COMMONWEALTH OF MASSACHUSETTS
DIVISION OF BANKS
1000 Washington Street, 10TH Floor, Boston, MA 02118-6400
(617) 956-1500 · Fax (617) 956-1599 · TDD (617) 956-1577
www.Mass.Gov/DOB

MAURA T. HEALEY
GOVERNOR

KIM DRISCOLL
LIEUTENANT GOVERNOR

YVONNE HAO
SECRETARY OF ECONOMIC DEVELOPMENT

LAYLA R. D'EMILIA
UNDERSECRETARY

MARY L. GALLAGHER
COMMISSIONER

April 25, 2024

Brad Papalardo, Esq.
Massachusetts Bankers Association
One Washington Mall, 8th Floor
Boston, MA 02208

Dear Attorney Papalardo:

This letter is in response to your correspondence on behalf of the Massachusetts Bankers Association ("Association") received by the Division of Banks ("Division") on February 26, 2024, in which you request an opinion relative to the authority of Massachusetts chartered banks to transfer or redeposit funds received in their institutions to other FDIC insured depository institutions as part of reciprocal deposit programs.

Reciprocal deposits are deposits that a bank receives through a deposit network in exchange for placing an equal dollar amount of deposits at other bank(s) in the network. Reciprocal deposit programs are operated by third parties for participating banks (those in the network) and function to allow a customer of a participating network bank to have her deposits in excess of the $250,000 FDIC insurance cap remain fully insured by the FDIC. The FDIC has long recognized the permissibility of reciprocal deposits and reciprocal deposit programs for purposes of maximizing deposit insurance, and most recently, addressed reciprocal deposits in Section 202 of The Economic Growth, Regulatory Relief, and Consumer Protection Act passed by Congress in 2018.[1] Section 202 amended the Federal Deposit Insurance Act to exclude reciprocal deposits of an insured depository institution from the definition of brokered deposits under certain circumstances. 12 USC 1831f(i). The FDIC subsequently amended its regulations based on Section 202. 12 CFR 337.6.[2]

In addition, although Massachusetts law does not directly address reciprocal deposits, the broad authority granted by M.G.L. c. 167D and principles of contract law support the conclusion that participation

[1] *See* FDIC Advisory Opinion No. 03-03 (July 29, 2003); *see also Study on Core Deposits and Brokered Deposits*, FDIC, July 8, 2011, available at Format for the Core and Brokered Deposits Study (fdic.gov).

[2] The FDIC's regulation defines "reciprocal deposits" as "deposits received by an agent institution through a deposit placement network with the same maturity (if any) and in the same aggregate amount as covered deposits placed by the agent institution in other network member banks." 12 CFR 337.6(e)(2)(v). It further specifies that, subject to the identified limitations and requirements, reciprocal deposits do not constitute brokered deposits, stating in relevant part:

> (1) ***Limited exception.*** Reciprocal deposits of an agent institution shall not be considered to be funds obtained, directly or indirectly, by or through a deposit broker to the extent that the total amount of such reciprocal deposits does not exceed the lesser of:
> (i) $5,000,000,000; or
> (ii) An amount equal to 20 percent of the total liabilities of the agent institution.

in reciprocal deposit programs is permissible for Massachusetts banks. As noted in your correspondence, Chapter 167D of the General Laws grants expansive authority to Massachusetts chartered banks with respect to deposit taking activity. Specifically, section 2 provides:

> Every bank in its banking department shall, subject to any limitations imposed by this chapter, have the following powers and whatever further incidental powers may fairly be implied from those expressly conferred and are reasonably necessary to enable it to exercise fully those powers according to common banking customs and usages:
>
> (A) to receive deposits as authorized by this chapter; and
> (B) to receive on deposit, storage or otherwise, money, government securities, stocks, bonds, coin, jewelry, plate, valuable papers and documents, evidences of debt and other property of any kind, upon such terms and conditions as may be agreed upon between the depositor and the bank and to collect and disburse, at the request of the depositor, the interest or income or principal of said property upon terms to be prescribed by such bank.

Section 2 not only contains comprehensive language regarding the specific range of permissible deposits and authority, but also expressly provides that banks shall have *whatever further incidental powers that may be fairly implied and are reasonably necessary* to permit the bank to fully execute those deposit taking powers. This particular language evidences an intent that the deposit taking authority of Massachusetts banks be interpreted broadly, particularly where the deposit taking activity would serve to maximize federal deposit insurance as permitted by the FDIC. Furthermore, consistent with the expansive authority set forth in M.G.L. c. 167D, § 2, the Division has long recognized that the relationship created by a deposit agreement between a bank and its customer is a contractual one, governed by the specific terms of the agreement. In considering the authority of a bank to sell a certificate of deposit to another institution, the Division articulated this position, noting that "… any deposit agreement between a bank and a depositor is a contractual relationship under Massachusetts law and is governed by the terms of the contract" and further noted that "both deposits and loans are often transferred between banking institutions." *See* Opinion 03-033. Pursuant to this broad grant of authority, and in light of the express recognition of reciprocal deposit programs by the FDIC, the Division is persuaded that participation in reciprocal deposit programs is permissible for Massachusetts banks.

Accordingly, based upon the foregoing, it is the position of the Division that Massachusetts banks are authorized to receive and transfer reciprocal deposits to other depository institutions pursuant to reciprocal deposit programs for the purpose of maximizing and providing full FDIC insurance coverage to a customer's funds, as described in your correspondence. The Division would remind any institutions seeking to participate in reciprocal deposit programs that they must ensure such activity is conducted in compliance with all applicable state and federal laws and consistent with principles of safety and soundness, including the management of risk associated with third-party relationships.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from that presented may result in a different position statement by the Division.

Sincerely,

Barbara Keefe
Deputy Commissioner of Banks
and General Counsel

O24002