



# The Commonwealth of Massachusetts

Office of the Commissioner of Banks

One South Station

Boston, Massachusetts 02110

JANE SWIFT  
GOVERNOR

THOMAS J. CURRY  
COMMISSIONER

August 13, 2001

Mr. Edward Bernardo, Jr.  
Vice President/Treasurer  
Slade's Ferry Bank  
100 Slades Ferry Avenue  
P. O. Box 390  
Somerset, MA 02726

Dear Mr. Bernardo:

This letter is written in response to your correspondence of July 9, 2001 relative to a proposal by Slade's Ferry Trust Company (the "Bank") to engage in certain annuity sales activities. You inquire as to whether the Bank's proposed activities are subject to the provisions of Chapter 129 of the Acts of 1998 (the "Act") and its implementing regulation 209 CMR 49.00 *et seq.*, governing bank insurance sales activities.

According to your letter, the Bank intends to make available to its customers certain annuity and securities products through a contractual arrangement with Essex Corporation, an independent New York Corporation, and its affiliates, Essex National Securities, Inc. (a registered broker-dealer) and Essex National Insurance Agency, Inc. (together "Essex"). Under that agreement, Essex will market fixed and variable annuities, as well as securities products and services to the Bank's customers at space leased from the Bank. No insurance products other than fixed and variable annuities will be offered at this time through this arrangement. The Agreement specifically provides that all operations will be conducted in compliance with applicable laws and regulations, including the Interagency Statement on Retail Sales of Nondeposit Investment Products, and any amendments thereto.

The lease arrangement with Essex provides that the Bank will be compensated through a percentage rental arrangement whereby the Bank receives a percentage of the net revenues generated through the sale of annuity and other products pursuant to the marketing arrangement. You state that it is your understanding that this payment arrangement may constitute a sharing of commissions necessitating that the Bank obtain a license from the Division of Insurance pursuant to G.L. c. 175, s. 209. Included with your letter were copies of the Agreement with Essex and the lease between the Bank and Essex National Insurance Agency, Inc.



A state-chartered bank in the Commonwealth may engage in the sale of annuities and other nondeposit investment products.<sup>1</sup> In further support of this authority, SECTION 10 of the Act provides that "[N]othing in this act shall be construed so as to prohibit a bank from selling annuity products pursuant to state or federal law." Certain types of annuities may be considered insurance products for insurance licensing purposes and require the Bank to obtain a license from the Division of Insurance to enter into a third party agreement which includes the sharing of commissions. The percentage lease arrangement described in your letter may constitute the sharing of commissions. You should consult directly with the Division of Insurance for a determination on that issue as well as information applicable to the specific filing and license requirements required by the Division of Insurance.

It is the Division's position that a plan of operation pursuant to the Act would not be required to be filed with the Division to engage in the sale of annuities, however, the sale of annuities and other nondeposit investment products would be subject to compliance with applicable federal guidelines governing the retail sales of nondeposit investment products.<sup>2</sup> As you know, these guidelines, similar to the Act, require specific consumer disclosures concerning the nature of the investment products; require separate physical locations for on-premises sales and require that sales are made by specifically designated and trained personnel.<sup>3</sup> In addition, agreements with third parties should contain provisions noted in the guidelines. Should the Bank seek to engage in the sale of insurance products, other than the proposed annuity products, a Plan of Operation would be required to be filed with the Division prior to engaging in such activity. As noted above, matters related to the applicable insurance licensing and other filing requirements should be addressed directly with the Division of Insurance.

Please be advised that the implementation of the Bank's nondeposit investment product sales, including agreements with third parties, is subject to review and verification by staff of the Division through the examination procedures of the Financial Institution Supervision Unit.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from that presented may result in a different position statement by the Division.

Sincerely,



Joseph A. Leonard, Jr.  
Deputy Commissioner of Banks  
and General Counsel

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ccDivision of Insurance

<sup>1</sup> See, e.g., Mass. Gen. L. ch. 167F, §2, para. 25 and Nationsbank v. Valic, 115 S. Ct. 810 (1995).

<sup>2</sup> The Interagency Statement on Retail Sales of Nondeposit Investment Products (Fed. Banking L. Rep. (CCH) Pars. 70-001-70-119, February 15, 1994) contains guidelines for the sale of nondeposit investment products, which include annuities.

<sup>3</sup> See *id.*