


# Repeal of 209 CMR 47.00: Parity With Federal Banks or Out-Of-State Banks

By the [Division of Banks](#)

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**NOTE: This regulation is repealed in its entirety effective December 4, 2015.**

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### **47.01: Purpose and Scope**

The purpose of 209 CMR 47.00 *et seq.* is to specify authorized powers and activities of banks, pursuant to M.G.L. c. 167F, §2, clause 31, and to establish procedures and requirements, applicable to banks seeking to exercise additional or more flexible parallel powers granted to or conduct activities authorized for federal banks under Federal law or for banks chartered by another state which have been approved by the Federal Deposit Insurance Corporation, to the extent that such powers are not otherwise prohibited under State law.

In determining whether or not to authorize any power or activity, the Commissioner shall also determine whether or not competition among banks will be unreasonably affected and whether public convenience and advantage will be promoted.

A bank may, under M.G.L. c. 167F, §2, clause 31 and 209 CMR 47.00 *et seq.*, exercise only those powers and engage in only those activities authorized by the Commissioner as set forth in 209 CMR 47.00 *et seq.* Powers and activities not so authorized are prohibited.

## **47.02: Applicability and Relationship to Other State Law**

(1) 209 CMR 47.00 *et seq.* shall apply only to banks as defined under 209 CMR 47.04.

(2) Any power authorized and exercised pursuant to 209 CMR 47.00 *et seq.* shall be independent from, and in addition to, any other powers granted to banks under applicable Massachusetts General Laws, or regulations promulgated thereunder. The express and incidental powers granted to banks under the Massachusetts General Laws are not limited or otherwise restricted by 209 CMR 47.00 *et seq.*

(3) Any lending power authorized and exercised pursuant to 209 CMR 47.00 *et seq.* shall be subject to the limitations on total obligations to one borrower found in M.G.L. c. 167E, § 14, unless otherwise specified herein.

## **47.03: Advisory Opinions**

The Commissioner may issue from time to time advisory rulings, pursuant to M.G.L. c. 30A § 8, interpreting any provision of the regulations issued hereunder. Each regulation or officially published interpretation or guideline issued by a federal bank regulatory agency which interprets a provision of federal law, as defined by 209 CMR 47.04, similar in substance to a provision of 209 CMR 47.00 *et seq.*, shall, until rescinded by such bank regulatory agency, be deemed by the Commissioner to be an advisory ruling issued under M.G.L. c. 30A, § 8; provided, however, that the Commissioner may reject such a regulation or officially published interpretation or guideline issued by a federal bank regulatory agency.

## **47.04: Definitions**

As used in 209 CMR 47.00 *et seq.*, the following words shall, unless the context otherwise requires, have the following meanings:

Adequately Capitalized. A bank shall be deemed adequately capitalized if the bank meets the definition of an adequately capitalized institution as defined under the prompt corrective action provisions of the Federal Deposit Insurance Act, 12 U.S.C. § 1831(o), and the Federal Deposit Insurance Corporation's Capital Adequacy Regulations, 12 CFR § 325.103.

Bank. A bank shall include a state-chartered savings bank, co-operative bank, trust company, or any other bank charter form hereinafter established under the Massachusetts General Laws. A bank shall also include a

Massachusetts branch of an out-of-state bank, as defined by M.G.L. c. 167 § 1, provided, however, that the laws of such bank's chartering state authorize the exercise of such powers.

Commissioner, the Commissioner of Banks.

Federal bank regulatory agency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency or any other applicable federal bank regulatory agency.

Federal law, the National Bank Act, 12 U.S.C. § 38 *et seq.*, and its implementing regulations; any other federal statute or regulation authorizing a national bank to engage in activities; and any officially published interpretation or guideline issued thereunder, by the Office of the Comptroller of the Currency, or other federal bank regulatory agency. An "officially published guideline" must be formally published and circulated by the Office of the Comptroller of the Currency, another federal bank regulatory agency, or a commercial publisher and be generally available to the public. This phrase shall not include a private, unpublished staff attorney letter issued to a financial institution.

Well capitalized. A bank shall be deemed to be well capitalized if the bank meets the definition of a well capitalized institution as defined under the prompt corrective action provisions of the Federal Deposit Insurance Act, 12 U.S.C. § 1831(o), and the Federal Deposit Insurance Corporation's Capital Adequacy Regulations, 12 CFR § 325.103.

Troubled condition. A bank shall be deemed to be in troubled condition if it:

- (a) has a composite rating of 4 or 5 under the Uniform Financial Institutions Rating System (CAMELS);
- (b) is subject to a cease and desist order, a consent order, or a formal written agreement, unless otherwise informed in writing by the Commissioner or an applicable federal bank regulatory agency; or
- (c) is informed in writing by the Commissioner or an applicable federal bank regulatory agency that as a result of an examination the bank has been designated in "troubled condition" for purposes of 209 CMR 47.04.

## **47.05: Bank Eligibility to Conduct Activities**

(1) Financial and Managerial requirements. Any bank engaging in an activity pursuant to 209 CMR 47.00 *et seq.* must possess the necessary financial and managerial resources to ensure such activity will not adversely affect the institution's safety and soundness.

(2) Policy and procedure requirements. Any bank engaging in an activity pursuant to 209 CMR 47.00 *et seq.* must have in place adequate policies and procedures governing the performance of such activity by the bank and its employees, to minimize any credit, market, liquidity, operational, legal and reputational risks to the bank.

(3) Satisfactory CRA rating requirement. Any bank engaging in an activity pursuant to 209 CMR 47.00 *et seq.* must have received at least a satisfactory CRA rating at the most recent examination conducted by the Commissioner or other applicable federal bank regulatory agency at the time any authority to engage in activities under 209 CMR 47.00 through 209 CMR 47.08, is sought.

(4) Review. Any activity undertaken by a bank pursuant to 209 CMR 47.00 *et seq.* shall remain subject to periodic review by the Commissioner. The Commissioner may modify, curtail, rescind or otherwise limit a bank's authority to conduct any activity pursuant to 209 CMR 47.00 *et seq.* through a formal or informal remedial action if a bank ceases to meet any applicable requirements, based upon a report of examination conducted by the Commissioner or other applicable federal bank regulatory agency, or based on other reliable information.

## **47.06: Application Process to Conduct Certain Activities**

(1) General.

(a) A bank that is adequately capitalized, and has not been notified that it is in troubled condition, may engage in any activity listed under 209 CMR 47.06(3) by submitting an application to, and receiving approval from, the Commissioner before commencing the activity, provided, however, that such a bank may also apply and receive approval from the Commissioner on a discretionary basis pursuant to 209 CMR 47.06, to engage in activities listed under 209 CMR 47.07(3), 209 CMR 47.08(3), and 209 CMR 47.09(2)(b).

(b) A bank that is well capitalized, and has not been notified that it is in troubled condition may apply and receive approval from the Commissioner to engage in any activity listed under 209 CMR 47.06(3) by submitting an application to, and receiving approval from the Commissioner before commencing the activity, provided however, that such a bank may also apply and receive an expedited approval from the Commissioner to engage in such an activity pursuant to 209 CMR 47.07(1).

(2) Application. The application must include a complete description of the bank's proposed activity, the bank's investment in such activity, and a representation and undertaking that the activity will be conducted in accordance with state and federal law. The application must also provide any other information the Commissioner may require.

(3) Activities Subject to Application and Approval. A bank may engage in the following activities pursuant to 209 CMR 47.06(1):

(a) Temporary Branch Offices. A bank may establish and operate a temporary branch office, to be open for less than a year, or on an intermittent basis at a designated site, subject to the investment limitations to purchase, hold or lease real estate suitable for the transaction of business, found at M.G.L. c. 167F § 2, clause 9.

(b) Corporate Affiliates and Subsidiaries.

1. Permissible Investments. Subject to the limitations found in 209 CMR 47.06(3)(b)2., a bank may invest in the capital stock or shares of one or more, wholly-owned or less than wholly-owned entities, including limited liability corporations, limited liability partnerships, business trusts and corporations, organized under the laws of any state. Such corporate affiliates and subsidiaries may be formed to conduct any activity or to perform any function the bank itself is empowered to perform directly under the Massachusetts General Laws or 209 CMR 47.00, *et seq.*, or to conduct any activity or to perform any function permitted under the so called "leeway" investment authority of M.G.L. c. 167F, § 2, clause 8.

2. Investment Requirements. A bank may invest in an entity pursuant to 209 CMR 47.06(3)(b)1., provided that the bank owns more than 50% of the voting (or similar type of controlling) interest, or otherwise controls the entity, and no other party controls more than 50% of the voting (or similar type of controlling) interest, provided however, that the following types of entities shall not be subject to the requirements herein:

a. An entity organized primarily to promote the public welfare, and invested in by the bank pursuant to 209 CMR 47.07(3)(c)2.

b. An entity which the bank has acquired, in good faith, shares through foreclosure on collateral, by way of compromise of a doubtful claim, or to avoid a loss in connection with a debt previously contracted.

(c) Minority or Non-controlling Interests in Certain Entities.

1. General. A bank may hold minority or non-controlling investments, directly or indirectly through a subsidiary formed under M.G.L. c.167F, § 2, clauses 7. and 8. or 209 CMR 47.06(3)(b), in entities other than those organized primarily to promote the public welfare or acquired by the bank, in good faith through foreclosure, by way of compromise of a doubtful claim or to avoid loss in connection with debt previously contracted subject to the requirements of 209 CMR 47.06(c)1. through 4..

2. Investment Conditions. Such investment shall comply with the following conditions:

a. The activities of the enterprise in which the investment is made must be limited to activities that are a part of, or incidental to, the business of banking;

b. the bank must be able to prevent the enterprise from engaging in activities that do not meet the requirements of 209 CMR 47.06(3)(c)2.a. or to be able to withdraw its investment;

c. the bank's loss exposure must be limited, as a legal and accounting matter, and the bank shall not have open-ended liability for the obligations of the enterprise; and

d. the investment must be convenient and useful to the bank in carrying out its business and not a mere passive investment unrelated to the applicant bank's business.

3. Limitations. The Commissioner may impose conditions on any such investment including, but not limited to, the permissible activities of the enterprise, the regulation, supervision and examination of the enterprise and prior approval of any change in ownership structure.

4. Permissible Investments. Investments in enterprises engaging in the following types of activities are permissible provided that they meet the requirements of 209 CMR 47.06(c)1. through 3.:

- a. Debt suspension agreements with borrowers;
- b. Vehicle service contracts;
- c. Medical claims processing;
- d. Digital certification and digital signature certification repository services;
- e. Point of sale terminal leasing;
- f. Health care payment and information processing services;
- g. Dealing in and investing in the securities of states and their political subdivisions;
- h. Electronic toll payment systems;
- i. Electronic fund transfers, electronic commerce and electronic data interchange network design, development, marketing and maintenance;
- j. Personal property leasing; and,
- k. Any other activity that meets the requirements of 209 CMR 47.06(c)1. through 3. or is otherwise authorized by 12 CFR 5.36(e).

(d) Financial Subsidiaries.

1. Permissible Activities. A well capitalized bank may engage in the following authorized activities through a financial subsidiary:

- a. Activities that are financial in nature and activities incidental to a financial activity, authorized pursuant to 12 U.S.C. 24a, including:
  - i. Lending, exchanging, transferring, investing for others, or safeguarding money or securities;
  - ii. Providing financial, investment, or economic advisory services, including advising an investment company as defined in section 3 of the Investment Company Act (15 U.S.C. 80a-3);
  - iii. Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly;
  - iv. Underwriting, dealing in, or making a market in securities;
  - v. Engaging in any activity that the Board of Governors of the Federal Reserve System has determined, by order or regulation in effect on November 12, 1999, to be so closely related to banking or managing or controlling banks as to be a proper incident thereto (subject to the same terms and conditions contained in the order or regulation, unless the order or regulation is modified by the Board of Governors of the Federal Reserve System);

- vi. Engaging, in the United States, in any activity that a bank holding company may engage in outside the United States and the Board of Governors of the Federal Reserve System has determined, under regulations prescribed or interpretations issued pursuant to section 4(c)(13) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(13)) as in effect on November 11, 1999, to be usual in connection with the transaction of banking or other financial operations abroad;
- vii. Activities that the Secretary of the Treasury in consultation with the Board of Governors of the Federal Reserve System, determines to be financial in nature or incidental to a financial activity; and
- viii. Engaging in any other financial activities authorized by 12 CFR §5.39

b. Activities that are financial in nature and activities incidental to a financial activity directly or indirectly authorized under M.G.L. c. 167 through M.G.L. c. 167H.

2. Limitations. Activities that may be conducted by a subsidiary pursuant to 209 CMR 47.06(3)(d) shall strictly conform to the requirements of 209 CMR 47.05, provided, however, that the bank must maintain a satisfactory CRA rating at all times.

(e) Merger with Nonbank Subsidiaries or Affiliates. A bank may merge with one or more of its nonbank subsidiaries or affiliates.

(f) Real Estate Development Loans. A bank may through a wholly-owned subsidiary develop residential or commercial real estate up to a maximum amount of twenty per cent of the bank's Tier 1 capital.

(g) Net Leases or Installment Sales of Real Estate. A bank may enter into net leases or installment sales of real estate to serve the home finance needs of its customers, who are prohibited by religious principles from paying interest and therefore from obtaining traditional mortgages, subject to such terms and conditions as the Commissioner shall approve.

(h) Electronic Activities. A bank may engage in the following electronic activities, subject to such terms and conditions as the Commissioner shall approve:

1. Electronic activities that are part of, or incidental to, the business of banking, as any such activities may be authorized pursuant to 12 CFR §7.5001;
2. Furnishing of products and services by electronic means and facilities, as any such activities may be authorized pursuant to 12 CFR §7.5002;
3. Composite authority to engage in electronic activities, as any such activities may be authorized pursuant to 12 CFR §7.5003;

4. Sale of excess electronic capacity and by-products, as any such activities may be authorized pursuant to 12 CFR §7.5004;
5. Bank acting as digital certification authority, as any such activities may be authorized pursuant to 12 CFR §7.5005;
6. Data processing, as any such activities may be authorized pursuant to 12 CFR §7.5006;
7. Correspondent services, as any such activities may be authorized pursuant to 12 CFR §7.5007; and
8. Shared electronic space, as any such activities may be authorized pursuant to 12 CFR §7.5010.

(i) Appraisal Services. A bank may perform real estate appraisals in connection with both their loans and loans made by other financial institutions. A bank may perform appraisals for the occasional customer who requests one even though there is no associated loan transaction. A bank's operating subsidiaries may perform real estate appraisals for general customers, even if no bank loan is involved, provided that the activity constitutes no more than 10 percent of the subsidiary's business. All appraisal services are subject to such terms and conditions as the Commissioner shall approve.

## **47.07: Expedited Review Process to Conduct Certain Activities**

(1) General. A bank that is well capitalized and has not been notified that it is in troubled condition may engage in the activities listed in 209 CMR 47.07(3) by submitting an application to the Commissioner and receiving approval thereof. Such an application shall be deemed approved by the Commissioner 30 days after the filing is received by the Commissioner, unless the Commissioner notifies the bank prior to that date that the filing is not eligible for expedited review.

(2) Application. The application must include a complete description of the bank's proposed activity, the bank's investment in such activity, and a representation and undertaking that the activity will be conducted in accordance with state and federal law. Any bank granted an approval to conduct an activity pursuant to 209 CMR 47.07(1) is deemed to have agreed to conduct the activity in a manner consistent with applicable guidelines. The Commissioner may also impose additional conditions in connection with any approval granted under 209 CMR 47.07(1).

(3) Activities Eligible for Expedited Review. A bank may exercise the following powers pursuant to 209 CMR 47.07(1):

(a) Branching and Non-branching Activities.

1. Temporary Branch Offices. A bank which received, as a result of its most recent examination by the Commissioner or other applicable federal bank regulatory agency, an outstanding CRA rating, may establish and



operate a temporary branch office, to be open for less than a year, or on an intermittent basis at a designated site, subject to the investment limitations to purchase, hold and lease real estate suitable for the transaction of business, found at M.G.L. c. 167F, § 2, clause 9.

## 2. Messenger Services.

a. Non-branching Functions. A bank may establish and use a messenger service to transport items relevant to the bank's transactions with its customers without regard to branching limitations found in applicable state and federal law, provided such service does not receive deposits, pay checks, or lend money.

b. Branching Functions. A bank and its customers may use a messenger service to pick up from, and deliver to, customers items, including deposits, check payments, and loan money, without regard to any branching limitations in applicable State and Federal law, provided such service is established and operated by an independent third party.

c. Service Costs. A bank may defray all or part of the costs incurred by a customer in transporting items through a messenger service. Payment of those costs may only cover expenses associated with each transaction involving the customer and the messenger service. The bank may impose terms, conditions, and limitations that it deems appropriate with respect to the payment of such costs.

## (b) Lending.

1. Mortgage or Home Equity Loans. A bank may engage in making permanent mortgage or home equity loans subject to the *Interagency Guidelines for Real Estate Lending Policies*, found at 12 CFR § 365, provided, however, that the bank's directors or trustees shall establish appropriate underwriting standards, including maximum aggregate and individual loan limitations for such loans. The following requirements shall be mandatory:

a. 90% to 100% LTV loans. A bank making loans for owner occupied, one to four family residential property with a loan-to-value (LTV) ratio equal to or greater than 90%, but not exceeding 100%, shall obtain appropriate credit enhancement in the form of mortgage insurance or readily marketable collateral, provided, however, that such loans made pursuant to 209 CMR 47.07(3)(b) for an amount less than \$35,000.00 shall not require such credit enhancement.

b. 90% to 100% LTV loan reporting requirements. Any bank making loans for owner occupied, one to four family residential property with an LTV ratio exceeding 90%, shall identify any such loans in its records, and the aggregate amount of such loans shall be reported quarterly to the bank's board of directors.

c. 90% to 100% LTV aggregate loan limits. The aggregate amount of loans with an LTV ratio greater than 90%, but not exceeding 100%, that any bank may make shall not exceed 100% of the bank's total capital.

2. Financing Mutual Fund Distributors. A bank may make loans to a non-affiliated mutual fund distributor in order to finance commissions advanced to securities brokers.

3. Leasing. A bank may engage in lease financing transactions subject to applicable provisions of 12 U.S.C. § 84, and 12 CFR § 23 *et seq.*

(c) Investments.

1. Edge Act and Agreement Corporations. A bank may increase its aggregate investment in the capital stock of one or more Edge Act or Agreement corporations, organized under 12 U.S.C. § 601 *et seq.* for the purpose of engaging in international or foreign banking or other international or foreign financial operations, or banking or other financial operations in a dependency or insular possession of the U.S., and subject to the jurisdiction and supervision of the Board of Governors of the Federal Reserve System, up to 20% of the bank's capital and surplus, with the Commissioner's approval, notwithstanding the investment limitations found in M.G.L. c. 167F, § 2, clause 6.

2. Community Development and Other Public Welfare Investments. An adequately capitalized bank may make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income areas or individuals, such as by providing housing, services, or jobs, subject to a 5% limitation of capital and surplus, unless the bank is well capitalized and obtains approval from the Commissioner to make such investments in an amount greater than 5%, but not exceeding 10% of the bank's capital and surplus. The limitations set forth hereunder are independent from, and in addition to, those set forth under M.G.L. c. 167F, § 2, clause 8.

3. Small Business Investment Corporations. A bank may invest in a small business investment corporation in organization and prior to it obtaining a license from the Small Business Administration under 15 U.S.C. §682. Such investment may be made through either the purchase of stock in a corporation or the purchase of a limited partnership interest up to a maximum investment of 5% of the bank's capital and surplus.

## **47.08: Notice Process to Conduct Certain Activities**

(1) General. A bank that is well capitalized and has not been notified that it is in troubled condition may engage in any activity listed under 209 CMR 47.08(3), by providing the Commissioner written notice within ten days after commencing the new activity.

(2) Notice. The written notice must include a complete description of the activity conducted, the bank's investment in such activity, and a representation and undertaking that the activity will be conducted in accordance with state and federal law. Any bank filing notice pursuant to 209 CMR 47.08(1) is deemed to have agreed to conduct the activity in a manner consistent with applicable guidelines.

(3) Activities Subject to Notice. A bank may engage in the following activities pursuant to 209 CMR 47.08(1):

(a) Products and Services.

1. Tax Preparation Services. A bank may assist for a fee in the preparation of tax returns to the extent that the bank does not act as an expert tax consultant but as the provider of a service preparing records.

2. Payroll Issuing Services. A bank may disburse payroll funds from the deposit account of a customer by direct payment to an employee of the customer, by crediting an employee's account at the disbursing bank, or by forwarding funds to another institution in which an employee maintains an account.

3. Data Processing Services. A bank may perform, provide, or deliver through electronic means and facilities any activity, function, product, or service that it is otherwise authorized to perform, provide or deliver. A bank may also, in order to optimize the use of the bank's resources, market and sell to third parties electronic capacities acquired or developed by the bank in good faith for banking purposes.

4. Debt Cancellation Agreements.

a. A bank may enter into a contract to provide for loss arising from cancellation of an outstanding loan upon the death or disability of a borrower.

b. A bank may also impose an additional charge and establish any necessary reserves in order to enable the bank to enter into such debt cancellation contracts, subject to the limitations set forth pursuant to M.G.L. c. 255, § 12G, and M.G.L. c. 167F, § 2, clauses 16. and 17.

5. Alternative Media Sales. A bank may sell, provide, or deliver through its branch offices or through electronic means alternate media, including, but not limited to postage, transit fares or passes, event tickets and gift certificates.

6. Internet Access Services. A bank may sell, provide or deliver internet access services to its customers and non-customers directly or indirectly through the bank, a wholly owned subsidiary established under M.G.L. c. 167F, § 2, clause 7., a corporate affiliate or subsidiary established under 209 CMR 47.06(3)(b), or a minority or non-controlling investment under 209 CMR 47.06(3)(c).

(b) Locations and Facilities.

1. Deposit Production Office. A bank may establish a deposit production office which is open to the public and provides deposit-related services such as distributing account information and applications, but which does not receive deposits or conduct other banking activities.

2. Loan Production Office. A bank may establish a loan production office, a staffed facility other than a branch, that is open to the public and provides lending-related services such as distributing loan information and applications.

## **47.09: Activities Requiring No Application or Notice**

(1) A bank that is well capitalized and has not been notified that it is in troubled condition may engage or expand activities listed in 209 CMR 47.09(2) which have been previously conducted by the bank, without filing an application or providing notice to the Commissioner, provided the activities continue to be deemed legally permissible by the Commissioner, and the activities are conducted in accordance with any conditions previously imposed on the bank by the Commissioner. Any bank engaging in any financial planning activities under 209 CMR 47.09(2)(b) which requires registration or licensure under applicable state or federal securities laws shall be subject to the application process established under 209 CMR 47.06(1) through (3) and 209 CMR 47.07(1).

(2) A bank may engage in the following activities pursuant to 209 CMR 47.09(1):

(a) Facilities.

1. A bank may establish or expand a deposit production office or a loan production office as provided in 209 CMR 47.08(3)(b)1. and 2.
2. A bank may re-open, expand or modify the hours of a temporary office established pursuant to 209 CMR 47.06(3)(a) or 47.07(3)(a)1.

(b) Financial Planning.

1. A bank may act as an investment or financial adviser, (not involving the exercise of investment discretion), or provide financial counseling, including:

- a. Serving as the advisory company for a mortgage or real estate investment trust;
- b. Furnishing general economic information and advice, general economic statistical forecasting services, and industry studies;
- c. Providing financial advice to state or local governments or foreign governments with respect to issuance of securities.
- d. Providing tax planning and preparation.
- e. Providing consumer financial counseling.

2. A bank may provide financial and transactional advice to customers and assist customers in structuring, arranging and executing financial transactions (provided that the bank and its affiliates do not participate as a principal), including mergers, acquisitions, divestitures, joint ventures, leveraged buyouts, recapitalizations, capital structurings, and financial transactions (including private and public financings and loan syndications), and arranging commercial real estate equity financing.

(c) Mortgage Loan Purchases.

1. General. A bank may purchase, participate in, or service, commercial or residential mortgage loans, individually or in pools of loans, originated by other banks or creditors without regard to the loan to value, amortization, tax escrow, appraisal and other requirements of M.G.L. c.167E, §§ 2 through 12, subject to the following conditions and limitations:

2. Conditions. A bank purchasing mortgage loans under 209 CMR 47.09(2)(c)1. shall be subject to the following requirements:

a. Prior to any purchase, the bank shall perform an independent credit analysis to determine whether a loan or portfolio of loans is consistent with sound credit underwriting standards and the bank's investment or loan purchase policies;

b. the bank's capital levels shall at all times be commensurate with the level of risk present in any purchased loan or pool of loans;

c. the bank shall maintain adequate loan loss reserves that reflect the credit risk presented by any purchased loan or pool of loans;

d. the bank shall maintain and implement appropriate risk management, accounting and internal control policies and procedures addressing risk parameters, internal loan review and monitoring practices and problem loan workout procedures; and

e. the bank shall not advance any new funds to a borrower under a purchased loan if such advance exceeds the maximum obligations of one borrower provisions of M.G.L. c.167E, § 14.

(d) Permissible Finder Activities. A bank that acts as a finder may identify potential parties, make inquiries as to interest, introduce or arrange contacts or meetings of interested parties, act as an intermediary between interested parties, and otherwise bring parties together for a transaction that the parties themselves negotiate and consummate. Permissible finder activities may include, but not be limited to, the following:

1. Communicating information about providers of products and services, and proposed offering prices and terms to potential markets for these products and services;
2. Communicating to the seller an offer to purchase or request for information, including forwarding completed applications, application fees, and requests for information to third-party providers;
3. Arranging for third-party providers to offer reduced rates to those customers referred by the bank;
4. Providing administrative, clerical, and record keeping functions related to the bank's finder activity, including retaining copies of documents, instructing and assisting individuals in the completion of documents, scheduling sales calls on behalf of sellers, and conducting marketing research to identify potential new customers for retailers;

5. Conveying between interested parties expressions of interest, bids, offers, orders, and confirmations relating to a transaction;
6. Conveying other types of information between potential buyers, sellers, and other interested parties;
7. Establishing rules of general applicability governing the use and operation of the finder services, including rules that:
  - i. Govern the submission of bids and offers to buyers, sellers, and other interested parties that use the finder service and the circumstances under which the finder service will pair bids and offers submitted by buyers, sellers, and other interested parties; and
  - ii. Govern the manner in which buyers, sellers, and other interested parties may bind themselves to the terms of a specific transaction; and
8. Any other finder activities authorized by 12 CFR §7.1002.
9. Limitation. The authority to act as a finder does not enable a bank to engage in brokerage activities that have not been found to be permissible for national banks.

REGULATORY AUTHORITY:

209 CMR 47.00: M.G.L. c. 167F, § 2, clause 31.; c. 30A, § 8.