



The Commonwealth of Massachusetts

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April 29, 2004

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

Dear Mr. James:

Enclosed for filing please find the Division of Banks' (the "Division") summary of its proposed amendments to 209 CMR 47.00 *et seq.*, *Parity with National Banks*, which are the implementing regulations for Massachusetts General Laws chapter 167F, section 2, clause 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, April 20, 2004 at 10:00 a.m. and written comments were accepted through 5:00 p.m. on that same date. Oral comments and written comments were received from the bank trade association, which was in support.

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 bank 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.

The Division has undertaken an extended review of the regulations of the Office of the Comptroller of the Currency ("OCC"), the Office of Thrift Supervision ("OTS") and authorities of other state banking institutions approved by the Federal Deposit Insurance Corporation



("FDIC") in considering these amendments. The list of all authorities considered is too extensive to be listed.

The proposed amendments include specific authorities requiring approval relative to mergers; real estate development loans; net leases or installment sales of real estate; and electronic activities, relative to a state-chartered bank's use of technology to deliver services, consistent with safety and soundness. The amendments also include authority for a state-chartered bank to act as a finder by bringing together interested parties to a transaction. Such finder authorities may be conducted without application or notice to the Division.

Most of the new authorities granted are taken from powers granted to federally-chartered banks. The language added or regulations referred to are taken from provisions applicable to national banks for consistency purposes. The authority for real estate development loans is taken from powers granted to banks in other states and approved by the FDIC. Some Massachusetts-chartered banks have made such loans under their Leeway Law, General Laws chapter 167F, section 2, paragraph 8. The inclusion of such loan authority in the parity regulations grants specific authority for such loans and results in such loans no longer being calculated against any Leeway Law limits.

SECTION-BY-SECTION SUMMARY

47.00 Parity with Federal Or Out-of-State Banks

Summary

This amendment would change title of the regulation to reflect that it also now includes parity with other states as well as to reflect that federal banks now include federal savings banks and federal savings and loan associations subject to the jurisdiction of the OTS, not just national banks under the jurisdiction of the OCC.

47.01 Purpose and Scope

Summary

Pursuant to Chapter 292 of the Acts of 2002, this amendment changes the purpose and scope of the regulation to reflect that it now may include authorized activities for banks within the jurisdiction of the OCC and the OTS, or out-of-state banks, and that such activities have been approved by the Federal Deposit Insurance Corporation.

Discussion

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 or an out-of-state bank in accordance with regulations promulgated by the Commissioner of Banks. Prior to said Chapter 292, the law provided for parity only with national banks subject to the OCC.

47.06(3) Application Process to Conduct Certain Activities -- *Activities Subject to Application and Approval*

Summary

These amendments would enable banks to apply to the Division for the following activities:

- Merger with nonbank subsidiaries or affiliates;
- Real estate development loans;
- Net leases or installment sales of real estate;
- Electronic activities, including:
 - Electronic activities that are part of, or incidental to, the business of banking;
 - Furnishing of products and services by electronic means and facilities;
 - Composite authority to engage in electronic activities;
 - Sale of excess electronic capacity and by-products;
 - Acting as digital certification authority;
 - Data processing;
 - Correspondent services; and
 - Shared electronic space.
- Appraisal services.

47.09(2) Activities Requiring No Application or Notice

Summary

These amendments would add the following finder activities, and would require neither application nor notice:

- Communicating information about providers of products and services, and proposed offering prices and terms to potential markets;

- Communicating to the seller an offer to purchase or request for information, including forwarding completed applications, application fees, and requests for information to third-party providers;
- Arranging for third-party providers to offer reduced rates to those customers referred by the bank;
- Providing administrative, clerical and record keeping functions related to the bank's finder activity, including scheduling sales calls on behalf of sellers and conducting marketing research to identify potential new customers for retailers;
- Conveying between interested parties expressions of interest, bids, offers, orders, and confirmations relating to a transaction; and
- Any other finder activities authorized by 12 CFR §7.1002.

The Joint Committee on Banks and Banking 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