# 02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

029 BUREAU OF BANKING

CHAPTER 130 DISTRIBUTION OF ANNUITIES THROUGH FINANCIAL INSTITUTIONS (REG. 30)

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, labeling, 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

APAO WORD VERSION CONVERSION (IF NEEDED) AND ACCESSIBILITY CHECK: July 17, 2025