



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING  
333 MARKET STREET, 16TH FLOOR  
HARRISBURG, PENNSYLVANIA 17101-2290

April 16, 1996

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SECRETARY OF BANKING

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TO: ALL CHIEF EXECUTIVE OFFICERS OF PENNSYLVANIA STATE-CHARTERED BANKS, BANK AND TRUST COMPANIES, SAVINGS BANKS, AND NATIONAL BANKS LOCATED IN PENNSYLVANIA

The Department has received several inquiries as to the authority of Pennsylvania state-chartered banking institutions to sell annuities issued by insurance companies. These inquiries reflect the intense interest in such activity expressed by the banking industry across the country. In recent months, that interest has increased sharply because of the United States Supreme Court's decision in Nationsbank of North Carolina N.A. v. Variable Annuity Life Insurance Co., 115 S.Ct. 8110 (1995), which upheld a ruling of the Office of the Comptroller of the Currency (OCC) that a national bank and its subsidiary have the authority to sell fixed, variable, and hybrid annuities as agents.

The Court based its decision on a finding that annuities are essentially financial instruments, which a national bank has the authority (as an incidental banking power) to broker just as it does with other financial instruments. The Court also ruled that the provision of the national banking laws which gives national banks specific authority to sell insurance was not pertinent to the case because annuities are properly classified as investments and not as insurance.

The Department has reviewed the provisions of the Pennsylvania Banking Code, including sections 315 and 502 (relating to the incidental powers of banks and savings banks), and has determined that Pennsylvania state-chartered banks, bank and trust companies, and savings banks may engage in the sale of annuities as a power incidental to the banking business, directly or indirectly through a subsidiary.

The incidental powers language found in the Banking Code is substantially similar to the incidental power provision contained in the National Bank Act, which was relied upon by the OCC in determining that national banks may sell annuities. In addition, Pennsylvania-chartered institutions, like national banks, are statutorily authorized to sell financial instruments as part of the institutions' banking business.

Furthermore, under section 103 of the Banking Code, the Department is authorized to exercise its administrative discretion to assure that Pennsylvania state-chartered banking institutions remain competitive, with each other and other financial organizations, and to assure that such institutions have the opportunity to expand their services to serve effectively the convenience and needs of customers.

As a supervisory matter, the Department expects Pennsylvania state-chartered institutions to address the following factors in developing a program to sell annuities as an agent and to be prepared to make such information available to the Department during examinations or at any other time upon request: the types of annuities to be sold and the issuer or issuers thereof; the method of sales and promotion thereof, including samples of proposed brochures and advertisements; a description of personnel to be engaged in sales efforts and their qualifications and training; the arrangement for separation of sales of annuities from normal deposit account functions; copies of disclosures to be made to prospective customers and contracts to be entered; the extent of supervision of promotion, sales, and the employees engaged therein; and the involvement of the board of directors and senior management in the supervision and review of annuity sales. Brochures, advertisements and other written promotional communications shall clearly and conspicuously state that an annuity is not an obligation of the selling bank or an affiliate, is not a deposit, and is not insured by the FDIC. Furthermore, all such communications shall state all fees, including surrender fees, that may be payable by the customer. Radio, television and oral promotions shall refer to written documents for such disclosure as a condition to any sale. The Department requires state-chartered institutions to adhere to the Federal banking regulators' Interagency Statement on Retail Sales of Nondeposit Investment Products, dated February 15, 1994, to the extent pertinent to sales of annuities.

Applications for licensure to sell annuities may be obtained by contacting the Pennsylvania Insurance Department, which shall process such applications from eligible financial institutions consistent with the requirements applicable to all applicants for agent licensure.

The Legal Division of the Department of Banking should be contacted if you have any questions concerning the contents of this letter. Applications for agent licensure may be obtained from Bev Love, Bureau of Licensing, Agents and Brokers Division, Insurance Department, 1346 Strawberry Square, Harrisburg, PA 17120, telephone (717) 783-2142.

Sincerely,

*Richard R. Risher*