

**HOUSE . . . . . No. 891**

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**The Commonwealth of Massachusetts**

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PRESENTED BY:

***Michael A. Costello***

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the list of legal investments prepared by the Commissioner of Banks.

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PETITION OF:

NAME:

*Michael A. Costello*

DISTRICT/ADDRESS:

*1st Essex*

**HOUSE . . . . . No. 891**

By Mr. Costello of Newburyport, a petition (accompanied by bill, House, No. 891) of Michael A. Costello relative to the list of legal investments prepared by the Commissioner of Banks. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 4301 OF 2011-2012.]

**The Commonwealth of Massachusetts**

**In the Year Two Thousand Thirteen**

An Act relative to the list of legal investments prepared by the Commissioner of Banks.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 54 of chapter 44 of the General Laws, as appearing in the 2010  
2 Official Edition, is hereby amended by striking out the first sentence and inserting in place  
3 thereof the following sentence:

4 Trust funds, including cemetery perpetual care funds, unless otherwise  
5 provided or directed by the donor thereof, shall be deposited in a trust company, co-operative  
6 bank or savings bank, if such bank or trust company is organized or exists under the laws of the  
7 commonwealth or any other state of the United States or is otherwise authorized to transact  
8 business in the commonwealth and has its main office or a branch office in the commonwealth; a  
9 national bank, federal savings bank, federal savings and loan association, if such bank is  
10 authorized to transact business and has it main office or a branch office in the commonwealth;  
11 provided that any such state-chartered or federally chartered bank shall be insured by the Federal  
12 Deposit Insurance Corporation or its successor; or invested by cities and towns in participation  
13 units in a combined investment fund under section 38A of chapter 29 in an amount not exceeding  
14 \$100,000, or in bonds or notes which are legal investments for savings banks.

15 SECTION 2. Chapter 44 of the General Laws is hereby amended by striking out section  
16 55A, as so appearing, and inserting in place thereof the following section:—

17 Section 55A. A city, town, district or regional school district officer receiving public  
18 money and lawfully and in good faith and in the exercise of due care depositing the same in a  
19 trust company, co-operative bank or savings bank, if such bank or trust company is organized or  
20 exists under the laws of the commonwealth or any other state of the United States or is otherwise  
21 authorized to transact business in the commonwealth and has its main office or a branch office in  
22 the commonwealth; a national bank, federal savings bank or federal savings and loan association,  
23 if such bank or association is authorized to transact business and has its main office or branch  
24 office in the commonwealth; or in participation units in a combined investment fund under  
25 section 38A of chapter 29, or, in the case of the city of Boston, in accordance with the provisions  
26 of section 55 in a national bank or trust company in the city of New York, provided that any such  
27 state-chartered or federally chartered bank shall be insured by the Federal Deposit Insurance  
28 Corporation or its successor; shall not be personally liable to the city, town, district or regional  
29 school district for any loss of such money by reason of the closing or liquidation of any such  
30 depository institution described above.

31

32 SECTION 3. Chapter 167 of the General Laws is hereby amended by striking out section  
33 15A, as so appearing, and inserting in place thereof the following 11 sections:—

34 Section 15A. (a) As used in sections 15A to 15K, inclusive, the term "legal list" or "legal  
35 investments" shall mean the list of securities approved for investment by the commissioner.

36 (b) On or before July 1 of each year, the commissioner shall prepare a list of all stocks,  
37 bonds, notes and other interest-bearing obligations which are then legal investments under any  
38 provision of sections 15B through 15K, inclusive, provided that all privately placed or held  
39 issues may, in the discretion of the commissioner, be omitted. An entity issuing such an  
40 instrument shall identify itself directly to the commissioner as being eligible to be included on  
41 such list under the authorities specified in section 15E through 15K, inclusive, provided however  
42 that the commissioner shall have the discretion as to whether to add any such entity and  
43 instrument to the list. Such list shall include the name of any investment fund, approved by the  
44 commissioner, which invests only in such stocks, bonds, notes and other interest bearing  
45 obligations. The shares of any such investment fund so approved shall be legal investments  
46 pursuant to this section to the same extent as any such stocks, bonds, notes and other interest  
47 bearing obligations. Said list shall at all times be public. In the preparation of any list hereunder  
48 which the commissioner is required to prepare or furnish, he may employ such expert assistance  
49 as he deems proper or may rely upon information contained in publications which he deems  
50 authoritative in reference to such matters, and he shall be in no way held responsible or liable for  
51 the omission from such list of the name of any state or political subdivision or authority thereof  
52 or of any corporation or association the stocks, bonds, notes or other interest bearing obligations  
53 of which conform or any investment fund which conforms to this chapter, or for the omission of  
54 any investment funds, stocks, bonds, notes or other interest bearing obligations which so

55 conform; nor shall he be held responsible or liable for the inclusions in such list of any such  
56 names or of any investment funds, stocks, bonds, notes or other interest bearing obligations  
57 which do not so conform.

58 (c) Officers and members of a board of a bank or credit union may rely upon the legal list  
59 referred to in this section as representing an accurate listing of investment funds, stocks, bonds,  
60 notes and other interest bearing obligations eligible for investment by it; and no such officer or  
61 member shall be personally liable for any loss incurred by such bank arising from the purchase in  
62 good faith of any shares in an investment fund or security appearing on said list at the time of  
63 such purchase.

64 (d) Subsequent to the annual preparation of such list, the commissioner may add the  
65 name of any investment fund which meets the requirements of this section.

66 (e) Before making any such investment under this section an entity shall conduct an  
67 appropriate level of due diligence to determine if an investment is both permissible and  
68 appropriate. This may include both internal as well as external analysis. For debt instruments,  
69 such analysis shall not rely solely on one or more credit rating agencies and such entity shall  
70 determine that such instrument has both a low risk of default by the obligor and that the full and  
71 timely repayment is expected over the expected life of the investment.

72 Section 15B. (a) The list of legal investments prepared pursuant to section 15A may  
73 include securities that are approved for investment in accordance with this section.

74 (b) The securities eligible for approval for investment under this section may  
75 include: (1) interest bearing obligations of any state, county, city, town or district or any  
76 subdivision or instrumentality thereof, and of any authority established under the laws of the  
77 United States or any state, county, town or district, including obligations of any of the foregoing  
78 payable from specified revenues; (2) interest bearing obligations of any corporation organized  
79 under the laws of the United States or any state and of any association, the business of which is  
80 conducted or transacted by trustees under a written instrument or declaration of trust, having its  
81 principal place of business in the commonwealth, and (3) preferred and common stock of any  
82 corporation described in the foregoing clause (2). Obligations to be eligible pursuant to clauses  
83 (1) and (2) shall have an initial offering of at least \$50,000,000 and be rated at least a single A.

84 (c) Upon application by 3 credit unions which have been chartered pursuant to  
85 chapter 171, which have submitted in such form and under such conditions as the commissioner  
86 may require, requesting authority to invest their deposits and the income derived therefrom in  
87 any of the interest bearing obligations or stocks referred to in paragraph 1 of this section, said  
88 credit unions may request the commissioner, in such form and under such conditions as in his  
89 discretion he may require, authorize, notwithstanding any general or special law to the contrary,  
90 the investment in any such interest bearing obligations or stock.

91 (d) If the commissioner grants such authority he shall forthwith add the name of  
92 such investment to the list provided for in section 15A. At any time thereafter the commissioner  
93 may, on his own initiative, revoke such authority.

94 (e) If the commissioner shall have authorized investment in an issue of bonds in  
95 accordance with any of the provisions of this section, and if thereafter but before such  
96 authorization shall have been revoked the issuer shall issue bonds the proceeds of which are to be  
97 used solely to refund the issue previously authorized for investment or another issue of equal or  
98 shorter maturity and of equal or prior security and if such new bonds shall be of equal security  
99 with the previously authorized issue and of equal or shorter maturity the commissioner may  
100 authorize investment in such refunding bonds, and thereafter may revoke such authority on his  
101 own initiative. If the commissioner shall have authorized investment in an issue of bonds in  
102 accordance with any of the provisions of this section, and if thereafter but before such  
103 authorization shall have been revoked the issuer shall issue bonds of which at least 90 per cent of  
104 the proceeds are to be used to refund the issue previously authorized for investment or another  
105 issue of equal or prior security, the security for the new bonds is not less than that for the  
106 previously authorized issue then the commissioner may authorize investment in such new bonds  
107 and thereafter may revoke such authority on his own initiative.

108 (f) In determining that any investments authorized under the provisions of this  
109 section should be included in the list of legal investments or deleted from said list, the  
110 commissioner may employ such expert assistance as he deems proper or may rely upon  
111 information contained in publications which he deems authoritative in reference to such matters.

112 (g) Not more than 10 per cent of the assets of such entity shall be invested in  
113 investments authorized under this section.

114 Section 15C. An entity authorized to invest pursuant to section 15A or the legal list may  
115 invest in bonds, notes or other interest bearing obligations of the following classes:

116 (1) direct obligations of the United States, or in such obligations as are  
117 unconditionally

118 guaranteed as to the payment of principal and interest by the United States;

119 (2) legally issued, assumed or unconditionally guaranteed bonds, notes or other  
120 interest bearing obligations of the commonwealth, including legally issued bonds, notes or other  
121 indebtedness of an entity established as a public instrumentality by general or special law;

122 (3) legally issued, assumed or unconditionally guaranteed bonds, notes or other  
123 interest bearing obligations of any state of the United States other than this commonwealth,  
124 which has, not within the 20 years prior to the making of such investment, defaulted for a period  
125 of more than 120 days in the payment of any part of either principal or interest of any legally

126 issued or assumed obligation; provided, that the full faith and credit of such state is pledged for  
127 the payment of the principal and interest of such obligations;

128 (4) bonds, notes or other obligations issued or guaranteed as to both principal and  
129 interest by the Dominion of Canada or any of its provinces provided, (a) that such bonds, notes  
130 or obligations shall be payable in United States funds either unconditionally or at the option of  
131 the holder thereof, and (b) that at the date of investment the said Dominion of Canada or the  
132 applicable province of Canada shall not have been in default in the payment of interest or  
133 principal of any of its obligations for a period in excess of 31 days at any time within the 20  
134 years preceding such date of investment. Not more than 5 per cent of the assets of an entity  
135 authorized to invest pursuant to section 15A or the legal list, so called, may be invested in  
136 obligations authorized under this paragraph;

137 (5) bonds, notes or obligations issued, assumed or guaranteed by the International  
138 Bank for Reconstruction and Development, the Inter-American Development Bank or the Asian  
139 Development Bank containing an unconditional promise to pay, or an unconditional guarantee of  
140 the payment of, the interest thereon regularly, and the principal thereof on or before a specified  
141 date, in lawful currency of the United States; provided, that not more than 3 per cent of the assets  
142 of an entity authorized to invest pursuant to section 15A or the legal list, so called, shall be  
143 invested in such bonds, notes or obligations; and provided, further, that the commissioner may at  
144 any time on his own initiative suspend the authorization granted by this paragraph for such  
145 period or periods as he may determine;

146 (6) obligations of, or instruments issued by and fully guaranteed as to principal and  
147 interest by, the Federal National Mortgage Association, established under the National Housing  
148 Act, as amended;

149 (7) debentures, bonds or other obligations issued by any federal home loan bank or  
150 consolidated federal home loan bank debentures or bonds issued by the federal home loan bank  
151 board under the Federal Home Loan Bank Act, as amended;

152 (8) debentures issued by the central bank for co-operatives or consolidated  
153 debentures issued by said central bank and the 12 regional banks for co-operatives under the  
154 Farm Credit Act of 1933, as amended;

155 (9) collateral trust debentures or other similar obligations issued by any federal  
156 intermediate credit bank or consolidated debentures or other similar obligations issued by the  
157 federal intermediate credit banks under the Federal Farm Loan Act, as amended;

158 (10) farm loan bonds issued by any federal land bank under the Federal Farm Loan  
159 Act, as amended;

160 (11) promissory notes representing domestic farm labor housing loans authorized by  
161 federal law when such notes are fully guaranteed as to principal and interest by the Farmers  
162 Home Administration of the United States Department of Agriculture;

163 (12) bonds, notes or obligations issued, assumed or guaranteed by the Export-Import  
164 Bank of the United States;

165 (13) obligations of any person, including any form of mortgage backed security, as to  
166 which the payment of principal and interest according to the terms of such obligations is  
167 guaranteed by the Government National Mortgage Association under the provisions of the  
168 National Housing Act, as amended;

169 (14) certificates issued by the Federal Home Loan Mortgage Corporation representing  
170 interests in mortgage loans made, acquired or participated in by the said Federal Home Loan  
171 Mortgage Corporation; and

172 (15) system-wide obligations issued under the provisions of the Farm Credit Act of  
173 1971, as amended, by institutions included in the federal farm credit system.

174 Section 15D. An entity authorized to invest pursuant to section 15A or the legal list may  
175 invest in bond, notes or other interest bearing obligations of the following classes:

176 (1) legally issued or assumed bonds, notes or other interest bearing obligation of a  
177 county, city town or legally established district of this commonwealth; and

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179 (2) legally issued or assumed bonds, notes or other interest bearing obligation of a county  
180 city town or legally established district of this commonwealth; provided, however, that this  
181 provision shall not authorize investments in obligations of any city or town situated outside the  
182 commonwealth which has been in default for more than 120 days in the payment of any part of  
183 principal and interest of all bonds notes or other interest bearing obligations legal for investment  
184 under any provision of this section.

185 The full faith and credit of the county, city, town or district shall be pledged for the full  
186 payment of principal and interest of all bonds, notes or other interest bearing obligations legal for  
187 investment under any provision of this section.

188 Section 15E. (a) An entity authorized to invest pursuant to section 15A or the legal list  
189 may invest in bonds, notes or other interest bearing obligations of railroad corporations subject to  
190 the conditions, limitations and requirements of this section.

191 (b) With respect to bonds, such obligations shall be those of a railroad incorporated in the  
192 United States or any state thereof and which is doing business principally within the United  
193 States and shall contain an unconditional promise to pay the interest thereon regularly and to pay

194 the principal at a specified date, which promise may be modified, if at all, only by vote of  
195 holders of at least 75 per cent in amount of such bonds.

196 Not more than 20 per cent of the assets of such entity shall be invested in such railroad  
197 obligations.

198

199 (c) Investments in railroad equipment obligations shall be those of, or guaranteed by, a  
200 railroad incorporated in the United States or any state thereof and which is doing business  
201 principally within the United States.

202 Section 15F. (a) As used in section 15F and 15G, the term "bond" includes a note or  
203 debenture.

204 (b) An entity authorized to invest pursuant to section 15A or the legal list may invest in  
205 the bonds of any company which at the time of such investment is incorporated under the laws of  
206 the United States or any state thereof, or the District of Columbia, and authorized to engage, and  
207 engaging, in the business of furnishing telephone service in the United States, subject to the  
208 following conditions: (1)The bonds shall be part of an original issue of not less than \$25,000,000  
209 in principal amount when the company is not incorporated in the commonwealth; and (2) not  
210 more than 20 per cent of the assets of such entity shall be invested in the bonds of telephone  
211 companies.

212 Section 15G. (a) An entity authorized to invest pursuant to section 15A or the legal list  
213 may invest in bonds, notes or other interest bearing obligations of a gas, electric light or water  
214 company incorporated or doing business in this commonwealth and subject to the control and  
215 supervision thereof.

216 (b) An entity authorized to invest pursuant to section 15A or the legal list, so called, may  
217 invest in the bonds of any company which at the time of such investment is incorporated under  
218 the laws of the United States or any state thereof, or the District of Columbia, and transacting the  
219 business of supplying electrical energy or artificial gas, or natural gas purchased from another  
220 company and supplied in substitution for, or in mixture with, artificial gas, for light, heat, power  
221 and other purposes, or transacting any or all of such business. The bonds shall be part of an  
222 original issue of not less than \$25,000,000 in principal amount.

223 (c) Not more than 25 per cent of the assets of such entity shall be invested in obligations  
224 under this section, nor shall more than 4 per cent be invested in the obligations of any one such  
225 company.

226 Section 15H. (a) An entity authorized to invest pursuant to section 15A or the legal list  
227 may invest in the common stock of the following banking corporations and bank holding  
228 companies subject to the conditions, limitations and requirements of this section.

229 (b) In the common stock, provided there is no preferred stock outstanding, of a bank in  
230 stock form incorporated under the laws of and doing business within the commonwealth, or in  
231 the common stock, provided there is no preferred stock outstanding, of a federally chartered bank  
232 in stock form doing business within the commonwealth. Such state-chartered or federally-  
233 chartered bank shall be well capitalized under bank regulatory criteria.

234 (c) In the common stock of a state-chartered bank or federally chartered bank doing  
235 business anywhere within the United States, which is a member of the federal reserve system  
236 and is well capitalized under bank regulatory criteria.

237 (d)(1) In the common stock of a bank holding company, as defined in chapter 167A,  
238 provided such stock is received pursuant to an offer made by such bank holding company to  
239 exchange shares of its common stock for shares of a bank in stock form incorporated under the  
240 laws of the commonwealth or for shares of a federally-chartered bank doing business in the  
241 commonwealth, or provided that such stock is received pursuant to a plan for the merger or  
242 consolidation of any such bank with or into, or the transfer, sale or exchange of property or of  
243 assets of such bank or with a bank in stock form incorporated under the laws of this  
244 commonwealth or a federally-chartered bank doing business in this commonwealth the stock of  
245 such bank, as the case may be, is at the time owned by such bank holding company.

246 (2) In the common stock of a bank holding company, as defined in chapter 167A,  
247 acquired otherwise than as set forth in the foregoing provisions of clause (a), or in the common  
248 stock of a bank holding company, as defined in the federal Bank Holding Company Act of 1956.  
249 The holding company shall own 80 per cent or more of the voting stock of the qualifying bank. If  
250 at any time after an investment in the common stock of any such bank holding company, no bank  
251 of such holding company meets the requirements of paragraph 1 or 2, such holding company's  
252 stock shall be disposed of within such reasonable time as the commissioner shall determine.

253 (e) In the common stock of a company as defined in chapter one hundred and sixty-seven  
254 A or in the federal Bank Holding Company Act of 1956, provided such banking institution or  
255 bank is of the kind referred to in paragraph 1 or 2 and such stock of such banking institution or  
256 bank represents at least 50 per cent of such company's assets at book value at the end of its fiscal  
257 year immediately preceding the date of investment or at the date of investment in the case of a  
258 newly formed company.

259 Section 15I. Subject to applicable banking law, an entity authorized to invest pursuant to  
260 section 15A or the legal list, so called, may purchase the whole or any part of the stock of a  
261 savings bank, co-operative bank, federal savings and loan association or federal savings bank  
262 provided that any such bank or association is well capitalized under bank regulatory criteria.

263 Section 15J. An entity authorized to invest pursuant to section 15A or the legal list, so  
264 called, may invest in the capital stock of any insurance company authorized to conduct a fire and

265 casualty insurance business in the commonwealth, subject to the conditions, limitations and  
266 requirements of this section.

267 No insurance stock shall be purchased if the cost thereof added to the cost of insurance  
268 stocks and bank stocks already owned shall exceed  $66 \frac{2}{3}$  per cent of the total of the assets of  
269 such entity.

270 Section 15K. An entity authorized to invest pursuant to section 15A or the legal list, so  
271 called, may invest in securities of any of the classes described below in this section.

272 Debentures, convertible debentures, notes or other evidences of indebtedness of (a) a  
273 banking corporation in the common stock of which such corporation may invest pursuant to  
274 paragraph 1 of section 15H; provided, that such entity authorized to invest pursuant to section  
275 15A or the legal list, so called, is well capitalized under regulatory criteria, (b) a banking  
276 corporation in the common stock of which such corporation may invest pursuant to paragraph 2  
277 of said section 15H is well capitalized under regulatory criteria.

278 SECTION 4. Chapter 171 of the General Laws is hereby amended by adding after section  
279 67A the following section:—

280 Section 67B. Upon a two-thirds vote of its board of directors, a credit union which has  
281 strong management, is well-capitalized and has at least a satisfactory rating at the most recent  
282 community reinvestment examination conducted by the commissioner pursuant to section 14 of  
283 chapter 167 may apply to the commissioner to invest in shares of stock registered on a national  
284 securities exchange as provided in the Securities Exchange Act of 1934, 15 USC 78a or for  
285 which quotations are available through the Financial Industry Regulatory Authority or any  
286 comparable service designated by the commissioner; provided that such investment shall be  
287 made in the exercise of the judgment and care consistent with the “Prudent Man” rule, so-called  
288 and as provided herein. In making such application to the commissioner for “Prudent Man”  
289 authority, so-called, as provided herein, such credit union shall also have adequate policies and  
290 procedures governing the performance of such activity by the credit union and its employees, to  
291 minimize any credit, market, liquidity, operational, legal and reputational risks to the credit  
292 union. A credit union shall submit such other information the commissioner may deem necessary  
293 to properly evaluate an application. The commissioner may consider any other information  
294 available to the division of banks in determining whether to approve or reject an application. Any  
295 such approval granted by the commissioner shall be subject to such conditions and limitations as  
296 he may impose.

297

298 A credit union may apply to invest up to 20 per cent of its assets under the authority of  
299 this section. The percentage of such assets authorized shall be determined by the commissioner.

300 The commissioner may increase, modify, curtail or rescind or otherwise limit a credit union's  
301 authority to make such investments.

302 Before making any such investment under this section a credit union shall conduct an  
303 appropriate level of due diligence to determine if an investment is both permissible and  
304 appropriate. This may include both internal as well as external analysis. For debt instruments,  
305 such analysis shall not rely solely on 1 or more credit rating agencies and such credit union shall  
306 determine that such instrument has both a low risk of default by the obligor and that the full and  
307 timely repayment is expected over the expected life of the investment.

308 A credit union shall take into consideration the following:

309

310 (1) when considering the purposes, terms, and other circumstances of the credit union,  
311 including those set forth in this section, whether the investment would meet the "prudent man"  
312 standard whereby the credit union shall exercise reasonable care, skill, and caution in making its  
313 investments and management decisions;

314 (2) whether the investment or management decision is consistent with an overall  
315 investment strategy reasonably suited to the credit union;

316 (3) consideration of circumstances relevant to the credit union in investing and managing  
317 its assets, including: (i) general economic conditions; (ii) the possible effect of inflation or  
318 deflation; (iii) the role that each investment or course of action plays within the overall credit  
319 union investment philosophy; (iv) the expected total return from income and the appreciation of  
320 capital; (v) other resources of the credit union; (vi) needs for liquidity, regularity of income, and  
321 preservation or appreciation of capital; and (vii) an asset's special relationship or special value, if  
322 any, to the purposes of the credit union;

323 (4) whether facts relevant to the investment and management of its assets can be  
324 reasonably verified;

325 (5) whether the investment or management decision would reasonably diversify the  
326 investments of the credit union in order to bring the credit union's portfolio into compliance with  
327 the purposes, terms, and the other circumstances of the credit union, and with the requirements of  
328 this section; (6) the costs of any decision in investing and managing credit union assets and  
329 whether such costs are appropriate and reasonable in relation to its assets.

330 The investments under this section shall not exceed 20 per cent of the credit union's  
331 assets.

332           Such investments shall be subject to annual review by the board of directors of the credit  
333 union and shall be subject to periodic review by the division of banks during the course of  
334 examinations pursuant to section 2 of chapter 167.

335           SECTION 5. Chapter 294 of the acts of 1961, as most recently amended by chapter 253  
336 of the acts of 2010, is hereby amended by inserting after section 12 the following section:—

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338           Section 12A. Upon a two-thirds vote of its board of directors, and having established that  
339 such activity will not adversely affect its safety and soundness; and having adequate policies and  
340 procedures to ensure such investments governing the performance of the corporation and its  
341 employees, to minimize any credit, market, liquidity, operations, legal and reputational risks to  
342 the corporation, it may apply to the commissioner to make investments under the “Prudent Man”  
343 authority, so-called, authorized to state-chartered credit unions pursuant to section 67B of  
344 chapter 171 of the General Laws. Any such approval granted by the commissioner shall be  
345 subject to such conditions and limitations as he may impose.

346           The corporation may apply to invest up to 20 per cent of its assets under the authority of  
347 said section 67B. The percentage of such assets authorized shall be determined by the  
348 commissioner. The commissioner may increase, modify, curtail or rescind or otherwise limit the  
349 corporation’s authority make such investments under the authority of said section 67B.