

Final Amendments

209 CMR 49.00: Insurance Sales by Banks, Credit Unions, and Lenders

Section

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49.01: Purpose and Scope

The purpose of 209 CMR 49.00 is to establish the application and approval procedures for banks, credit unions and lenders seeking to exercise insurance sales agency powers pursuant to M.G.L. c. 167F, § 2A and St. 1998, c. 129; and M.G.L. c. 171, §75B and St. 2002, c. 454, under licenses issued by the Division of Insurance pursuant to M.G.L. c. 175, § 209 and 211 CMR 142.00: *Insurance Sales by Banks and Credit Unions*. Terms and conditions governing the insurance sales activities and practices are also prescribed. The terms and conditions set forth in 209 CMR 49.06 are consumer protections mandated by M.G.L. c. 167F, § 2A(b)(1) through (9) and M.G.L. c. 171, §75B(b)(1) through (9) which ensure that such business is conducted in accordance with the consumer protection laws of the Commonwealth. These provisions are also applicable to federally chartered banks and credit unions pursuant to the cross reference set out in M.G.L. c. 175, §209. References to banks and federal banks shall include credit unions consistent with the definition of a bank or a federal bank.

49.02: Applicability and Relationship to Other State and Federal Law

(1) General. 209 CMR 49.00 shall apply to banks and lenders as defined under 209 CMR 49.03 subject to the jurisdiction of the Commissioner of Banks. Federal banks, as defined in 209 CMR 49.03, that engage in insurance sales activities shall be governed by 209 CMR 49.06, which establishes consumer protection terms and conditions applicable to such activities. The Division of Insurance, however, shall enforce the terms and conditions found within 209 CMR 49.06 with respect to federal banks pursuant to M.G.L. c. 175, § 209, and 211 CMR 142.00: *Insurance Sales by Banks and Credit Unions*. All insurance sales activities of federal banks shall be conducted in accordance with plans of operation which conform to 209 CMR 49.05(3), submitted to, and approved by, the Division of Insurance under M.G.L. c. 175, §209, and 211 CMR 142.00: *Insurance Sales by Banks and Credit Unions*.

(2) Insurance Producer Licensing Requirements. Any bank or lender authorized by the Commissioner to engage in insurance sales activity shall obtain a license as an insurance producer from the Division of Insurance prior to engaging in any such activity. Banks and lenders shall at all times maintain valid insurance producer licenses under M.G.L. c. 175, § 209 and shall conduct such business in full compliance with all applicable rules, regulations and directives of the Division of Insurance pertaining to licensing and the sale of insurance products.

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(3) Federal Conditions Governing the Sale of Insurance. The conditions and limitations and other provisions contained in 209 CMR 49.00 are in addition to federal conditions governing the sale of insurance products. Banks and lenders shall comply with federal conditions governing the sale of insurance products. The terms and conditions set out in M.G.L. c. 167F § 2A(b)(1) through (9), M.G.L. c. 171, §75B(b)(1) through (9), 209 CMR 49.06, and 211 CMR 142.00: *Insurance Sales by Banks and Credit Unions*, however, shall control in the case of a conflict with such federal conditions.

(4) Annuity Products. Nothing in 209 CMR 49.00, shall prohibit a bank or lender from exercising its express or incidental powers to sell annuity products under state or federal law.

(5) Credit Insurance. 209 CMR 49.00 shall not apply to credit insurance activities of banks, federal banks or lenders pursuant to M.G.L. c. 167F, § 2(16) and (17); M.G.L. c. 171, §75, seventh paragraph and ninth paragraph; or M.G.L. c. 255, § 12G, by virtue of M.G.L. c. 167F § 2A(d) and c. 171, §75B(d).

49.03: Definitions

As used in 209 CMR 49.00, the following words shall, unless the context otherwise requires, have the following meanings:

Adequately capitalized. A bank shall be deemed adequately capitalized if the institution 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), the Federal Deposit Insurance Corporation's Capital Adequacy Regulations, 12 CFR § 325.103, the Federal Credit Union Act, 12 U.S.C. §1790d and the regulations promulgated by the NCUA.

Affiliate. An affiliate of a bank as defined by M.G.L. c.167A, § 1, or a credit union service organization as established pursuant to 12 U.S.C. §1786a(e)(1) or by M.G.L. c. 171, §6A.

Applicant. A bank or lender seeking approval from the Commissioner to engage in insurance sales activities.

Bank. A bank shall include a state-chartered savings bank, co-operative bank, credit union or trust company or any other bank charter form hereinafter established under the 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, and a Massachusetts branch of a foreign credit union, as defined by M.G.L. c. 171, § 8A, provided, however, that the laws of such bank's chartering state authorize the exercise of such powers. Bank shall also include an affiliate, subsidiary corporation or third party vendor engaged in insurance sales activities on behalf of, or under contract with, a bank.

Bank Premises. A main office or branch office(s) of a bank or federal bank established under state or federal law or any other bank office, including a loan production office, in which consumer deposit or credit transaction may be effected. Bank Premises also shall include the offices of lenders. Electronic branches established by banks under M.G.L. c. 167C, §§ 1 and 12, and established by credit unions under M.G.L. c. 171, § 8A, are not defined as bank premises and are not authorized locations for insurance sales activities.

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Commissioner. The Commissioner of Banks, including the Division of Banks, established under M.G.L. c. 26, § 1.

Company. An insurance company licensed pursuant to M.G.L. c. 175.

CRA. The Community Reinvestment Act established under M.G.L. c. 167, §14 or comparable provisions of federal law, or M.G.L. c. 255E, § 8 for a lender, if applicable.

Division of Insurance. The Division of Insurance, including the Commissioner of Insurance, established under M.G.L. c. 26, § 1.

Federal Bank. A bank chartered by the United States subject to supervision and examination by the Office of the Comptroller of the Currency or any such successor federal bank regulatory agency or a credit union chartered by the United States under the Federal Credit Union Act and subject to supervision and examination by the National Credit Union Administration Federal Bank shall also include an affiliate, subsidiary corporation or third party vendor engaged in insurance sales activities on behalf of, or under contract with, a federal bank.

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, the National Credit Union Administration or any other applicable federal bank regulatory agency.

Federal Conditions Governing the Sale of Insurance. The conditions established by the Comptroller of the Currency, the National Credit Union Administration and other federal regulatory agencies, by guideline or subsequent regulation, governing the sale of insurance products. Federal Conditions Governing the Sale of Insurance shall also include conditions prescribed by the federal bank regulatory agencies' *Interagency Statement on Retail Sales of Mutual Funds and other Non-deposit Investment Products*, to the extent applicable.

Insurance Sales Activities. The negotiating, soliciting or selling of insurance products in Massachusetts, as those terms are defined in M.G.L. c. 175, §162H.

Interagency Agreement. The *Interagency Agreement Relative to Bank Insurance Sales Consumer Complaint Resolution Procedures* entered into by the Commissioner and the Division of Insurance pursuant to M.G.L. c. 167F § 2A(b)(9); M.G.L. c. 171, §75B(b)(9); and M.G.L. c. 175 § 210. and

Lender. A small loan company licensed pursuant to M.G.L. c. 140, § 96; a mortgage lender and a mortgage broker licensed pursuant to M.G.L. c. 255E; and a mortgagee subject to the provisions of M.G.L. c. 183, § 68. Lender shall also include an affiliate, subsidiary corporation or third party vendor engaged in insurance sales activities on behalf of, or under contract with, a lender.

Office of Consumer Affairs. The Office of Consumer Affairs and Business Regulation established under M.G.L. c. 24A, § 1.

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

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(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 49.05(1).

49.04: Eligibility to Conduct Insurance Sales Activities

(1) Financial and Managerial Requirements. Any bank or lender engaging in insurance sales activities pursuant to 209 CMR 49.00 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 or lender engaging in insurance sales activities pursuant to 209 CMR 49.00 must have in place adequate policies and procedures governing the performance of such activity by the institution and its employees, to minimize any credit, market, liquidity, operational, legal, reputational and compliance risks to the bank or lender.

(3) Satisfactory CRA Rating Requirement. Any bank or, if applicable, a lender, seeking to engage in insurance sales activities pursuant to 209 CMR 49.00 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 authority to engage in such activity is sought.

(4) Review. Insurance sales activity undertaken by a bank or lender pursuant to 209 CMR 49.00 shall remain subject to periodic review by the Commissioner. The Commissioner may modify, curtail, rescind or otherwise limit the authority of a bank or lender to conduct insurance sales activities pursuant to 209 CMR 49.00 through a formal or informal remedial action if a bank or lender ceases to meet applicable eligibility requirements of 209 CMR 49.04, based upon a report of examination conducted by the Commissioner or other applicable federal bank regulatory agency, or an investigation conducted by the Division of Insurance or based on other reliable information.

49.05: Application Process to Conduct Insurance Sales Activities

(1) General. A bank that is adequately capitalized, and has not been notified that it is in troubled condition or that it is significantly undercapitalized, or a lender that meets applicable statutory or regulatory net worth requirements, may engage in insurance sales activities under 209 CMR 49.00, by submitting an application to, and receiving approval from, the Commissioner; provided, however, that such bank or lender also applies for and receives a license as an insurance producer from the Division of Insurance pursuant to M.G. L. c. 175, § 209 and 211 CMR 142.00: *Insurance Sales by Banks and Credit Unions*., before commencing insurance sales activities.

(2) Application. A bank or lender must include in its application a complete description of its proposed insurance sales activities, its investment in such activity, and any other information the Commissioner may require.

(3) Plan of Operation. A bank or lender shall submit a plan of operation to the Commissioner as part of the application process under 209 CMR 49.05. The plan of operation shall contain:

(a) a detailed description of the applicant's consumer complaint resolution procedures, which shall include, but not be limited to, the names, addresses and telephone numbers of designated personnel responsible for its enforcement; a description of its procedures for forwarding copies of all consumer insurance sales complaints to the Office of Consumer Affairs pursuant to 209 CMR 49.06(10)(a); and a description of its procedures for the investigation and resolution of such complaints under 209 CMR 49.06(10)(c);

(b) information demonstrating that the applicant meets the financial managerial, capital or net worth, policy and procedure, and other applicable eligibility requirements of 209 CMR 49.04;

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- (c) information demonstrating that the applicant has established effective internal control procedures and safeguards to ensure compliance with the consumer protection terms and conditions prescribed by 209 CMR 49.06.
- (d) detailed information demonstrating that the applicant has established effective internal control procedures and safeguards against the unauthorized release, dissemination, or sharing of confidential customer information, including medical record information, protected by M.G.L. c. 175I, within the applicant's organization, including its affiliates, subsidiary corporations and third party vendors, as well as to third parties; and
- (e) a representation and undertaking that insurance sales activities will be conducted in accordance with 209 CMR 49.00, and all other applicable state and federal law.

(4) Conditions. Any bank or lender granted an approval to conduct insurance sales activities pursuant to 209 CMR 49.05 is deemed to have agreed to conduct such activity in a manner consistent with applicable law, regulations and guidelines. The Commissioner may also impose additional conditions in connection with any approval granted under 209 CMR 49.05.

49.06: Consumer Protection Terms and Conditions Governing the Sale of Insurance by Banks

(1) Applicability.

- (a) General. The provisions of 209 CMR 49.06 shall govern the insurance sales activities of banks, federal banks and lenders. For purposes of 209 CMR 49.06, the term "bank" shall include a bank, federal bank and lender unless otherwise provided.
- (b) Waivers. A mortgagee which is not chartered as a bank, federal bank or licensed as a small loan company, mortgage lender or broker shall not be a bank for the purposes of the waiver provisions of 209 CMR 49.06(4)(b). Federal banks shall be governed by the waiver application provisions of 211 CMR 142.05(2)(b) instead of 209 CMR 49.06(4)(b)1. and 2.

(2) Plan of Operation.

- (a) Banks and Lenders. All insurance sales activities by banks or lenders shall be conducted in accordance with the plans of operation submitted to, and approved by, the Commissioner under 209 CMR 49.05(3).
- (b) Federal Banks. All insurance sales activities by federal banks shall be conducted in accordance with the plans of operation, which conform to 209 CMR 49.05(3), submitted to, and approved by, the Division of Insurance under M.G.L. c. 175, § 209, and 211 CMR 142.00: *Insurance Sales by Banks and Credit Unions*.

(3) Solicitations and Sales by Bank Personnel.

Referrals. The solicitation and sale of insurance by banks shall be conducted only by licensed insurance producers to the extent required by applicable insurance laws and regulations. Unlicensed personnel who accept deposits from the public in an area where such transactions are routinely conducted in the bank may refer a customer who seeks to purchase an insurance product to a licensed insurance producer only if the person making the referral receives no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction. Unlicensed bank personnel shall not discuss specific insurance policy terms and conditions.

(4) Insurance Sales on Bank Premises.

- (a) Locations. A bank must, to the extent practicable, keep the area where the bank conducts insurance sales activities physically segregated from areas where retail deposits are routinely accepted from the general public, identify the areas where insurance product sales activities occur, and clearly delineate and distinguish those areas from the areas where the bank's retail deposit-taking activities occur.
- (b) Waivers.
 - 1. Grounds. The Commissioner, in his or her discretion, may waive the requirement under 209 CMR 49.06(4)(a) for the physical separation of bank and insurance services upon a demonstration by a bank or lender that space considerations, such as the size or design of said bank premises, preclude such separation. The burden is upon the applicant bank or lender to demonstrate that size, design, landmark status, *National Register of Historic Places* designation, site impediments, local zoning

requirements, building codes, fire codes or other relevant considerations warrant the granting of a waiver.

2. Waiver Conditions.

a. Common areas may be permitted for banking and credit transaction and insurance purposes if physical constraints warranting such condition are satisfactorily demonstrated by a bank's or lender's waiver application.

b. In any instance where such waiver is granted, a bank or lender employee, licensed as an insurance producer, shall not, in any manner involving the application by a customer for an extension of credit by said bank or lender, act as the representative of the bank or lender both with respect to said application and with respect to the solicitation and sale of insurance products to said customer, whether or not such insurance is required for the extension of credit.

c. It shall be the responsibility of a bank or lender to institute procedures to eliminate customer misunderstanding or confusion as to the distinction between such insurance products and other bank or lender functions, and to prevent any misrepresentation thereof if a waiver is granted.

d. The Commissioner, in his or her discretion, may impose such other conditions as may be deemed necessary to effectuate the purposes of M.G.L. c. 167F, § 2A(b)(3).

e. The Commissioner, in his or her discretion, may subject a waiver application under 209 CMR 49.06(4)(b) to such notice and hearing as may be required.

3. Limitation on Waivers. Notwithstanding 209 CMR 49.06(4)(b), any bank premises constructed, purchased, leased or acquired by a bank on or after September 1, 1998, or on or after June 20, 2003 for a credit union subject to M.G.L. c. 171, § 75B, for the conduct of its authorized business, including the solicitation and sale of insurance, shall not be eligible for the waiver provided for herein, unless said acquisition results from a merger, consolidation or purchase of assets pursuant to applicable provisions of M.G.L. c. 167I or M.G.L. c. 171, or under comparable provisions of federal law in the case of a federal bank.

4. Applications. Applications for waivers shall be available for public inspection upon request unless the information is exempt from disclosure under M.G.L. c. 167, § 2J; M.G.L. c. 66, § 10; or M.G.L. c. 4, § 7, paragraph 26. Decisions approving or denying such applications shall be in writing and shall be available for public inspection upon request.

(5) Anti-tying.

(a) General. A bank is prohibited from tying the availability and extension of credit by a bank to the purchase of insurance products from said bank in violation of M.G.L. c. 176D § 4, or 12 USC §§ 1971 through 1978 and its implementing regulations promulgated by the Board of Governors of the Federal Reserve System.

(b) Prohibitions on Misrepresentations. A bank may not engage in any practice or use any advertisement at any office of, or on behalf of, the bank or a subsidiary of the bank that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

1. The fact that an insurance product sold or offered for sale by the bank is not backed by the Federal government or the bank, or the fact that the insurance product is not insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration or any other type of deposit insurance, and are not an obligation of or guaranteed by the bank;

2. In the case of an insurance product that involves investment risk, the fact that there is an investment risk, including the potential that principal may be lost and that the product may decline in value; or

3. The fact that the approval of an extension of credit to a customer by the bank or subsidiary may not be conditioned on the purchase of an insurance product by the customer from the bank or subsidiary of the bank; and the customer is free to purchase the insurance product from another source.

(c) Disclosure Requirements in Credit Transactions. In the case of an application for credit wherein an insurance product is solicited, offered, or sold, the bank must disclose that the bank may not condition an extension of credit on either: the customer's purchase of an insurance product from the bank or any of its affiliates; or the customer's agreement not to obtain, or a prohibition on the customer from obtaining, an insurance product from an unaffiliated entity.

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- (d) Timing of Disclosures. The disclosures required by 209 CMR 49.06(5)(c) must be made orally and in writing at the time the customer applies for an extension of credit wherein an insurance product is solicited, offered, or sold.
 - (e) Exception for Transactions by Mail. If an application for credit is taken by mail, the bank is not required to make the oral disclosure required by 209 CMR 49.06(5)(c).
 - (f) Exception for Transactions by Telephone. If an application for credit is taken by telephone, the bank may provide the written disclosure required by 209 CMR 49.06(5)(c) by mail, provided it is mailed to the customer within three days beginning the first business day after the application is taken, excluding Sundays and the legal public holidays specified under federal and state laws.
 - (g) Electronic Form of Disclosures. Subject to the requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (12 U.S.C. 7001(c)) and the Uniform Electronic Transactions Act, M.G.L. c. 110G, the bank may provide the written disclosures required by 209 CMR 49.06(5)(c) through electronic media instead of on paper, if the customer affirmatively consents to receiving the disclosures electronically and if the disclosures are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically (such as downloading). Any disclosure required by 209 CMR 49.06(5)(c) that is provided by electronic media is not required to be provided orally.
- (6) Rebates. Rebates shall be regulated pursuant to the provisions of M.G. L. c. 175, §§ 182 through 184.
- (7) Mandatory Consumer Disclosures.
- (a) Disclosure Contents. A bank, through its licensed insurance producers, shall disclose in writing to a potential insurance customer that:
 - 1. the insurance products which are available are not deposits of the bank, are not protected by the Federal Deposit Insurance Corporation, the National Credit Union Administration or any other type of deposit insurance, are not an obligation of or guaranteed by the bank, and may be subject to risk;
 - 2. any insurance required as a condition of the extension of credit by the bank need not be purchased from the bank but may, without affecting the approval of the application for an extension of credit, be purchased from an agent or insurance company of the customer's choice; and
 - 3. the customer may file any complaints with the Office of Consumer Affairs, as provided in 209 CMR 49.06(10).
 - (b) Exception. The disclosure required by 209 CMR 49.06(7)(a)1. shall not apply to a lender that does not accept deposits.
 - (c) Disclosure Form. The disclosures required by 209 CMR 49.06(7)(a) shall be provided in writing and receipt thereof shall be acknowledged in writing by the customer.
 - (d) Electronic Form of Disclosures. Subject to the requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (12 U.S.C. 7001(c)) and the Uniform Electronic Transactions Act, M.G.L. c. 110G, the bank may provide the written disclosures required by 209 CMR 49.06(7)(a) through electronic media instead of on paper, if the customer affirmatively consents to receiving the disclosures electronically and if the disclosures are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically (such as downloading).
- (8) Customer Information Security and Confidentiality.
- (a) A bank, licensed as an insurance producer under M.G.L. c. 175, § 209, shall not permit the unauthorized release, dissemination, or sharing of confidential information, including medical record information, protected by M.G.L. c. 175I, within the bank's organization, including its affiliates, subsidiary corporations and third party vendors, as well as to third parties;
 - (b) a bank shall not permit the unauthorized release, dissemination, or sharing of confidential credit or other information, protected by the federal Fair Credit Reporting Act, 15 USC § 1681, and its implementing regulations, within the bank's organization, including its affiliates, subsidiary corporations and third party vendors engaged in insurance sales activities, as well as to third parties; and
 - (c) A bank shall at all times remain in compliance with M.G.L. c. 175I, M.G.L. c. 93H, and the federal Fair Credit Reporting Act.

- (9) Anti-discrimination Requirements. No bank engaged in the direct sales of insurance products shall unlawfully discriminate against an insurance applicant or allow an affiliate, a subsidiary corporation established for the purpose or a third party acting on its behalf, to unlawfully discriminate against an applicant for any insurance products offered by it based upon his or her membership in any class protected by M.G.L. c. 151B, § 4(3A) and (3B), including but not limited to, race, color, national origin or residence. No bank offering insurance products at its bank premises, shall refuse to offer the same at every such branch of the bank.
- (10) Consumer Complaint Processing.
- (a) A bank engaged in insurance sales activities, as an insurance producer, shall forthwith forward copies of all Massachusetts customer complaints relative to such activities to the Office of Consumer Affairs. Said Office shall cause a record of all such complaints received to be maintained and shall, depending upon the nature of the complaint, refer any such complaint for resolution to the Commissioner or the Division of Insurance.
- (b) The processing and resolution of consumer complaints under 209 CMR 49.06(10) shall be governed by the Interagency Agreement, and any amendments thereto.
- (c) A bank shall take reasonable steps to investigate all consumer complaints and shall make a good faith effort to resolve such customer complaints in a timely manner.
- (d) Nothing in 209 CMR 49.06(10)(a) shall prohibit a consumer from filing a separate individual complaint directly with the Office of Consumer Affairs, the Commissioner and/or the Division of Insurance. Such complaints shall be processed pursuant to the Interagency Agreement.
- (11) Unfair and Deceptive Acts or Practices. Any violation of 209 CMR 49.06 shall be deemed to be unfair methods of competition and unfair and deceptive acts or practices under M.G.L. c. 167, §§ 2A through 2G and M.G.L. c. 93A.

49.07: Penalties and Sanctions

Any bank or lender that violates the provisions of 209 CMR 49.00, shall be subject to sanctions under M.G.L. c. 167, including, but not limited to, M.G.L. c. 167 §§ 2A through 2G, M.G.L. c. 140, and M.G.L. c. 255E. The preceding sanctions are independent from additional sanctions that may be imposed by the Commissioner pursuant to M.G.L. c. 167F, § 2A(c), M.G.L. c. 171, §75B(c) and by the Division of Insurance under 211 CMR 142.00: *Insurance Sales by Banks and Credit Unions*.

49.08: Severability

If any provision of 209 CMR 49.00, or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of 209 CMR 49.00 and the application of such provisions to other persons or circumstances shall not be affected thereby.

REGULATORY AUTHORITY

209 CMR 49.00: M.G.L. c. 167F, § 2A(e); M.G.L. c. 171, §75B(e); c. 30A, § 8; M.G.L. c. 175, §209.