June 29, 2006

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

Dear Mr. James:

Enclosed for filing pleased find the Division of Banks' (the "Division") summary of its proposed amendments to 209 CMR 47.00 *et seq*., *PARITY WITH FEDERAL OR OUT-OF-STATE BANKS*, which are the implementing regulations for Massachusetts General Laws chapter 167F, section 2, paragraph 31. 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.

A public hearing on these amendments was held pursuant to Massachusetts General Laws chapter 30A on Tuesday, June 20, 2006 at 1:30 p.m. and written comments were accepted through 5:00 p.m. on that same date. Oral comments and written comments were received from two entities, which were in support of the proposed regulation.

The Parity with National Banks regulations had been authorized by the enactment of section 26 of Chapter 238 of the Acts of 1996*, An Act Relative to the Banking Industry in the Commonwealth*, which authorized the Division to propose regulations that would grant state-chartered banks certain expanded powers enjoyed by national banking associations with their main offices located in the Commonwealth, subject to Legislative review. Chapter 292 of the Acts of 2002, *An Act Relative to the Powers of State Chartered Banks*, rewrote the first two sentences of General Laws chapter 167F, section 2, paragraph 31 in order to broaden the wild card powers, so-called, for state-chartered banks by authorizing such banks to exercise any power and engage in any activity that is permissible for any federal bank, not just national banks, or an out-of-state bank in accordance with regulations promulgated by the Division. The purpose of the statute, and the regulations promulgated by the Division, has been to promote competitive equality for state-chartered banks.

This bank parity regulation proposal seeks to increase current limitations relative to the authority for certain state-chartered banks with an international business to hold obligations of foreign countries. The current Massachusetts statute governing limitations on obligations, section 6 of chapter 167E of the General Laws, establishes that the obligations of a foreign government

or a political subdivision thereof are limited to 10% of the state-chartered bank's capital, and that the obligations of all foreign governments and the political subdivisions thereof shall not exceed in the aggregate a total of 50% of the bank's capital. The regulation would only be applicable to a state-chartered bank with a global custody business which has at least $5 billion of foreign currency denominated deposits ("a qualifying state-chartered bank").

There are two purposes to the proposed regulation. The first is to raise the maximum amount which a qualifying state-chartered bank may hold in obligations of a foreign government or political subdivisions thereof from 10% of capital to up to 40% of capital. The second is to exempt a qualifying state-chartered bank from the present restriction that a state-chartered bank may hold obligations of all foreign governments or political subdivisions thereof in an amount not to exceed 50% of its capital. Under the proposed regulation a state-chartered bank which has at least $5 billion of foreign currency denominated deposits would not be subject to any aggregate limitations. Such a qualifying state-chartered bank's aggregate investment in federal government obligations, however, would be subject to prudent investment practices as well as standards for safe and sound banking.

The state laws for banks that compete with Massachusetts-chartered banks as well as the regulations of the Comptroller of the Currency governing national banks, in part, provide for a higher level of obligations of a foreign country to be held by a bank. The bank parity statute, Massachusetts General Laws chapter 167F, section 2, paragraph 31, allows the Commissioner of Banks, to adopt by regulation the authorities given to federally-chartered banks or banks chartered in other states. The proposed amendment seeks to use this authority based on existing provisions in New York law.

The New York statute provides for a clear 25% of capital, surplus and undivided profits to be held in such obligations of a foreign country and political subdivisions thereof with a second authority based on certain conditions, as follows: (i) such bonds, debentures, notes or other obligations mature not less than one year after their respective dates of issuance, and, at the time of such investment, are rated in one of the three highest rating grades by an independent rating service designated by the Commissioner; (ii) such investment does not exceed 15% of the capital stock, surplus fund and undivided profits of such bank; and (iii) such investment complies with any additional limitations and conditions as the Commissioner may impose.

On May 1, 2006, the Financial Services Committee reported out favorably a redraft of Senate 614. The redraft, now Senate 2540, provides certain state-chartered banks with the authority to hold obligations of foreign countries and political subdivisions thereof up to 40% of capital, surplus and undivided profits. An aggregate limit on obligations of all foreign countries and political subdivisions thereof would not be applicable to those same banks. Senate 2540 would be applicable to only those state-chartered banks with a global custody business which have at least $5 billion of foreign currency denominated deposits. Since the parity power authority must be based in the law governing a federal or out-of-state bank, the proposed regulation only allows for the described bifurcated authority. The preference is for a clear statutory amendment.

The bank parity statute also requires Legislative review of any regulations before they become final for 90 days, which must occur while the Legislature is holding formal sessions. By acting now and filing the proposed amendment, the 90-day review process will begin, and progress will continue to be made until the end of the current session, which will end this year on

July 31, 2006. The 90-day period will continue when the Legislature's formal 2007-2008 sessions begin. If Senate 2540 is signed into law the Division would not file the final regulation to be promulgated.

The Joint Committee on Financial Services and its staff may contact me at (617) 956-1510 or the Division's Legal Unit at (617) 956-1520, if they have any questions regarding these proposed regulations.

Very truly yours,

Steven L. Antonakes
Commissioner of Banks

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