



# The Commonwealth of Massachusetts

Office of the Commissioner of Banks

One South Station

Boston, Massachusetts 02110

MITT ROMNEY  
GOVERNOR

KERRY HEALEY  
LIEUTENANT GOVERNOR

STEVEN L. ANTONAKES  
COMMISSIONER OF BANKS

BETH LINDSTROM  
DIRECTOR  
OFFICE OF CONSUMER AFFAIRS AND  
BUSINESS REGULATION

July 18, 2005

Jackie K. Weisberg  
Epstein Becker & Green, P.C.  
Two Gateway Center, 12<sup>th</sup> Floor  
Newark, New Jersey 07102-5003

Dear Ms. Weisberg:

This letter is in response to your March 4, 2005 correspondence to the Massachusetts Division of Banks (the "Division"), relative to whether certain activities would require licensing under the Commonwealth's premium financing laws.

In your letter, you advise that an equipment leasing company requires its customer-lessees to obtain insurance for the leased equipment, with the leasing company as the named insured. If the lessee does not obtain the insurance, the leasing company obtains a policy from an insurance company, paying the entire premium for the policy up front. The leasing company then bills the lessee for the amount of the premium on an installment basis, adding on interest and administrative fees.

In Massachusetts, insurance premium financing is governed under the provisions of General Laws chapter 255C and 209 CMR 20.00 *et seq.* Section 1 of chapter 255C defines a premium finance agreement as "a promissory note or other written agreement by which an insured promises or agrees to pay to, or to the order of, an insurance agent or broker the amount advanced or to be advanced under the agreement to an authorized insurer or to an insurance agent or broker in payment of premiums on an insurance contract, together with a charge as authorized and limited by law..." Thus, a premium financing agreement is one in which the *insured* agrees to pay to the lender or its agent the amount advanced in payment of premium on an insurance contract. In this case, as the insured party in all instances would be the leasing company, the arrangement described in your letter would not be considered by the Division to involve premium financing.

Because the Corporation's activities were not described in detail, the Division is unable to determine whether or to what extent other provisions of Massachusetts law may apply to its operations. For example, to the extent the Corporation leases equipment to consumers, the related insurance financing may be considered as the making of a small loan, subject to a licensing requirement and other provisions of General Laws chapter 140, section 96. Moreover, and again provided that the leasing activities involved consumers, the related insurance transaction could be considered as an extension of credit, subject to the disclosure requirements of General Laws chapter 140D, the Massachusetts Truth and Lending Law, and its implementing regulations 209 CMR 32.00 *et seq.* Finally, please be aware that the Corporation's activities may be subject to laws and regulations that are not within the jurisdiction of this agency. In that regard, you may wish to discuss this matter with the Division of Insurance.

The statute and regulations referenced above are available on the Division's website at <http://www.mass.gov/dob/>. The conclusions reached in this letter are based solely on the facts presented. Fact patterns which differ from that presented may result in a different position statement by the Division.

Sincerely,

Joseph A. Leonard, Jr. <sup>(48)</sup>

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