



The Commonwealth of Massachusetts

Office of the Commissioner of Banks

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July 30, 2003

Mr. David Elliott, President
Depositors Insurance Fund
One Linscott Road
Woburn, MA 01801-2000

Dear Mr. Elliott:

This letter is written in response to your correspondence of June 4, 2003 to the Division of Banks (the "Division") relative to the Depositors Insurance Fund's ("DIF") proposal to initiate a borrowing arrangement with the Federal Home Loan Bank of Boston ("FHLB"). The DIF believes that an FHLB membership and borrowing authority would give the DIF access to a significant additional source of borrowed funds on terms as favorable or more favorable than the terms offered by most other sources of credit.

In order to qualify to borrow, the DIF would have to become a "member" of the FHLB and purchase a number of shares of the FHLB's Class B Stock in connection with its membership and in connection with any actual borrowing. Your letter inquires as to whether the Division has any objection to the DIF's proceeding with an application to become a member of the FHLB for the purpose of establishing a borrowing arrangement.

Your letter states that, as a member of FHLB, DIF would be required to purchase Class B Stock in an amount based on a two-part formula: part based on the DIF's Membership Stock Investment Base, as defined, and part based on the amount of the DIF's Activity-Based Assets, as defined. The Membership Stock Investment Base is the aggregate value of certain assets that would be eligible to secure loan advances by the FHLB. The amount that a member may borrow at any time is limited by the amount of eligible assets, so the required Membership Stock Investment amount is related to the borrowing capacity available to the member institution. The Activity-Based Assets amount is based on the aggregate amount of outstanding loans and loan commitments (such as standby letters of credit) for the account of the member. According to your letter, until recently, the DIF maintained a line of credit with Fleet Bank, the commitment fee for which was paid through a compensating balance in excess of \$1 million for a credit line of \$9 million. The DIF, as a FHLB member, would have capacity to borrow up to an aggregate of \$250 million and the cost of the required purchase of Class B Stock would be approximately \$975,000.

Your letter states that the DIF's authority to borrow (and to take any necessary related actions) is well established, and such lines of credit have been a regular part of the DIF's ordinary course of business over the years. You assert that this authority is broad, under both of the DIF's governing statutes. With respect to the Liquidity Fund: The corporation is authorized to borrow money and pledge its assets as



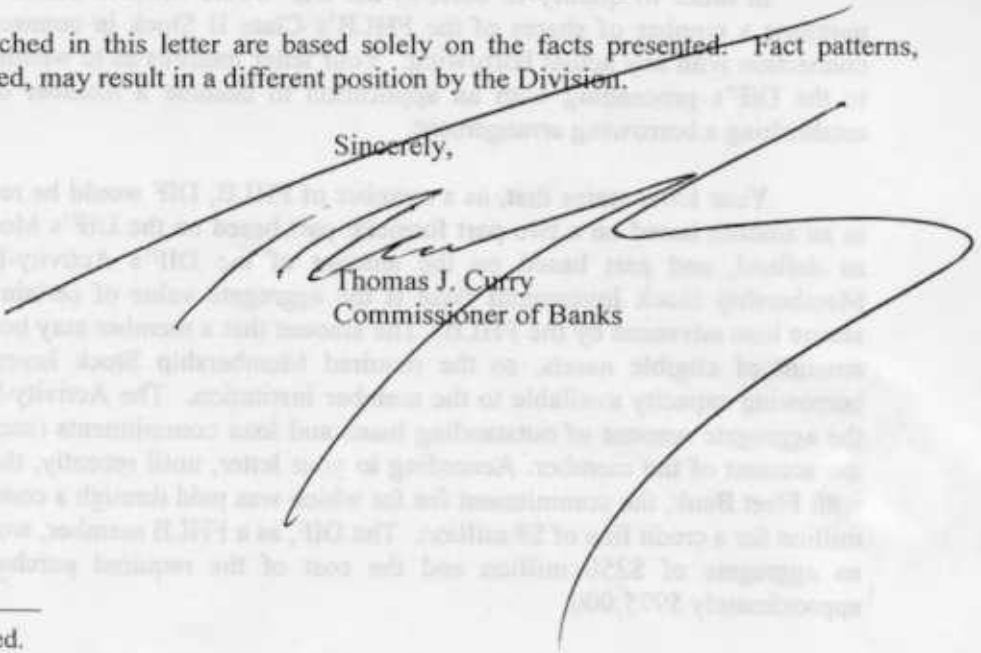
security therefor.¹ The statute governing the operation of the Deposit Insurance Fund provides that the corporation may borrow money for the purposes of the Deposit Insurance Fund and pledge any assets in which said Fund is invested as security for such loans.² The Division is not persuaded by the alternative argument presented that DIF possesses sufficient independent investment authority to effectuate the purchase of the Class B stock.

In general, special purpose entities within the Commonwealth's banking statutes, such as the DIF, are governed by a statutory scheme setting forth express authorization for specified powers and activities and their enabling acts do not contain general language recognizing broad implied or incidental powers of a corporate nature.³ It is the Division's position that the DIF does not possess a grant of broad incidental or implied powers given the content and construction of its enabling statutes. It has been the Division's longstanding position that the acts creating these entities are ordinarily narrowly construed. The Division has consistently stated that express legislative authorization is generally required to expand an entity's purpose or its range of permissible powers or activities.⁴ Notwithstanding this position, the Division acknowledges, as cited in your letter, that the DIF's authority to borrow and pledge its assets as security is well established and lines of credit have been a regular part of the DIF's ordinary course of business over the years. This authority to borrow includes the power to take those limited actions deemed necessary to arrange for and accomplish the borrowing. In the case at hand, this would include applying for membership in the FHLB and purchasing the required Class B stock. It is the Division's position that any stock or other purchase beyond that which is minimally required to maintain the line of credit would go beyond the DIF's authority to borrow and not be permissible.

Accordingly, the Division has no objection to the DIF proceeding with the membership application process with FHLB for the purpose of establishing a borrowing arrangement.

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 by the Division.

Sincerely,



Thomas J. Curry
Commissioner of Banks

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¹ St. 1932, ch. 44, §6, as amended.

² St. 1934, ch. 43, §3, as amended.

³ Examples of other such entities include the Co-operative Central Bank, Central Credit Union Fund, Inc., Massachusetts Credit Union Share Insurance Corporation.

⁴ See Division Opinion #99-043.