



THE COMMONWEALTH OF MASSACHUSETTS
DIVISION OF BANKS
1000 Washington Street, 10th Floor, Boston, Massachusetts 02118

CHARLIE BAKER
GOVERNOR

DAVID J. COTNEY
COMMISSIONER OF BANKS

January 9, 2015

TO THE CHIEF EXECUTIVE OFFICER OF THE CREDIT UNION ADDRESSED:

On October 9, 2014, Bill H. 3954 was signed into law by Governor Deval Patrick as Chapter 343 of the Acts of 2014 (Chapter 343). Chapter 343 amends several sections of the Massachusetts General Laws as it pertains to the Legal List of Investments (Legal List). Chapter 343 goes into effect on January 9, 2015.

The new law can be found [here](#). Each credit union is encouraged to read Chapter 343 in its entirety to gain a better understanding of how these changes affect your institution's investment strategies. However, there are some significant changes that you should be aware of, particularly those that concern applying to the Commissioner of Banks for investment authority. The two more significant changes pertain to Chapter 167, §15B (c), relating to petitioning the Commissioner to invest in stocks, and Chapter 171, § 67B, relating to the prudent person investment authority.

Additionally, Chapter 343 includes a revision to the amount that a credit union may invest in the obligations of the Legal List. Prior to these changes, credit unions were limited to investing 10% of shares and deposits in Legal List investments. Chapter 343 changes that limit to 10% of assets (Chapter 167, §15B (g)).

Adding Investments to the Legal List

Prior to the enactment of Chapter 343, Chapter 167 § 15B (c) required that ten credit unions with assets over \$10 million petition both the Division of Banks and the Massachusetts Credit Union Share Insurance Corporation to add an individual investment to the Legal List to make it a legal investment for state-chartered credit unions. Chapter 343 amends this section to allow three state-chartered credit unions to petition the Commissioner directly to include an investment on the Legal List in one of the following categories:

1. Interest-bearing obligations of any state, county, city, town or district or any subdivision or instrumentality thereof and any authority established under the laws of the United States or any state, county, town or district, including obligations of any of the foregoing payable from specified revenues;
2. Interest-bearing obligations of any corporation organized under the laws of the United States or any state and of any association, the business of which is conducted or transacted by trustees

under a written instrument or declaration of trust, having its principal place of business in the commonwealth; and

3. Preferred and common stock of any corporation described above.

These amendments eliminate the former petitioning process and the asset size requirement for petitioning credit unions.

Prudent Person Investment Authority

The new section 67B adds a so called prudent person investment authority. Any credit union may apply to the Commissioner to invest in shares of stock registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 USC 78a or for which quotations are available through the Financial Industry Regulatory Authority, Inc., that are otherwise not included in the Legal List of Investments.

However, there are minimum application requirements set forth in § 67B, which are outlined and clarified as follows:

- The application must be submitted in writing to the Commissioner;
- Two-thirds of the credit union's Board of Directors must vote to request the prudent person investment authority, and a copy of the vote must be included with the application;
- The credit union must have strong management, which is the equivalent of a "1" or "2" Management rating in the most recent Division of Banks (Division) risk management examination report. (Credit unions are reminded, however, to refrain from mentioning their rating in the application, as applications are public documents and ratings are confidential);
- The credit union must be well-capitalized, as defined under the prompt corrective action provisions of the Federal Credit Union Act, 12 U.S.C. § 1790d, and the regulations promulgated by the National Credit Union Administration;
- The credit union must have received at least a satisfactory rating at the most recent community reinvestment examination conducted by the Division pursuant to § 14 of Chapter 167; and
- The application must include a copy of the credit union's investment policies and procedures. The policy and procedures must address the following:
 - The performance of such activity by the credit union and its employees, to minimize any credit, market, liquidity, operational, legal and reputational risks to the credit union. The policy and procedures should also address concentration risk by including limits by issuer and industry, at a minimum;
 - The due diligence procedures the credit union will employ regarding the investment(s), including but not limited to internal and external analyses, credit ratings by one or more credit rating agencies, and projected returns on income and appreciation of capital; and
 - The percentage of its assets the credit union seeks to invest under this authority.

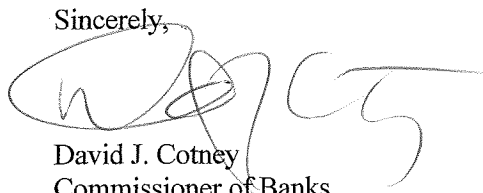
Credit unions may apply to invest up to 20% of assets under the prudent person authority. However, the Commissioner may "increase, modify, curtail or rescind or otherwise limit a credit union's authority to make such investments."

In summary, Chapter 343 does not eliminate the Legal List of Investments, as it still must be prepared annually by the Division pursuant to Chapter 167, §15A (b). However, it does provide an easier avenue for credit unions to collaboratively petition the Commissioner to add investments to the

Legal List and for a credit union to apply to the Commissioner to exercise the prudent person investment authority.

As a reminder, these changes go into effect on January 9, 2015. Please contact Chief Director Andrea L. Cipolla at (617)956-1532 or andrea.cipolla@state.ma.us with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Cotney', written over the word 'Sincerely,'.

David J. Cotney
Commissioner of Banks