

## CHAPTER 23

### CEASE AND DESIST ORDERS; REMOVAL OR CHANGE OF OFFICER OR DIRECTOR

#### §231. Cease and desist orders

**1. Authority.** The superintendent has the following authority over financial institutions, out-of-state financial institutions, financial institution holding companies and subsidiaries thereof.

A. The superintendent may issue and serve an order upon an institution or company requiring the institution or company to cease and desist from the violation or practice if, in the opinion of the superintendent, a financial institution or its subsidiary, financial institution holding company or its subsidiary or out-of-state financial institution subject to the provisions of this Title is engaging in or has engaged in, or the superintendent has reasonable cause to believe that the institution or company is about to engage in, any of the following violations or practices:

- (1) An unsafe or unsound practice in conducting the business of the financial institution or company;
- (2) Violation of a law, rule or regulation relating to the supervision of the institution or company;
- (3) Violation of any condition, imposed in writing, in connection with the approval of any application by the superintendent;
- (4) Violation of any written agreement entered into with the superintendent; or
- (5) An anticompetitive or deceptive practice, or one that is otherwise injurious to the public interest under chapter 24. [PL 1995, c. 628, §16 (RPR).]

B. The superintendent may restrict the withdrawal of funds from one or more financial institutions in an order issued under paragraph A if, in the opinion of the superintendent, extraordinary circumstances make such action necessary and appropriate for the protection of depositors, investors or the public. [PL 2005, c. 82, §3 (AMD).]

C. The order issued under paragraph A may require the officers or directors of the institution or company or subsidiary to take affirmative action to correct any violation or practice. [PL 1995, c. 628, §16 (RPR).]

D. Before issuing a cease and desist order against an out-of-state financial institution operating one or more branches in this State, the superintendent shall request that the financial institution's home state regulatory agency undertake an enforcement action. If the home state regulatory agency is unwilling or unable to issue an enforcement action, the superintendent may then exercise the enforcement authority available under this section. The superintendent may take enforcement action against a branch of a foreign financial institution without requesting enforcement action be taken first by the foreign regulatory agency. Where, in the opinion of the superintendent, emergency conditions make such enforcement action immediately necessary for the protection of depositors, shareholders or the public, the superintendent may proceed without requesting enforcement by the home state regulatory agency. [PL 1995, c. 628, §16 (NEW).]

[PL 2005, c. 82, §3 (AMD).]

#### **2. Notice; hearing.**

A. Prior to the issuance of any order to cease and desist in accordance with subsection 1, notice shall be given to the institution by the superintendent. Such notice shall contain a statement of the

facts upon which the order is to be issued, and the date upon which such order is to take effect. [PL 1975, c. 500, §1 (NEW).]

B. Upon petition of any interested party, a hearing in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375 shall be provided prior to the effective date of any order issued pursuant to subsection 1, except as provided in subsection 3. [PL 1979, c. 663, §31 (AMD).]  
[PL 1979, c. 663, §31 (AMD).]

### **3. Temporary cease and desist order.**

A. Whenever, in the opinion of the superintendent, the violation or practice set forth in subsection 1 requires immediate action for the protection of depositors or investors, or the violation or practice, or the continuation thereof, is likely to cause insolvency or substantial dissipation of the assets or earnings of the institution, the superintendent may issue orders pursuant to subsection 1, which become effective upon service thereof, without prior notice or hearing. [PL 2005, c. 82, §4 (AMD).]

B. If an order is issued by the superintendent pursuant to paragraph A, the superintendent shall afford an opportunity for a hearing to rescind the order and action taken promptly thereafter, upon application by an interested party. [PL 1975, c. 500, §1 (NEW).]  
[PL 2005, c. 82, §4 (AMD).]

**4. Power as additional.** The power and authority granted to the superintendent by this section shall be in addition to any enforcement or regulatory powers granted elsewhere in this Title. [PL 1975, c. 500, §1 (NEW).]

## SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 1979, c. 663, §31 (AMD). PL 1985, c. 328, §§3,4 (AMD). PL 1995, c. 628, §16 (AMD). PL 2005, c. 82, §§3,4 (AMD).

### **§232. Removal or prohibition of officer or director**

The superintendent may remove any officer or director of a financial institution organized pursuant to this Title or any officer of a branch of an out-of-state financial institution authorized to do business in this State or any officer or director of a financial institution holding company, in accordance with the procedures and subject to the conditions and limitations set forth in this section. The superintendent may prohibit an officer or director of a financial institution, financial institution holding company or branch of an out-of-state financial institution from participating in any manner in the conduct of the affairs of a financial institution, financial institution holding company or branch of an out-of-state financial institution if the superintendent determines that such action is necessary for the protection of the public, the financial institution, financial institution holding company or out-of-state financial institution or the interests of the institution's depositors or creditors. [PL 1997, c. 660, Pt. A, §2 (AMD).]

**1. Grounds for removal.** The superintendent may serve written notice of intent to remove an officer or director from office or to prohibit further participation by the officer or director in any manner in the conduct of the affairs of a financial institution or financial institution holding company if:

- A. In the opinion of the superintendent, that officer or director has directly or indirectly:
- (1) Violated a law, rule, regulation or cease and desist order that has become final;
  - (2) Engaged in or participated in any unsafe or unsound practice; or
  - (3) Committed or engaged in any act, omission, or practice that constitutes a breach of the fiduciary duty of the officer or director; [PL 1993, c. 538, §2 (RPR).]
- B. By reason of the violation, practice or breach of fiduciary duty described in paragraph A:

- (1) The financial institution or financial institution holding company has suffered or will probably suffer financial loss or other damage;
  - (2) The interests of the financial institution's depositors or creditors or the public have been or could be prejudiced; or
  - (3) The officer or director has received financial gain or other benefit by reason of the violation, practice or breach of fiduciary duty; and [PL 2005, c. 83, §2 (AMD).]
- C. The violation, practice or breach of fiduciary duty described in paragraph A involves personal dishonesty on the part of the officer or director or demonstrates willful or continuing disregard by the officer or director for the safety or soundness of the financial institution or financial institution holding company. [PL 2005, c. 83, §2 (AMD).]
- D. [PL 2005, c. 83, §3 (RP).]
- E. [PL 2005, c. 83, §4 (RP).]  
[PL 2005, c. 83, §§2-4 (AMD).]

**1-A. Additional grounds for removal.** The superintendent may serve written notice of intent to remove an officer or director from office or to prohibit further participation by the officer or director in any manner in the conduct of the affairs of a financial institution or financial institution holding company if:

- A. In the opinion of the superintendent, that officer or director has evidenced personal dishonesty and unfitness to continue as an officer or director of the financial institution or financial institution holding company by conduct with respect to another business entity that resulted, or is likely to result, in substantial financial loss or other damage; or [PL 2005, c. 83, §5 (NEW).]
- B. The officer or director has been removed or prohibited from participation in any manner in the conduct of the affairs of the financial institution by the appropriate federal banking agency. [PL 2005, c. 83, §5 (NEW).]  
[PL 2005, c. 83, §5 (NEW).]

**2. Notice of intent to remove.**

- A. The written notice required in subsection 1 shall be in the form prescribed by the Maine Administrative Procedure Act, Title 5, section 9052, subsection 4 and shall be served not less than 30 nor more than 60 days prior to the date set for the hearing. [PL 1977, c. 694, §156 (RPR).]
- B. The superintendent shall serve such written notice in accordance with Rule 4 of the Maine Rules of Civil Procedure upon the officer or director involved and copies of such notice must be served upon the financial institution or financial institution holding company of which the person is an officer or director or in the conduct of whose affairs the person has participated. [PL 1997, c. 182, Pt. C, §3 (AMD).]  
[PL 1997, c. 182, Pt. C, §3 (AMD).]

**3. Effect of notice.**

- A. If the superintendent considers it necessary for the protection of the financial institution or financial institution holding company or the interests of its depositors or shareholders, such written notice may suspend the officer or director from office or prohibit the officer or director from further participation in any manner in the conduct of the affairs of the financial institution or financial institution holding company. [PL 1997, c. 182, Pt. C, §4 (AMD).]
- B. Such suspension or prohibition shall become effective upon service of said notice and, unless stayed by the Superior Court pursuant to subsection 4, shall remain in effect pending completion of administrative proceedings pursuant to this section and until such time as the superintendent shall dismiss the charges specified in such notice or, if an order of removal or prohibition is issued

against the officer or director, until the effective date of any such order. [PL 1975, c. 500, §1 (NEW).]

[PL 1997, c. 182, Pt. C, §4 (AMD).]

**4. Stay of suspension or prohibition.** Any officer or director adversely affected by a suspension or prohibition contained in a written notice pursuant to subsection 3 may apply to the Superior Court in the county where the financial institution of which he is an officer or director has its main office or in the Superior Court of Kennebec County for a stay of such suspension or prohibition pending completion of administrative proceedings required under this section, and such court shall have jurisdiction to stay such suspension or prohibition.

[PL 1975, c. 500, §1 (NEW).]

#### **5. Hearing.**

A. The superintendent shall hold a hearing at the time and place specified in the notice required under subsection 2, such hearing to be governed by the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV. [PL 1979, c. 429, §4 (AMD).]

B. Unless the officer or director affected shall appear at such hearing, he shall be deemed to have consented to the issuance of an order for such removal or prohibition. [PL 1975, c. 500, §1 (NEW).]

C. In the event of consent pursuant to paragraph B, or if upon the record made at any such hearing the superintendent finds that any of the grounds specified in the notice have been established, the superintendent may issue such orders of suspension or removal from office or prohibition from participation in the conduct of the affairs of the financial institution or financial institution holding company, as the superintendent considers appropriate. [PL 1997, c. 182, Pt. C, §5 (AMD).]

D. Notwithstanding any provision to the contrary, as prescribed by the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, such order shall be issued not later than 30 days after the close of the hearing if any, held pursuant to this section. [PL 1987, c. 402, Pt. A, §86 (AMD).]

[PL 1997, c. 182, Pt. C, §5 (AMD).]

#### **6. Effective date.**

A. Any order issued pursuant to subsection 5 becomes effective at the expiration of 30 days after service upon the officer or director and the financial institution or financial institution holding company concerned; provided that an order issued upon consent becomes effective within the time specified therein. [PL 1997, c. 182, Pt. C, §6 (AMD).]

B. Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated or set aside by action of the superintendent or a court having jurisdiction relating thereto.

[PL 1975, c. 500, §1 (NEW).]

[PL 1997, c. 182, Pt. C, §6 (AMD).]

#### **7. Participation in a felony.**

A. The superintendent may issue written notice, pursuant to subsections 2 and 3, to any officer or director charged in any information, complaint, or indictment with commission of or participation in a felony involving dishonesty or breach of trust, pursuant to laws of the State of Maine or of the United States. Such suspension or prohibition shall remain in effect until terminated by the superintendent or said information, complaint, or indictment is finally disposed of. [PL 1975, c. 500, §1 (NEW).]

B. At such time as a judgment of conviction with respect to such offense is entered against such officer or director, and such judgment is not subject to further appellate review, the superintendent may issue and serve upon such officer or director an order removing the officer or director from

such office or prohibiting the officer or director from further participation in the conduct of the affairs of the financial institution or financial institution holding company except with the written consent of the superintendent. Such order becomes effective after service upon the officer or director and the financial institution or financial institution holding company. [PL 1997, c. 182, Pt. C, §7 (AMD).]

C. A finding of not guilty or other disposition of the charge in paragraph A shall not preclude the superintendent from instituting proceedings pursuant to this section on the grounds set forth in subsection 1. [PL 1975, c. 500, §1 (NEW).]

[PL 1997, c. 182, Pt. C, §7 (AMD).]

**8. Prohibition on participation in banking industry.** An officer or director may be prohibited from participating in the banking industry in accordance with the following.

A. Any officer or director who, pursuant to an order issued under this section, has been removed from office in a financial institution, out-of-state financial institution or financial institution holding company or prohibited from participating in the conduct of the affairs of a financial institution, out-of-state financial institution, or financial institution holding company may not, while such order is in effect, continue or commence to hold any office, or participate in any manner in the conduct of the affairs of any financial institution, out-of-state financial institution or financial institution holding company. [PL 1997, c. 660, Pt. A, §5 (NEW).]

B. If, on or after the date an order is issued under this section that removes from office an officer or director or prohibits an officer or director from participating in the conduct of the affairs of any financial institution, out-of-state financial institution or financial institution holding company, the order is modified, terminated or set aside in accordance with subsection 6, then the prohibition imposed in paragraph A must be similarly modified, terminated or set aside. [PL 1997, c. 660, Pt. A, §5 (NEW).]

[RR 1997, c. 2, §35 (COR).]

#### SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 1977, c. 694, §156 (AMD). PL 1979, c. 429, §§4,5 (AMD). PL 1987, c. 402, §A86 (AMD). PL 1993, c. 538, §2 (AMD). PL 1995, c. 628, §17 (AMD). RR 1997, c. 2, §35 (COR). PL 1997, c. 182, §§C1-7 (AMD). PL 1997, c. 660, §§A1-5 (AMD). PL 2005, c. 83, §§2-5 (AMD).

#### §233. Enforcement by Superior Court

Orders issued by the superintendent pursuant to sections 231 and 232 shall be enforced by the Superior Court, subject to the following conditions and limitations: [PL 1975, c. 500, §1 (NEW).]

**1. Appeal of order.** Any person aggrieved and directly affected by an order of the superintendent issued pursuant to sections 231 and 232 shall be entitled to judicial review of the order pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII.

[PL 1977, c. 694, §157 (RPR).]

**2. Limitation on liability.** No person shall be subjected to any civil or criminal liability for any act or omission to act in good faith in reliance upon a subsisting order, regulation or definition of the superintendent, notwithstanding a subsequent decision by any court invalidating the order, regulation or definition.

[PL 1975, c. 500, §1 (NEW).]

#### SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 1977, c. 694, §157 (AMD).

#### §234. Notice to Federal authorities

**1. Requirement.** In connection with any proceeding under section 231 or 232 involving a financial institution under the concurrent supervision of a federal agency and the bureau, the superintendent shall provide the appropriate federal agency with notice of any such proceeding and the grounds therefor. Such proceeding may then be continued jointly or by either the federal agency or the superintendent. [PL 2007, c. 79, §4 (AMD).]

**2. Failure to notify.** Failure of the superintendent to give such notice shall not constitute a ground for attacking the validity of the order. [PL 1975, c. 500, §1 (NEW).]

#### SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 2007, c. 79, §4 (AMD).

#### §235. Change of director or senior executive officer

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Financial institution in troubled condition" includes any financial institution:

- (1) That is subject to a cease and desist order issued under section 231 or issued by a federal regulator under applicable federal law;
- (2) That is subject to a written agreement as contemplated under section 231;
- (3) That has a composite rating of 4 or 5 under the federal Uniform Financial Institutions Rating System or comparable composite ratings under a rating system employed by the superintendent;
- (4) That is not in compliance with section 412-A or is not in compliance with applicable federal capital standards; or
- (5) That has been notified in writing by the superintendent that it is in troubled condition for the purposes of this section. [PL 2007, c. 79, §5 (NEW).]

B. "Senior executive officer" means any person who holds the title of president, chief executive officer, chief operating officer, chief financial officer, chief lending officer or chief investment officer or, without regard to title, salary or compensation, performs the function of one or more of these positions. "Senior executive officer" also includes any other person identified by the superintendent, whether or not hired as an employee, with significant influence over, or who participates in, major policy-making decisions of a financial institution. [PL 2007, c. 79, §5 (NEW).]

[PL 2007, c. 79, §5 (NEW).]

**2. Filing notice.** A financial institution in troubled condition shall file notice with the superintendent at least 30 days prior to adding or replacing a member of its board of directors or governing body, employing a senior executive officer or changing the duties of a senior executive officer so that the senior executive officer would assume a different senior executive officer position. The notice must be in a form and contain content as prescribed by the superintendent. For good cause shown, the superintendent may accept notice of less than 30 days. [PL 2007, c. 79, §5 (NEW).]

**3. Approval.** The superintendent shall approve or disapprove the notice under subsection 2 within 10 days after the receipt of the notice. [PL 2007, c. 79, §5 (NEW).]

#### SECTION HISTORY

PL 2007, c. 79, §5 (NEW).

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