup>
- D. "Financial Institution" means a financial institution authorized to do business in this State as defined by 9-B M.R.S.A. § 131(17-A), or credit union authorized to do business in this State, as defined by 9-B M.R.S.A. § 131 § (12-A).
- E. "Regulated institution" means a "financial institution" as defined by 9-B M.R.S.A. § 131(17); a "financial institution holding company" as defined by 9-B M.R.S.A. § 1011(1); and a "subsidiary" as defined by 9-B M.R.S.A. § 131(39-A) or "service corporation" as defined by 9-B M.R.S.A. § 131(37), to the extent that that the subsidiary or service corporation

provides advertising or marketing services for a financial institution or financial institution holding company.

#### **IV. General Provisions**

Advertising of deposit accounts by a regulated institution may not be inaccurate or misleading. Inaccurate or misleading advertising, includes but is not limited to, making any statement or claim which cannot be substantiated, which misrepresents the terms or conditions of the deposit accounts offered or which has a tendency or capacity to deceive.

- A. All claims of a comparative nature, including claims of certain dollar amounts saved, must be capable of substantiation and must be verified by the regulated institution prior to the appearance of the advertising and must be substantiated upon request.
- B. Advertising offering a "bonus" or "premium" must conspicuously state the terms under which the bonus or premium may be collected. Should the bonus or premium represent a prepayment of interest, that fact shall be conspicuously stated in the advertisement.
- C. Advertising for consumer deposit accounts must also meet the requirements of Section V of this regulation.

#### **V. Use of the Words "Free," "Fees Waived" or "Profit"**

- A. Advertising of consumer deposit accounts by a regulated institution may not refer to or describe the account as "free" or "no cost" or contain a similar term, if a maintenance or activity fee may be imposed on the account. For purposes of this section, maintenance or activity fees include:
  - 1. Fees imposed when a minimum balance requirement is not met or a specified number of transactions is exceeded;
  - 2. Transaction and service fees that can be reasonably expected to be imposed on a regular basis;
  - 3. A flat fee, such as a monthly service fee; and
  - 4. Fees imposed to deposit, withdraw, or transfer funds, including per-check or per-transaction charges.

Examples of fees that are not considered to be maintenance or activity fees include:

- 5. Check printing fees;
- 6. Balance inquiry fees;
- 7. Stop-payment fees and fees associated with checks returned unpaid;

8. Fees assessed against a dormant account; and
  9. Fees for ATM or electronic transfer services, such as pre-authorized transfers or home banking services that are not required to obtain an account.
- B. Advertising by a regulated institution for a consumer deposit account may refer to or describe the account as "free" or "no cost" or contain a similar term, under the following circumstances:
1. A specific account service or feature may be advertised as "free," if no fee is imposed for that service or feature. For example, regulated institutions offering an account that is free of deposit or withdrawal fees could advertise that fact, as long as the advertisement does not mislead consumers by implying that no other fee (a monthly service fee, for example) may be charged;
  2. If an account or a specific account service is free only for a limited period of time and the time period is stated, the account or service may be advertised as "free."
  3. An account may be advertised as "free" for consumers meeting conditions not related to deposit accounts, such as the consumer's age.
- C. Advertising of a consumer deposit account may not use the term "fees waived," if a maintenance or activity fee may be imposed.
- D. The term "profit" may not be used, in referring to interest paid on a consumer deposit account.

## **Federal Regulations**

It is recognized that the Comptroller of the Currency, the Federal Reserve Bank, the Office of Thrift Institutions, the Federal Deposit Insurance Corporation and the National Credit Union Administration may have promulgated regulations concerning advertising activities of financial institutions, financial institution holding companies or their subsidiaries. It is further recognized that there may exist differences in scope and coverage between this regulation and regulations promulgated by those federal regulatory 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 any applicable federal agency.

AUTHORITY: Title 9-B M.R.S.A. §§ 215, 241 and 242

EFFECTIVE DATE: March 5, 2006

## **BASIS STATEMENT**

This regulation repeals and replaces Regulation #9 governing advertising by financial institutions, financial institution holding companies and their subsidiaries or service corporations. Through this rulemaking, the Bureau establishes guidelines for advertising of deposit accounts and related services including general provisions that prohibit advertising that is inaccurate or misleading. In addition, this rule replaces guidelines for the use of the word "free" in advertising of consumer deposit accounts and related services with a set of standards that are consistent with federal rules in this area. Also this regulation repeals the restrictions on the use of the word "free" for advertising of business deposit accounts and related services, which have no corresponding provisions in federal advertising rules. In lieu of those restrictions, the regulation utilizes a broader approach which sets forth a general standard that any advertising of deposit accounts and related services may not be inaccurate or misleading.

Notice of proposed rulemaking was published on or about January 11, 2006. No public hearing was requested and none was held. The Bureau received one letter of comment, from the Maine Association of Community Banks, during the public comment period which closed on February 11, 2006. That letter of comment, from this Maine based trade association representing 23 community banks with total assets in excess of \$11 billion, is supportive of the Bureau's proposed regulation, its responsiveness to creating parity with federally chartered institutions, and the progressive move to establish regulatory language that specifically covers consumer deposit accounts similar to federal law and to continue the protections of business and non-consumer accounts. The Association did not request any changes to the regulation in its comment letter. Therefore, the regulation is being promulgated essentially as proposed.

[1] E.g., Bureau of Financial Institution's Regulation #29, "Financial Institutions and Broker-Dealers Engaging in Third Party Brokerage Arrangements" (effective 1/18/2003); Bureau of Financial Institution's Regulation #30, "Distribution of Annuities Through Financial Institutions" (1/1/1995); Bureau of Financial Institution's Regulation #39, "Sale of Insurance Products by Financial Institutions and Supervised Lenders" (11/26/1997); "Federal Financial Institutions Examination Council Interagency Statement on Retail Sales of Nondeposit Investment Products" (2/15/1994) and "Federal Financial Institutions Examination Council Interagency Guidance on Electronic Financial Services and Consumer Compliance" (7/15/98).

[2] Federal Reserve Regulation Z – Truth-in-Lending (12 C.F.R. Part 226).

[3] Federal Reserve Regulation DD – Truth-in-Savings (12 C.F.R. Part 230) and National Credit Union Regulation (12 C.F.R. Part 707).

[4] Copies of 12 C.F.R. Part 204.2 may be obtained at cost from the Bureau of Financial Institutions or from the Federal Reserve Bank of Boston, 600 Atlantic Avenue Boston, MA 02016 (Tel: 617-973-3000). Copied may be obtained at no cost via the Internet at <http://www.gpoaccess.gov/cfr/index.html> .