

§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).

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