



BULLETIN

B-90-4

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Recent decisions by the Office of the Comptroller of the Currency allowing national banks to sell both variable and fixed rate annuities have prompted numerous inquiries as to whether state-chartered banks may sell these products. In 1987 the OCC concluded that a national bank located in Tennessee may sell variable rate annuities. The basis for the OCC's position is that variable rate annuities are essentially securities and national banks have long had the authority pursuant to their powers incidental to banking to sell securities for the accounts of others.

Sales of securities by state-chartered banks are governed by state statutes (T.C.A. 45-2-1801 *et seq.*) and regulations (Chapter 0180-19 of the Rules of the Tennessee Department of Financial Institutions - a copy of which is attached to Bulletin B-90-3 and enclosed herein). It is the position of this Department that, to the extent a variable rate annuity is a security, the sale of this product by a state-chartered bank would be governed by the above statutes and regulations. Therefore, in order to sell variable rate annuities, a state-chartered bank must, pursuant to Chapter 0180-19, apply for and receive authorization from this Department.

More recently, the OCC has opined that national banks may sell fixed rate annuities, reasoning that such products are in essence financial instruments which national banks have the authority to sell under their incidental powers. This Department recognizes the need for state-chartered banks to remain competitive with national banks, and therefore takes the position that state-chartered banks may, pursuant to Tennessee's "wild card" statute, T.C.A. Section 45-2-601, sell fixed rate annuities. However, the Tennessee Department of Commerce and Insurance has expressed the belief that fixed rate annuities are insurance products, and therefore, T.C.A. Section 56-6-201 prohibits any bank subsidiary a bank holding company from selling fixed rate annuities. Accordingly, the Department of Commerce and Insurance has represented that it will request an Attorney General's opinion to clarify this issue. However, the Department of Commerce and Insurance has stated that, pending the release of an Attorney General's Opinion on this issue, it will not take action against any state-chartered bank which has been authorized by this

Department to sell fixed rate annuities. Banks seeking authority to sell fixed rate annuities should address inquiries to Mark C. McDowell, Program Administrator-Applications at the Department's address. Telephone: (615) 741-6013.

Any questions concerning legal issues regarding the sale of either variable or fixed rate annuities may be addressed to Staff Attorney Roger Thomas at (615) 741-0346.