

May 2, 2012

The Honorable Steven T. James  
Clerk of the House of Representatives  
State House, Room 145  
Boston, Massachusetts 02133

Dear Mr. James:

Enclosed for filing please find the Division of Banks' (the "Division") summary of its proposed amendments to 209 CMR 50.00 *et seq.*, *Parity with Federal Credit Unions* (the "Parity Regulations"), which are the implementing regulations for Massachusetts General Laws chapter 171, section 6A. This statute authorizes the Commissioner of Banks to propose regulations, subject to Legislative review, to authorize activities that are available to federally chartered credit unions in order to make the state charter more competitive. A copy of the statute is attached to this letter. This summary and a copy of the proposed amendments, found at Appendix A, are required to be filed with your office pursuant to the statute. The Division's required statement that it has complied with the pertinent provisions of Massachusetts General Laws chapter 30A is found at Appendix B.

### **Summary of Proposed Amendments**

The primary purpose of the proposed amendments is to update the Parity Regulations to clarify the authority of statechartered credit unions regarding the purchase of and participation in certain loans. These amendments are being proposed as part of an extensive review by the Division of provisions of Chapter 454 of the Acts of 2008 and the subsequent amendments to streamline and reorganize the Parity Regulations effective August 20, 2010. The Division currently believes that some questions on the scope of the 2008 Act will be addressed by inserting certain provisions back into the Parity Regulations. The authorities for the purchase and sale of loan portfolios; the purchase of loans from federally-insured credit unions; consumer loan participations; and non-residential real estate loan participations that previously were set forth in the Parity Regulations are proposed to be restored. Additional technical changes, including amendments to the authority to accept non-member deposits to delete the reference to institutions insured by the Federal Deposit Insurance Corporation, and the substitution of the term "in troubled condition" for the term "significantly undercapitalized" throughout the Parity Regulations, are also proposed.

As summarized below, the proposed amendments are divided into two general categories: restored authorities and technical amendments.

#### **A. Restored Authorities**

The following authorities are proposed to be restored to the Parity Regulations:

- Authority for the purchase and sale of loan portfolios;
- Authority for consumer loan participations;
- Authority for non-residential real estate loan participations; and
- Authority for the purchase of loan portfolios from any federally insured credit union.

## **B. Technical Amendments**

There are several technical amendments proposed as well. The authority to accept non-member deposits is proposed to be amended in order to delete the reference to institutions insured by the Federal Deposit Insurance Corporation, to remain consistent with federal regulation. The words “significantly undercapitalized” are deleted throughout the regulation, and replaced with the words “in troubled condition” to improve the consistency of the terminology to describe the regulatory status of a state-chartered credit union. In addition, several changes to citations, including cross references, are also proposed.

### **Section-by-Section Summary**

A section-by-section summary of the proposed amendments to 209 CMR 50.00 *et seq.* and additional comments follow. It should be noted that citations below are to the proposed amendments to the Parity Regulations.

#### **50.04        Definitions**

The definition of “significantly undercapitalized” is deleted.

#### **50.06        Application Process to Conduct Certain Activities**

##### **50.06(1)(a)    *General***

Technical correction to replace the words “significantly undercapitalized” with “in troubled condition”.

##### **50.06(3)        *Activities Subject to Application and Approval***

##### **50.06(3)(e)    *Additional Non-Member Deposits***

The term “financial institution” is replaced with “credit union” and the reference to the “Federal Deposit Insurance Corporation” is deleted to clarify that this authority is for non-member deposits of a credit union insured by the National Credit Union Administration (“NCUA”). **50.06(3)(g)    *Purchase and Sale of Loan Portfolios***

The authority requiring an application to and approval by the Division relative to the purchase and sale of loan portfolios is restored.

##### **50.06(3)(h)    *Consumer Loan Participations***

The authority relative to consumer loan participations is restored.

##### **50.06(3)(i)    *Non-Residential Real Estate Loan Participations***

The authority relative to non-residential real estate loan participations is restored.

##### **50.06(3)(j)    *Additional Powers***

Technical correction to change the citation from 209 CMR 50.06(3)(g) to 209 CMR 50.06(3)(i), and update internal cross references.

**50.07**            **Credit Union Service Organizations**

**50.07(1)**        ***Application Process to Conduct Certain Activities Relative to CUSOs***

Technical correction to replace the words “significantly undercapitalized” with “in troubled condition”.

**50.07(3)**        ***Notice Process to Conduct Certain Activities Relative to CUSOs***

**50.07(3)(a)**    ***General***

Technical correction to replace the words “significantly undercapitalized” with “in troubled condition”.

**50.08**            **Expedited Review Process to Conduct Certain Activities**

**50.08(1)**        ***General***

Technical correction to replace the words “significantly undercapitalized” with “in troubled condition”.

**50.09**            **Notice Process to Conduct Certain Activities**

**50.09(3)(d)**    ***Purchase and Sale of Loan Portfolios***

The authority requiring notice to the Division relative to the purchase and sale of loan portfolios is restored.

**50.09(e)**        ***Additional Powers***

Technical correction to change the citation from 209 CMR 50.09(3)(d) to 209 CMR 50.09(3)(e), and update internal cross references.

**50.10**            **Pilot Investment Program**

Technical correction to replace the words “significantly undercapitalized” with “in troubled condition”.

**50.11**            **Activities Requiring No Application or Notice**

**50.11(1)-(3)**    ***General***

Technical corrections to replace the words “significantly undercapitalized” with “in troubled condition” and update internal cross references.

**50.11(4)(h)**    ***Purchase of Loan Portfolios from Any Federally Insured Credit Union***

The authority requiring neither an application nor notice to the Division relative to the purchase of loan portfolios from any federally insured credit union is restored.

**50.11(4)(i) Purchase and Sale of Loan Portfolios**

The authority requiring neither an application nor notice to the Division relative to the purchase and sale of loan portfolios is restored.

**50.11(4)(j) Additional Powers**

Technical correction to change the citation from 209 CMR 50.11(4)(h) to 209 CMR 50.11(4)(j), and update internal cross references.

**Public Hearing**

A public hearing on these amendments was held pursuant to Massachusetts General Laws chapter 30A on Wednesday, April 25, 2010 at 10:00 a.m. and written comments were accepted through 5:00 p.m. on the same date. Oral and written comments in support of the proposed amendments were received from the credit union trade association. There was no opposition offered. No other comments were received before the end of the comment period.

**General Background on the Parity Regulations Amendment Process**

The Parity with Federal Credit Union regulations had been authorized by the enactment of Chapter 223 of the Acts of 1998, *An Act Relative to State-Chartered Credit Unions* (the "Act"), which authorized the Division to propose regulations that would grant state-chartered credit unions certain expanded powers enjoyed by federally-chartered credit unions. This Act amended Massachusetts General Laws chapter 171, *The Massachusetts Credit Union Act*, by inserting a new section 6A, which permits state-chartered credit unions to exercise certain powers granted to federal credit unions under the Federal Credit Union Act<sup>1</sup>. In addition, this provision specifically charged the Commissioner of Banks with promulgating regulations authorizing state-chartered credit unions to exercise such federal credit union powers not otherwise prohibited by Massachusetts law. The Act required the Division's proposed regulations to be subject to Legislative review. Under the law, the Division is precluded from filing final regulations until 90 days after they have been submitted to the Legislature.

The Act's purpose was to ensure that state-chartered credit unions remain competitive with their federally-chartered credit union counterparts in terms of permissible powers and activities. Toward that end, the Parity Regulations, and the amendments proposed, grant state-chartered credit unions certain expanded powers enjoyed by federally-chartered credit unions in order to promote "competitive equality" between state-chartered credit unions and federally-chartered credit unions. In addition, the Parity Regulations cover all adequately-capitalized and eligible credit unions regardless of size, so all eligible small- and medium-sized credit unions are able to take full advantage of the expanded authorities. In general, the Division's goal in proposing amendments to the Parity Regulations is to continue to offer new authorities in a manner that will make it easier for eligible credit unions to implement and remain competitive. However, as noted earlier and detailed herein, this set of amendments does not authorize powers to credit unions that did not exist in the regulations previously approved by the Legislature.

The Parity Regulations were not intended to be a definitive or static listing of federally-chartered credit union powers. The Legislature, the Division and the credit union movement all view the federally-chartered credit union parity process as a continuously evolving one. Consequently, it was intended that additional federally-chartered credit union powers would be adopted on a periodic basis to reflect changes in federal credit union laws, official interpretations, and operating conditions.

Please contact me at (617) 956-1510 or the Division's Legal Unit at (617) 956-1520, if there are any questions regarding these proposed regulations.

Sincerely,

David J. Cotney  
Commissioner of Banks

<sup>1</sup>12 U.S.C. §§1751 *et seq.*