

MAINE BUREAU OF FINANCIAL INSTITUTIONS
SUPERINTENDENT'S
NOTICE TO INTERESTED PARTIES

Chapter 109 (Regulation #9) entitled Advertising by Financial Institutions, Credit Unions, Bank Holding Companies and Service Corporations was last amended in 1986. This regulation repeals and replaces the existing rule. Since 1986, a number of state and federal laws and rules governing distribution of nondeposit investment products have been promulgated. In addition, disclosure and advertising requirements for credit-related products have also been strengthened. Therefore, this regulation narrows the focus of the Bureau advertising guidelines to deposit products and services. It also adopts advertising guidelines for consumer deposit accounts similar to the rules issued under federal law. It is a routine technical rule as defined in Title 5, chapter 375, subchapter II-A.

Notice of this proposed Rule is being published by the Secretary of State. Interested parties may submit written comments or requests for a hearing to the Bureau of Financial Institutions, 36 State House Station, Augusta, Maine 04333-0036 by February 11, 2006. Electronic comments or requests for a hearing may be submitted by accessing the Internet Home Page of the Bureau of Financial Institutions at <http://www.maine.gov/financialinstitutions>.

A copy of the proposed rule is attached.

/s/ Lloyd P. LaFountain III
Superintendent of Financial Institutions
Gardiner, Maine
January 11, 2006

ADVERTISING BY FINANCIAL INSTITUTIONS, FINANCIAL INSTITUTION
HOLDING COMPANIES AND SUBSIDIARIES OR SERVICE CORPORATIONS
(REG. 9)

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. ^[1] Disclosure and advertising requirements for credit-related products also have been strengthened.^[2] Finally, federal rules implementing the Truth in Savings Act have been promulgated. ^[3]

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)."^[4]
- 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:

BASIS STATEMENT

[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). Copies may be obtained at no cost via the Internet at <http://www.gpoaccess.gov/cfr/index.html> .