HOUSE DOCKET, NO. 3278 FILED ON: 1/18/2013

# HOUSE . . . . . No. 893

## The Commonwealth of Massachusetts

PRESENTED BY:

***Michael A. Costello***

*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 modernizing the banking laws and enhancing the competitiveness of state-chartered banks.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|---|---|---|
| *Michael A. Costello* | *1st Essex* | *1/18/2013* |

HOUSE DOCKET, NO. 3278 FILED ON: 1/18/2013

# HOUSE . . . . . No. 893

By Mr. Costello of Newburyport, a petition (accompanied by bill, House, No. 893) of Michael A. Costello relative to the investment of municipal trust funds, including cemetery perpetual care funds, the modernizing the banking laws and enhancing the competitiveness of state-chartered banks. Financial Services.

## The Commonwealth of Massachusetts

**In the Year Two Thousand Thirteen**

An Act modernizing the banking laws and enhancing the competitiveness of state-chartered banks.

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

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

Trust funds, including cemetery perpetual care funds, unless otherwise provided or directed by the donor thereof, shall be deposited in a trust company, co-operative bank or savings bank, if such bank or trust company is organized or exists under the laws of the commonwealth or any other state of the United States or is otherwise authorized to transact business in the commonwealth and has its main office or a branch office in the commonwealth; a national bank, federal savings bank, federal savings and loan association, if such bank is authorized to transact business and has its main office or a branch office in the commonwealth; provided that any such state-chartered or federally chartered bank shall be insured by the Federal Deposit Insurance Corporation or its successor; or invested by cities and towns in participation units in a combined investment fund under section 38A of chapter 29 in an amount not exceeding $250,000, or in bonds or notes which are legal investments for savings banks.

SECTION 2. Said chapter 44 is hereby further amended by striking out section 55A, as so appearing, and inserting in place thereof the following section:—

Section 55A. A city, town, district or regional school district officer receiving public money and lawfully and in good faith and in the exercise of due care depositing the same in a

trust company, co-operative bank or savings bank, if such bank or trust company is organized or exists under the laws of the commonwealth or any other state of the United States or is otherwise authorized to transact business in the commonwealth and has its main office or a branch office in the commonwealth; a national bank, federal savings bank or federal savings and loan association, if such bank or association is authorized to transact business and has its main office or branch office in the commonwealth; or in participation units in a combined investment fund under section 38A of chapter 29, or, in the case of the city of Boston, in accordance with the provisions of section 55 in a national bank or trust company in the city of New York, provided that any such state-chartered or federally chartered bank shall be insured by the Federal Deposit Insurance Corporation or its successor; shall not be personally liable to the city, town, district or regional school district for any loss of such money by reason of the closing or liquidation of any such depository institution described above.

SECTION 3. Section 83 of chapter 62C of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in lines 68 to 69, the words:— or comparable reports filed with the office of thrift supervision.

SECTION 4. Section 34 of chapter 93 of the General Laws is hereby repealed.

SECTION 5. Section 1 of chapter 140D of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out the seventh paragraph and inserting in place thereof the following paragraph:—

“Bureau”, the bureau of consumer financial protection.

SECTION 6. Section 1 of said chapter 140D is hereby further amended by striking out the definition of “person” and inserting in place thereof the following definition:--

“Person”, a natural born person or organization other than a co-operative bank, a federal bank, foreign bank, out-of-state bank, out-of-state federal bank, savings bank or trust company as those words are defined in section 1 of chapter 167.

SECTION 7. Section 3 of said chapter 140D, as so appearing, is hereby amended by striking out, in lines 13, 16, 21 and 23, the word “board”, and inserting in place thereof the word:— bureau.

SECTION 8. Section 18 of said chapter 140D, as so appearing, is hereby amended by striking out, in lines 5 and 11, the word “board”, and inserting in place thereof the word:— bureau.

SECTION 9. Section 31 of said chapter 140D, as so appearing, is hereby amended by striking out, in line 6, the word “board” and inserting in place thereof the word:— bureau.

SECTION 10. Chapter 140E of the General Laws is hereby repealed.

SECTION 11. Chapter 167 of the General Laws is hereby amended by striking section 1A as appearing in the 2010 Official Edition, and inserting in place thereof the following section:—

Section 1A. The commissioner shall promulgate rules and regulations establishing minimum standards relative to the security and protection of credit unions under his supervision, both for the benefit of employees as well as the general public, including the requirement for the installation, maintenance and operation of security devices and procedures and to assist in the identification and apprehension of criminals.

Said rules and regulations shall fix the time limit within which each such credit union shall comply with the standards so established and may require the submission, in writing, of periodic reports and other information necessary to ensure compliance with such rules and regulations. A credit union which violates any rule or regulation promulgated pursuant to this section shall forfeit to the commonwealth one hundred dollars for each day during which such violation continues, to be recovered by an information in equity in the name of the attorney general at the request of the commissioner, commenced in the supreme judicial court for Suffolk county.

SECTION 12. Section 1B of chapter 167 of the General Laws is hereby repealed.

SECTION 13. Section 2 of chapter 167 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in lines 54 to 55, the words "Office of Thrift Supervision" and inserting in place thereof the words:— Bureau of Consumer Financial Protection.

SECTION 14. Section 2 of said chapter 167, as so appearing, is hereby further amended by adding the following subsection:—

(d) Notwithstanding the provisions of any general or special law to the contrary, the commissioner may establish a tiered regulatory structure for the supervision and examination of savings banks, co-operative banks and trust companies. The criteria for the tiered regulatory structure may include, but need not be limited to, the following: asset size; level of capital; balance sheet composition; the so-called CAMELS rating; record of performance under the community reinvestment act; compliance with laws and regulations and such other factors as the commissioner may determine. In establishing the tiered regulatory structure the commissioner shall seek to effect cost reductions and reduce the regulatory burden for savings banks, co-operative banks and trust companies. The commissioner may promulgate rules and regulations to carry out the provisions of this subsection.

SECTION 15. Said chapter 167 as appearing is hereby amended by inserting after section 2G the following three sections:—

Section 2H. Notwithstanding any general or special law to the contrary, the commissioner may approve, subject to such terms and conditions as he may impose, an application by a savings bank, a co-operative bank or a trust company to engage in any activity or invest in any products or services which are related or incidental to banking and not prohibited by law and do not pose a substantial risk to the safety and soundness of the savings bank, co-operative bank or trust company.

Section 2I. A bank shall comply with the following federal laws and federal regulations subject to the terms and conditions imposed by this section.

(a) The Expedited Funds Availability Act 12 USC 4001 et seq. and regulations promulgated thereunder.

(b) The Federal Fair Credit Billing Act 15 USC 1666 to 1666j, inclusive and the regulations promulgated thereunder.

(c) The Electronic Fund Transfer Act 15 USC 1693 et seq. and the regulations provided there under but the maximum liability of a consumer under 15 USC 1693g shall be limited to $50.00

(d) The Truth in Lending Act 15 USC 1601 et seq. and regulations promulgated thereunder. This subsection shall not apply if the Commonwealth has a separate law, other than chapter 140D, which governs a type or class of credit transactions and any substantially similar federal law is implemented solely through regulations promulgated under 15 USC 1601 et seq.

(e) A bank shall comply with the regulations of a federal banking agency of which it is a member or by which its deposits or accounts are insured which regulations govern the manner of safeguarding the bank's monies and securities and the deposit of its securities or substantially the same subject matter.

(f) A bank shall comply with the provisions of 12 CFR Part 326 which govern the minimum security devices and procedures and Bank Secrecy Act compliance or other applicable regulations of a federal banking agency of which the bank is a member or by which its deposits or accounts are insured which regulations govern substantially the same subject matter.

(g) A bank shall comply with the provisions of 12 CFR Part 215 which govern loans to executive officers, directors or principal shareholders of a bank or federal regulations of a federal banking agency of which it is a member or by which its deposits or accounts are insured which regulations govern substantially the same subject matter.

Notwithstanding the provisions of this section, the commissioner shall retain jurisdiction over a bank to examine, supervise, take enforcement action against and assist consumers in matters relative to compliance with the cited federal laws or federal regulations. Nothing in this section shall affect the commissioner's jurisdiction relative to other federal laws or federal

regulations. For the purposes of this section, a bank shall mean a savings bank, a co-operative bank or a trust company. A federal bank, a foreign bank and an out-of-state bank shall comply with subsections (c) and (d).

Section 2J. A savings bank, co-operative bank or trust company, federal bank, out-of-state bank, foreign bank or limited purpose trust company may request that specific information in any application filed with the commissioner be treated as confidential. The following information shall be eligible for confidential treatment: (i) personal information, the release of which would constitute a clearly unwarranted invasion of privacy; (ii) commercial or financial information, the disclosure of which could result in substantial competitive harm to the submitter; (iii) information, the disclosure of which could seriously affect the financial condition of any such bank. The commissioner may determine that certain information should be treated as confidential and withhold that information from the public file.

If any such bank requests confidential treatment for information that the commissioner determines is not eligible for confidential treatment, the commissioner may include that information in the public file after notifying the bank.

SECTION 16. Said chapter 167 is hereby further amended by striking section 6 as appearing and inserting in place thereof the following section:—

Section 6. The commissioner may prescribe the manner and form of keeping the books and accounts of a bank, the extent to which they shall be audited and for a credit union, the manner of safeguarding its money and securities and regulations under which credit union may deposit its securities with savings banks, co-operative banks, trust companies or banking associations for safekeeping.

SECTION 17. Section 15 of said chapter 167, as so appearing, is hereby amended by striking out, in lines 17 to 18, the words “Federal Home Loan Bank Board” and inserting in place thereof the words:— Board of Governors of the Federal Reserve System.

SECTION 18. Said chapter 167 is hereby further amended by striking section 15A and 15B as appearing and inserting in place thereof the following:—

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

(b) On or before July 1 of each year, the commissioner shall prepare a list of all stocks, bonds, notes and other interest-bearing obligations which are then legal investments under any provision of sections 15B through 15K, inclusive, provided that all privately placed or held issues may, in the discretion of the commissioner, be omitted. An entity issuing such an instrument shall identify itself directly to the commissioner as being eligible to be included on such list under the authorities specified in section 15E though 15K, inclusive, provided however

that the commissioner shall have the discretion as to whether to add any such entity and instrument to the list. Such list shall include the name of any investment fund, approved by the commissioner, which invests only in such stocks, bonds, notes and other interest bearing obligations. The shares of any such investment fund so approved shall be legal investments pursuant to this section to the same extent as any such stocks, bonds, notes and other interest bearing obligations. Said list shall at all times be public. In the preparation of any list hereunder which the commissioner is required to prepare or furnish, he may employ such expert assistance as he deems proper or may rely upon information contained in publications which he deems authoritative in reference to such matters, and he shall be in no way held responsible or liable for the omission from such list of the name of any state or political subdivision or authority thereof or of any corporation or association the stocks, bonds, notes or other interest bearing obligations of which conform or any investment fund which conforms to this chapter, or for the omission of any investment funds, stocks, bonds, notes or other interest bearing obligations which so conform; nor shall he be held responsible or liable for the inclusions in such list of any such names or of any investment funds, stocks, bonds, notes or other interest bearing obligations which do not so conform.

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

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

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

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

(b) The securities eligible for approval for investment under this section may include: (1) interest bearing obligations of any state, county, city, town or district or any subdivision or instrumentality thereof, and of 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 in the foregoing clause (2). Obligations to be eligible pursuant to clauses (1) and (2) shall have an initial offering of at least $50,000,000 and be rated at least a single A.

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

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

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

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

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

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

(1) direct obligations of the United States, or in such obligations as are unconditionally guaranteed as to the payment of principal and interest by the United States;

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

(3) legally issued, assumed or unconditionally guaranteed bonds, notes or other interest bearing obligations of any state of the United States other than this commonwealth, which has: not within the 20 years prior to the making of such investment defaulted for a period of more than 120 days in the payment of any part of either principal or interest of any legally issued or assumed obligation; provided, that the full faith and credit of such state is pledged for the payment of the principal and interest of such obligations;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) With respect to bonds, such obligations shall be those of a railroad incorporated in the United States or any state thereof and which is doing business principally within the United States and shall contain an unconditional promise to pay the interest thereon regularly and to pay the principal at a specified date, which promise may be modified, if at all, only by vote of holders of at least 75 per cent in amount of such bonds. Not more than 20 per cent of the assets of such entity shall be invested in such railroad obligations.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 15J. An entity authorized to invest pursuant to section 15A or the legal list, so called, may invest in the capital stock of any insurance company authorized to conduct a fire and casualty insurance business in the commonwealth, subject to the conditions, limitations and requirements of this section.

No insurance stock shall be purchased if the cost thereof added to the cost of insurance stocks and bank stocks already owned shall exceed 66 2/3 per cent of the total of the assets of such entity.

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

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

SECTION 19. Sections 38 to 39C, inclusive of said chapter 167 are hereby repealed.

SECTION 20. Section 40 of said chapter 167, as so appearing, is hereby amended by striking out, in line 31 the words “Office of Thrift Supervision” and inserting in place thereof the words:— Bureau of Consumer Financial Protection.

SECTION 21. Sections 43 and 43A of said chapter 167 are hereby repealed.

SECTION 22. Section 3 of chapter 167A, as appearing in the 2010 Official Edition, is hereby amended by adding the following paragraph:—

The provisions contained in section 2 shall not apply to the acquisition by a bank holding company, or a company or a banking institution which would become a bank holding company, of a banking institution or other bank holding company is

merged, consolidated, its assets purchased or established on an interim basis simultaneously with the acquisition of the shares of the banking institution or other bank holding company, and the company or bank holding company is not operated by the acquiring bank holding company, company or banking institution, as a separate entity other than as the survivor of the merger, consolidation or asset purchase; and

the transaction requires the approval of the commissioner under the General Laws.

The provisions of section 4 relative to the Massachusetts Housing Partnership Fund shall apply to any transaction which but for the exemption provided for in this paragraph would have been subject to such provisions. The commissioner shall not approve any transaction referred to in clause (ii) until he has received notice from the Massachusetts Housing Partnership Fund that satisfactory arrangements have been made under said section 4.

SECTION 23. Said chapter 167A is hereby further amended by adding the following section:—

Section 8. A banking institution, a bank holding company, a company or a mutual holding company defined in section 1 of chapter 167H may request that specific information in any application filed with the board of bank incorporation shall be eligible for confidential treatment. The following information generally is considered confidential: (i) personal information, the release of which would constitute a clearly unwarranted invasion of privacy; (ii) commercial or financial information, the disclosure of which could result in substantial competitive harm to the submitter; (iii) information, the disclosure of which could seriously affect the financial condition of any such banking institution, bank holding company, company or mutual holding company. The board may determine that certain information should be treated as confidential and withhold that information from the public file.

If any such banking institution, bank holding company, or company requests confidential treatment for information that the board determines not to be confidential, the board may include that information in the public file after notifying the banking institution, bank holding company, company or mutual holding company.

SECTION 24. Chapter 167B of the General laws is hereby amended by striking out section 1 as appearing in the 2010 Official Edition and inserting in place thereof the following section:—

Section 1. The following words as used in this chapter, unless the context otherwise requires, shall have the following meanings:—

“Accepted access device”, an access device to a consumer’s account for the purpose of initiating electronic fund transfers when the consumer to whom such card, code, or other means of access was issued has requested, received and signed a receipt for, or has signed, or has used, or authorized another to use such card, code, or other means of access for the purpose of transferring money between accounts or obtaining money, property, labor or services.

“Access device”, a card, code, or other means of access or any combination thereof, other than a check, draft or similar paper instrument, by the use of which a consumer may initiate an electronic fund transfer.

"Account", demand deposit, negotiable withdrawal order account, savings deposit, share account or other consumer asset account, other than an occasional or incidental credit balance in an open end credit plan as defined in chapter one hundred and forty D, established primarily for personal, family or household purposes, but such term does not include an account held by a financial institution pursuant to a bona fide trust agreement.

"Bank" any association or corporation chartered by the commonwealth under chapter 171, or any individual, association, partnership or corporation incorporated or doing a banking business subject to supervision of the commissioner, provided however, that a bank shall not include a co-operative bank, a federal bank, a foreign bank, an out-of-state bank, an out-of-state federal bank, a savings bank or a trust company as defined in section 1 of chapter 167.

"Bureau", the bureau of consumer financial protection.

"Business day", any day on which the offices of the consumer's financial institution involved in an electronic fund transfer are open to the public for carrying on substantially all of its business functions.

"Central routing unit", a facility where electronic impulses or other indicia of a transaction originating at an electronic branch are received and are routed and transmitted to a financial institution, or to a data processing center, or to another central routing unit, wherever located.

"Commissioner", the commissioner of banks.

"Consumer", a natural person.

"Data processing center", a facility, wherever located, at which electronic impulses or other indicia of a transaction originating at an electronic branch are received and are processed in order to enable the electronic branch to perform any authorized function.

"Electronic branch", an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. Such term includes, but is not limited to automated teller machines and cash dispensing machines. Such term does not include a teller machine or similar device located on the premises of and operated solely by an employee of a financial institution or a point-of-sale terminal as hereinafter defined. An electronic branch shall not be considered a branch in chapter 171.

"Electronic fund transfer", any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic branch telephone instrument, or computer or magnetic tape or point-of-sale terminal so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone. Such term shall not include:

(a) check guarantee or authorization service which does not directly result in a debit or credit to a consumer's account.

(b) any transfer of funds, other than those processed by automated clearinghouse, made by a financial institution on behalf of a consumer by means of a service that transfers funds held at either Federal Reserve banks or other depository institutions and which is not designed primarily to transfer funds on behalf of a consumer.

(c) any transfer, the primary purpose of which is the purchase or sale of securities or commodities regulated by the Securities and Exchange Commission or the Commodities Futures Trading Commission.

(d) any transfer under an agreement between a consumer and a financial institution which provides that the institution will initiate individual transfers without a specific request from the consumer, (1) between a consumer's accounts within the financial institution, such as a transfer from a checking account to a savings account; (2) into a consumer's account by the financial institution, such as the crediting of interest to a savings account, provided that the financial institution shall be subject to clause (2) of section 7 and sections 20 and 21; or (3) from a consumer's account to an account of the financial institution, such as a loan payment, provided that the financial institution shall be subject to clause (1) of section 7 and sections 20 and 21.

(e) any transfer of funds which is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution which is not pursuant to a prearranged plan and under which periodic or recurring transfers are not contemplated.

"Error", an error consists of:

(1) an unauthorized electronic fund transfer;

(2) an incorrect electronic fund transfer from or to the consumer's account;

(3) the omission from a periodic statement of an electronic fund transfer affecting the consumer's account which should have been included;

(4) a computational error by the financial institution;

(5) the consumer's receipt of an incorrect amount of money from an electronic branch;

(6) a consumer's request for additional information or clarification concerning an electronic fund transfer or any documentation required by this chapter; or

(7) any other error described in regulations of the commissioner.

"Financial Institution"; a bank, federal credit union or any other person who (a) directly or indirectly holds an account belonging to a consumer, or (b) issues an access device and agrees

with a consumer to provide electronic fund transfer services; provided, however, that a person shall not include a co-operative bank, a federal bank, a foreign bank, an out-of-state bank, an out of state federal bank, a savings bank or a trust company as defined in section 1 of chapter 167.

"Merchant", any person, corporation, association, partnership or other entity which provides a location for a point-of-sale terminal and contracts with a financial institution or an approved organization for electronic fund transfer services.

"Office", shall mean a main office or branch office as are authorized in chapter 171. An electronic branch shall not be considered an office.

"Official bureau interpretation", a formal interpretation issued by the bureau and designated by the bureau as constituting an official bureau interpretation.

"Official staff interpretation", an interpretation issued by an official duly authorized by the bureau to issue such interpretation, and designated by the official as constituting an official staff interpretation.

"Organization", any person, corporation, association of partnership which assists or provides services to a financial institution or merchant in order to make available electronic fund transfers. A financial institution or merchant shall not be considered an organization.

"Point-of-sale terminal", an electronic terminal located on the premises of a merchant when such terminal is used with the assistance of an employee of a merchant for a customer's purchase or lease of goods or services sold or leased by such merchant or adjustments thereto or the receipt of cash by the customer which is ancillary to the customer's purchase or lease of goods or services from such merchant; provided, however, that such terminal shall be deemed an electronic branch for the purposes of this chapter whenever it is used for any other electronic fund transfer, or for an electronic fund transfer involving a customer's account held by an organization, or for an electronic fund transfer solely for customers of a single financial institution or bank holding company subject to the provisions of chapter 167A or the Bank Holding Company Act of 1956, 12 USC 1841 et seq.

"Preauthorized electronic fund transfers", an electronic fund transfer authorized in advance to recur at substantially regular intervals.

"Unauthorized electronic fund transfer", an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate such transfer and from which the consumer receives no benefit, but the term does not include any electronic fund transfer (a) initiated by a person other than the consumer who was intentionally furnished with the access device to such a consumer's account by such a consumer unless the consumer has notified the financial institution involved that transfers by such other person are no

longer authorized, (b) initiated with fraudulent intent by the consumer or any person acting in concert with the consumer.

SECTION 25. Section 2 of said chapter 167B, as so appearing, is hereby amended by striking out, in lines 5, 7, 10, 18, 22, 25, 29, 31, 55, 71, and 73, the word “board”, and inserting in place thereof the word:— bureau.

SECTION 26. Said section 2 of said chapter 167B is hereby further amended by striking out, in lines 9, 10, 12, and 75 the word “board’s”, and inserting in place thereof the word:— bureau’s.

SECTION 27. Subsection (d) of section 20 of said chapter 167B, as so appearing, is hereby amended by striking out paragraphs (1) and (2) and inserting in place thereof the following two paragraphs:—

(1) any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the bureau or by the commissioner or in conformity with any interpretation or approval by an official or employee of the bureau duly authorized by the bureau to issue such interpretations or approvals under such procedures as the bureau may prescribe therefor or in conformity with any advisory ruling by the commissioner; or

(2) any failure to make disclosure in proper form if a financial institution utilized an appropriate model clause issued by the bureau or the commissioner, notwithstanding that after such act, omission, or failure has occurred, such rule, regulation, interpretation, approval, or model clause is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

SECTION 28. Chapter 167C of the General Laws is hereby amended by striking out section 1, as appearing in the 2010 Official Edition, and inserting in place thereof the following section:—

Section 1. As used in this chapter, the following words shall, unless the context otherwise requires, have the following meanings:—

“Bank”, an association or corporation chartered by the commonwealth under chapter 168, 170 and 172.

“Commissioner”, the commissioner of banks.

“Electronic branch”, an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. Such term includes, but is not limited to automated teller machines and cash dispensing machines. Such term does not include a teller machine or similar device located on the premises of and operated solely by an employee

of a financial institution or a point-of-sale terminal as hereinafter defined. An electronic branch shall not be considered a main office or a branch office in this chapter.

"Financial institution", a bank, federal bank, federal credit union, foreign bank, out-of-state bank, out-of-state federal bank or any other person who (a) directly or indirectly holds an account belonging to a consumer, or (b) issues an access device and agrees with a consumer to provide electronic fund transfer services; provided, however, that said term shall mean a bank for the purposes of the first, second and third paragraphs of section 3 and for the purposes of section 4.

"Foreign bank", an association or corporation authorized to do a banking business in the commonwealth, the main office of which is located outside the commonwealth, and which exists by authority of a country other than the United States.

"Governing board", the board of directors, the board of trustees or similar board of a bank.

"Organization", any person, corporation, association of partnership which assists or provides services to a financial institution or merchant in order to make available electronic fund transfers. A financial institution or merchant shall not be considered an organization.

"Out-of-state bank", an association or corporation authorized to do a banking business in the commonwealth, the main office of which is located outside the commonwealth, and which exists by the authority of a state of the United States except the commonwealth.

"Out-of-state branch", a branch of a bank located outside the commonwealth.

"Out-of-state federal bank", a national banking association, savings and loan association or savings bank that exists by authority of the United States, the main office of which is located outside the commonwealth.

"Point-of-sale terminal", an electronic terminal located on the premises of a merchant when such terminal is used with the assistance of an employee of a merchant for a customer's purchase or lease of goods or services sold or leased by such merchant or adjustments thereto or the receipt of cash by the customer which is ancillary to the customer's purchase or lease of goods or services from such merchant; provided, however, that such terminal shall be deemed an electronic branch for the purposes of this chapter whenever it is used for any other electronic fund transfer, or for an electronic fund transfer involving a customer's account held by an organization, or for an electronic fund transfer solely for customers of a single financial institution or bank holding company subject to the provisions of chapter one hundred and sixty-seven A or the Bank Holding Company Act of 1956, 12 USC 1841 et seq.

SECTION 29. Chapter 167C is hereby further amended by striking out section 2, as so appearing, and inserting in place thereof the following section:—

Section 2. The main office of a bank shall be in the town specified in its charter or in its agreement of association, or in such other town to which the office has been lawfully moved or to which it may be moved as provided in this section. The location of the main office of a bank may be changed to a point in the town of its location or to another town within the commonwealth with the written consent of the commissioner.

SECTION 30. Said chapter 167C is hereby further amended by striking out section 6, as so appearing, and inserting in place thereof the following section:—

Section 6. A bank, upon approval by the commissioner of an application therefor in prescribed manner and form and in accordance with applicable law, may establish and maintain branches through a merger or consolidation with or by the purchase of the whole or any part of the assets or stock of a foreign bank, out-of-state bank or out-of-state federal bank. A request for the approval by the commissioner shall be accompanied by an investigation fee the amount of which shall be determined annually by the commissioner of administration under the provisions of section 3B of chapter 7.

The offices of a foreign bank, out-of-state bank or out-of-state federal bank merged or consolidated with or whose assets or stock were purchased pursuant to this section, may be maintained as branch offices of the bank; but, the a resulting branch outside the commonwealth shall be considered to be an out-of-state branch and subject to the supervision of the commissioner and the applicable laws of the jurisdiction in which the out-of-state branch is located.

SECTION 31. Chapter 167C, as so appearing, is hereby further amended by adding the following 6 sections:—

Section 12. After a vote of its board of trustees or directors, a bank, except as otherwise provided in this section, may purchase, establish, install, operate, lease or use individually or with any other financial institution or organization or share with any other financial institution or organization any number of manned or unmanned electronic branches at which a customer may make deposits, withdrawals, transfers of funds, obtain advances against preauthorized lines of credit, cash checks or pay obligations, and any number of point-of-sale terminals; provided, however, that withdrawals from such electronic branches, other than those located at an office of a bank, shall be made only from a demand deposit account, negotiable withdrawal order account, or statement account or against a preauthorized line of credit; and provided, further that the bank, shall have applied for and obtained the approval of the commissioner for such electronic branch except that a bank at whose office such electronic branch is located need not have applied for or obtained such approval. The commissioner shall approve such application if, in his opinion, such action will promote a sound banking system which provides for the needs of the people and business, encourages competition, discourages monopolies and does not ignore legislative policies.

There shall be no geographical limitation on the location of electronic branches which a bank may purchase, establish, install, operate, lease or use individually or with any other financial institution or organization or share with any other financial institution or organization; provided, however, that the site location for such electronic branches, other than an electronic branch located at an office of a financial institution or in another state, shall be subject to approval by, and regulation of, the commissioner. An electronic branch may be located in a mobile unit under such conditions and limitations as the commissioner, by regulation, shall establish. No electronic branch shall be located upon premises where there occurs legalized gambling, other than a state lottery.

A financial institution or organization shall adopt and maintain safeguards to insure the safety of a customer using the electronic branch, to insure the safety of the funds, items and other information at the electronic branch and to assist in the identification of criminals. The commissioner shall promulgate rules and regulations establishing minimum standards for such safeguards. Such safeguards shall be in place and operational at the time such electronic branch begins to transact business; provided, however, that such safeguards shall not apply to an electronic branch located at an office of a financial institution.

No such electronic branch located at other than the office of a financial institution shall be manned or operated at any time by an employee of any financial institution, holding company of a financial institution or affiliate thereof, or any organization except on a temporary basis for the purpose of instructing operators or customers, servicing the electronic branch or for the purpose of using such electronic branch on said employee's own behalf.

Section 13. Any out-of-state bank or out-of-state federal bank, if such bank is expressly authorized to do so by the laws under which it is organized and operates, may, upon approval by the commissioner of an application thereof in prescribed manner and form, establish and maintain branches through a merger or consolidation with or the purchase of assets or stock of any Massachusetts bank; provided, however, that in each instance the laws of the jurisdiction in which such out-of-state bank or out-of-state federal bank has its principal place of business expressly authorize, under conditions no more restrictive than those imposed by this chapter as so determined by the commissioner, a bank to exercise like authority therein.

Any such out-of-state bank shall, upon any such merger or consolidation with or purchase the assets or stock of a bank, operate the same as a branch under the supervision of the commissioner and in accordance with all applicable laws which govern such activities by banks.

Any out-of-state federal bank shall, upon such merger or consolidation with or purchase of assets or stock of a bank, shall operate the same as a branch which shall be subject to all laws of the commonwealth relative to community reinvestment, consumer protection, fair lending, establishment of intra-state branches, and the application or administration of any tax or method of taxation including, but not limited to, sections 1to 14A of chapter 93 and applicable sections

of chapters 93A, 167 to 167J, inclusive, and all other applicable laws, including all rules and regulations established thereunder pursuant to law, and to such other laws of the commonwealth as are applicable to a national bank with its main office in the commonwealth.

Any such merger, consolidation or purchase of assets shall comply with all applicable provisions of law relative to filing requirements of out-of-state non-banking corporations doing business in the commonwealth. The commissioner shall not approve any such application if the bank sought to be acquired has been in existence for a period of less than 3 years or if, as a result thereof, the applicant would control in excess of 30 percent of the total deposits, exclusive of foreign deposits, of all depository institutions in the commonwealth insured by the Federal Deposit Insurance Corporation, or any successor corporation thereto; provided, however, that the commissioner may waive either said age requirement or concentration limit, or both, if it is deemed that economic conditions warrant granting such waiver. For the purposes of this section, the term "foreign deposits" shall mean deposits received in a foreign country and deposits in Edge and Agreement subsidiaries and international banking facilities.

Section 14. A foreign bank, out-of-state bank, or out-of-state federal bank, if such bank does not operate a branch in the commonwealth, may, upon approval by the commissioner of an application thereof in prescribed manner and form and in accordance with the requirements of section 13 establish and maintain a branch de novo in the commonwealth or may purchase a branch of a bank without purchasing the bank; provided, however, that in each instance the laws of the jurisdiction in which such bank has its principal place of business expressly authorize, under conditions no more restrictive than those imposed by this chapter as so determined by the commissioner, a bank to establish therein a branch de novo or to acquire a branch of a bank without acquiring the bank. Any foreign bank or out-of-state bank shall operate the same as a branch under the supervision of the commissioner and in accordance with all applicable laws which govern such activities by banks.

Any out-of-state federal bank shall operate the same as a federal branch which shall be subject to all laws of the commonwealth relative to community reinvestment, consumer protection, fair lending, establishment of intra-state branches, and the application or administration of any tax or method of taxation including, but not limited to, sections 1 to 14A, inclusive, of chapter 93, and the applicable sections of chapters 93A, 167 to 167J, inclusive, and any other applicable laws, including all rules and regulations promulgated thereunder, and to such other laws of the commonwealth as are applicable to a national bank with its main office in the commonwealth.

Section 15. No foreign bank shall, except as herein provided, transact a banking business in the commonwealth, other than as provided in this chapter; provided, however, that the commissioner may, conditioned upon the performance of such requirements as to auditing as commissioner may prescribe, grant a certificate authorizing the same to any such bank. The commissioner, upon application thereof which shall be accompanied by an investigation fee, the

amount of which shall be determined annually by the commissioner of administration under the provisions of section 3B of chapter 7, except that such fee shall not be less than $10,000, may grant such certificate in accordance with the provisions of this section. Any such bank transacting banking business in the commonwealth pursuant to such certificate shall be subject to the commissioner and shall comply with all laws of the commonwealth applicable to a bank.

In deciding whether or not to issue such certificate, the commissioner shall determine whether the applicant is adequately capitalized, as defined in the Federal Deposit Insurance Act 12 USC 1811 et seq., whether competition among banking institutions will be unreasonably affected and whether public convenience and advantage will be promoted. In making such determination, the commissioner shall consider, but not be limited to, the applicant's record of compliance with all applicable community reinvestment requirements and a showing of net new benefits. For the purposes of this section, the term "net new benefits" shall mean initial capital investments, job creation plans, consumer and business services including small business loans, farm loans, commitments to maintain and open branch offices within a bank's delineated local community, as such term is used within section 14 of chapter 167, and such other matters as the commissioner may deem necessary or advisable.

The commissioner shall not issue such certificate until the commissioner has received notice from the Massachusetts Housing Partnership Fund established by section 35 of chapter 405 of the acts of 1985, that arrangements satisfactory to such fund have been made for such foreign bank to make ninety hundredths of one percent of its assets in the commonwealth available for call by said fund for a period of 10 years for the purpose of providing loans to said fund for financing, down payment assistance, share loans, closing costs and other costs related to creating affordable rental housing, limited equity cooperatives and affordable home ownership opportunities, and tenant management programs and tenant unit acquisition or ownership programs in state funded public housing developments. All of the benefits and assistance provided by said fund under funds made available by this section shall be to persons with incomes of less than 80 percent of the area-wide median income as determined from time to time by the United States Department of Housing and Urban Development; provided, however, that at least 25 percent of such assistance shall be to persons with incomes of less than 50 percent of said area-wide median income. All loans made to the fund by such banks shall be deemed to be legal investments for such banks; provided, however, that (a) such loans shall be evidenced by notes, or other evidence of indebtedness of the fund, which shall bear interest at rates approved by the commissioner which shall be based upon the costs, not to include any so-called lost opportunity costs, incurred by the bank in making funds available to the fund; provided, however, that the fund may, by agreement with such bank, accept a reduction in the amount of said call based upon a lower rate of interest; and (b) no loan to the fund shall be secured in any manner unless all outstanding loans to the fund shall be secured equably and ratably in proportion to the unpaid balance of such loans and in the same manner.

Said fund shall file with the commissioner a report subsequent to any call to borrow funds pursuant to this section. Such report shall contain the total amount of the call, the allocation of the call to each such bank, the amount loaned by each to the fund, and the rate of interest thereon. Said report shall be filed within 60 days of any such call.

No such certificate shall be issued until the commissioner has received written assurances from such foreign bank that a resident or residents of the commonwealth shall occupy a position of an executive officer in any resulting bank or branch. For the purposes of this section, the term "executive officer" shall have the same meaning as contained in section 4 of chapter 167A.

Section 16. Any foreign bank which has obtained a certificate issued by the commissioner in accordance with section 38, if such bank is expressly authorized to do so by the laws under which it is organized and operates, may, upon approval by the commissioner of an application thereof in prescribed manner and form, establish and maintain branches through a merger or consolidation with any bank or federal bank; provided, however, that in each instance the laws of the jurisdiction in which such foreign bank has its principal place of business expressly authorize, under conditions no more restrictive than those imposed by this chapter as so determined by the commissioner, any bank or federal bank to exercise like authority therein.

Any foreign bank which establishes a branch through such merger, consolidation or purchase of assets or stock of any bank, shall operate the same as a branch under the supervision of the commissioner and in accordance with all applicable laws which govern such activities by banks.

Any foreign bank which establishes a branch through such merger, consolidation or purchase of assets or stock of any federal bank, shall operate the same as a federal branch which shall be subject to all laws of the commonwealth relative to community reinvestment, consumer protection, fair lending, establishment of intra-state branches, and the application or administration of any tax or method of taxation including, but not limited to, sections 1 to 14A of chapter 93 and applicable sections of chapters 93A, 167 to 167J, inclusive, and all other applicable laws including all rules and regulations established thereunder pursuant to law, and to other laws of the commonwealth as are applicable to a national bank with its main office in the commonwealth.

Any merger, consolidation or purchase of assets shall comply with all applicable provisions of law relative to filing requirements of out-of-state non-banking corporations doing business in the commonwealth. The commissioner shall not approve any such application if the bank or federal bank sought to be acquired thereby has been in existence for a period of less than 3 years or if, as a result thereof, the applicant would control in excess of 30 percent of the total deposits, exclusive of foreign deposits, of all depository institutions in the commonwealth insured by the Federal Deposit Insurance Corporation, or any successor corporation thereto; provided, however, that the commissioner may waive either said age requirement or

concentration limit, or both, if it is deemed that economic conditions warrant granting a waiver. For the purposes of this section, the term “foreign deposits” shall mean deposits received in a foreign country and deposits in Edge and Agreement subsidiaries and international banking facilities.

Section 17. The commissioner may, subject to any conditions as he may prescribe, grant to an out-of-state bank, an out-of-state federal bank, or a foreign bank a certificate authorizing it to act in a fiduciary capacity under the provisions, so far as applicable, of chapter 167G; provided, however, that such bank is authorized so to act by the laws of the jurisdiction where its principal office is located; and provided, further, that the laws of such jurisdiction, as determined by the commissioner, grant a similar privilege or privileges to a bank. Any out-of-state bank, out-of-state federal bank, or a foreign bank holding a certificate as aforesaid and appointed a fiduciary shall be subject to the provisions of General Laws with respect to the appointment of agents by fiduciaries and to the same taxes, obligations and penalties, with respect to its activities as fiduciary and the property held by it in its fiduciary capacity, as banks, and no certificate shall be issued to any out-of-state bank, out-of-state federal bank, or a foreign bank until it has filed with the commissioner an agreement in writing in which it binds itself to perform said obligations and pay any such taxes and penalties as aforesaid as may be levied or imposed upon it in this commonwealth. A bank, to the extent only that it acts as fiduciary as hereinbefore authorized, shall not be deemed to transact business in the commonwealth for the purposes of sections 40 to 42, inclusive.

SECTION 32. The General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out chapter 167D and inserting in place thereof the following chapter:—

CHAPTER 167D

DEPOSITS AND ACCOUNTS

Section 1. In this chapter, unless the context otherwise requires, the following words shall have the following meanings:—

“Bank”, a savings bank, co-operative bank or trust company incorporated as such in the commonwealth.

“Board”, the board of trustees or directors, as the case may be in a bank.

“Commissioner”, the commissioner of banks.

“Federally-chartered bank”, a national bank association, a federal savings and loan association, a federal savings bank or a federal credit union authorized to do business in the commonwealth.

Section 2. 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 such as are reasonably necessary to enable it to exercise fully those powers according to common banking customs and usages:

1. To receive deposits as authorized by this chapter.

2. 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 3. A bank may receive demand, time and other types of deposits without limitation and upon such terms and conditions as may be agreed upon between the depositor and the bank. Such deposits may include, but are not limited to:

(a) any bank or federally-chartered bank may receive deposits in the name of two or more persons as joint tenants, payable to two or more persons or the survivor or survivors of them, and any part or all of the deposits and interest represented by joint accounts may be withdrawn, assigned or transferred in whole or in part by any of the individual parties. Payments to any of the parties to a joint account while all of them are living shall discharge the liability of the bank or federally chartered bank to all persons and, in the event of the death of any of them, the bank or federally chartered bank shall be liable only to the survivor or survivors and the payment to any of the survivors shall discharge the liability of the bank or federally chartered bank to all persons.

The surviving owner or owners of a joint account may maintain the balance of the account in the amount appearing at the time of the decease of a joint owner, and such bank or federally chartered bank may allow interest additions and accumulations thereon.

Such deposits or any part thereof, or any interest thereon, may be paid to any of such persons or to any assignee or pledgee of any of such persons, whether the other such persons be living or not, provided they are not then attached at law or in equity in a suit against any such person, and the bank or federally chartered bank then has no notice in writing of any assignment or pledge of the account by any of such persons to any person other than the person to whom payment is being made hereunder. All such payments shall be valid and discharge the liability of the bank to all persons.

(b) Any bank or federally-chartered bank may receive deposits made by 1 or 2 persons in trust for other persons. The name, residence and date of birth of the person or persons for whom such deposit is being made shall be disclosed and the deposit shall be credited to the depositors as trustees for such persons. Payments may be made to the trustee, or if there are 2 trustees, to

both or to either or the survivor. If no other notice of the existence and terms of a trust has been received in writing by the bank or federally-chartered bank upon the death of the trustee or, if there are 2 trustees, upon the death of both of them, the amount then on deposit together with the interest thereon shall be paid to the persons who survive the death of the last surviving trustee in an equal portion of the funds for whom such deposit was made or to their legal representatives. Each person or his representative claiming to be a beneficiary under this section shall provide such identification and other information as requested by the bank or federally-chartered bank. Withdrawals and payments made in accordance with this section shall fully discharge the liability of the bank or federally-chartered bank to all persons.

(c) Any bank or federally-chartered bank having funds on deposit in the name of a minor may, unless in violation of a written agreement to which such bank or federally-chartered bank is a party, pay the same in whole or in part directly to such minor, to his legal representative, to either parent of such minor or to others on his written order; and any such payments shall discharge the liability of such bank or federally-chartered bank to all persons to the extent of such payment.

Section 4. (a) A bank may receive deposits into a deposit account held in the name of a natural person and established for personal, family or household purposes. The deposits, interest and other credits represented by the account may be withdrawn, assigned or transferred in whole or in part by the account holder only, except as otherwise provided in this section.

(b) Notwithstanding subsection (a), a holder of the account may provide for limited access to the account by another person to act as a signatory to the account pursuant to a declaration of intent in the form of a written statement, signed and sworn to by the account holder, evidencing his intent to designate another person as signatory to the account for the purpose of exercising, on behalf of the account holder, such powers with respect to the account as shall be expressed in the declaration.

The declaration of intent shall include the following:

(1) the name of the financial institution holding said account;

(2) the account number;

(3) the date of execution;

(4) the name and signature of the account holder; and

(5) the powers granted relative to the use of and withdrawals from the account by the signatory.

(c) The provisions of the declaration relative to the account shall become effective upon the filing of the declaration with the financial institution, if the following documents are executed contemporaneously with, or on the same document as the declaration:

(1) a statement, signed by the signatory, accepting the appointment;

(2) a statement disclosing that any acts by a signatory relative to the account not specifically authorized in the declaration of intent may subject the signatory to civil or criminal liability;

(3) a statement, signed and sworn to by the signatory, acknowledging receipt of an attested copy of the declaration of intent and the statement required by clause (2).

The declaration submitted to effect the establishment of the account, and documents related thereto, shall be maintained by the financial institution with the records of the account.

(d) Unless otherwise provided in the declaration of intent, all assets of the account shall be the property solely of the principal, and nothing in this section shall be construed to vest any rights relative to the account in the signatory; and in the event of the death of the principal while the declaration of intent is in effect, no right of survivorship shall accrue to a signatory.

(e) An amendment to or revocation of a declaration of intent, unless otherwise provided in the declaration, may be effected only by the principal or by a court appointed fiduciary in accordance with the intent of this section, and shall be filed forthwith with the financial institution holding the account.

(f)(1) In the event of the incapacity or death of the principal, and receipt of written notice by the financial institution holding the account, withdrawals shall not be permitted, except by a court appointed fiduciary, unless otherwise provided for in the declaration of intent. Notice of the death or incapacity of the principal of a limited access deposit account shall be given, in the case of a bank or federally chartered bank, to the main office of the bank.

(2) A bank shall not be required to monitor the limited access deposit account in a manner different from its other checking or savings accounts. A bank shall not be liable for withdrawals and payments made by the signatory before it receives notice of amendments or revocation of the declaration of intent, or before it receives notice of the death or incapacity of the principal.

(g) A signatory to the account shall maintain accurate records of his activity as a signatory and shall make the same available whenever requested to do so by the holder, his legal representative, or by a court appointed fiduciary.

(h) A signatory who violates the terms of a declaration of intent, with intent to defraud, and converts or secretes with intent to convert, the assets of the account, shall be guilty of larceny and subject to penalties contained in section 30 of chapter 266.

Section 5. A natural person 18 years of age or under or 65 years of age or older may choose 1 demand deposit account and 1 savings account which, in each instance, shall include a joint account in which the spouse of the eligible depositor, regardless of age, is the joint tenant therein or the joint tenant would otherwise be an eligible depositor, and which has been established and used for personal, family or household purposes, upon which no service, maintenance or other similar charge shall be imposed. No such account shall be subject to: (i) a minimum balance requirement; (ii) a charge for a deposit or withdrawal; or (iii) a fee for the initial order or subsequent refills of the basic line of checks offered by the bank, which shall include the name of the depositor. For the purposes of this subparagraph, the term "savings account" shall include a regular passbook, regular statement savings or regular NOW account, so-called. A savings account in trust for another person shall be covered by the notice, services, fee and charge provisions of this subparagraph only if the trustee is a person 18 years of age or under or 65 years of age or older. A consumer shall notify a bank of his eligibility for such accounts and provide proof of age in a form acceptable to the bank. A bank may, however, assess a fee for certain services in accordance with the bank's published service charge schedule which shall include, stop payment orders, wire transfers, certified or bank checks, money orders, deposit items returned, transactions at electronic branches and through other electronic devices a reasonable charge, as determined by the commissioner, against any such account when payment on a check or other transaction on the account has been refused because of insufficient funds or paid despite insufficient funds. A bank shall post in each of its banking offices a notice informing consumers of the availability of the banking services prescribed by this subparagraph. A bank shall, in addition to the notice posting requirement, disclose annually to all depositors, in a manner of its choosing, the provisions of this subparagraph applicable to a person 18 years of age or younger or 65 years of age or older. For the purposes of this subparagraph, the term "check or other transaction" shall include, but not be limited to, a check for purposes of the Check Clearing for the 21st Century Act, 12 USC Sec. 5001 et seq., an electronic funds transfer as defined in section 1 of chapter 167B or regulations thereunder or a transaction processed by an automated clearinghouse.

Section 6. No bank shall assess any fee, charge or other assessment against any account, established for personal, family or household purposes, of a depositor who, as the payee of a check, draft or money order, of which the payee is not also the maker, deposits the same therein and payment on any such instrument is refused by the depository institution upon which it is drawn because of insufficient funds or because the maker thereof did not have an account at such depository institution; provided, further, that a bank may assess a reasonable fee, charge or assessment that represents its direct costs, as established annually by the commissioner of banks, incurred for processing such check, draft or money order.

Section 7. A bank or federally-chartered bank which accepts a deposit for demand deposit or other account subject to withdrawal by negotiable or transferable instrument for the purpose of making a transfer to a third party shall, if requested by the depositor, provide without charge not less than 25 cancelled instruments or legible copies of the fronts and backs thereof per calendar year; but, if requested by a depositor who is blind the bank shall make additional accommodations to provide additional cancelled instruments or information thereon as is possible in accordance with the Check Clearing for the 21st Century Act, 12 USC 5001 et seq., and regulations promulgated thereunder. Section 4-406 of chapter 106 shall be subject to this section.

Section 8. No bank shall give collateral or other security for a deposit of money received in its banking department, except that such bank may make such a deposit of securities or satisfy and provision as may be required by the laws of the United States or the rules and regulations of any department, agency or instrumentality thereof as security for deposits of funds made by the United States or any department, agency or instrumentality thereof with such bank and may give such collateral or other security for deposits of public or other funds as may be required by any public authority making such deposits or controlling the terms upon which they may be made and except as provided in section 8 of chapter 167G.

Section 9. Any bank or federally-chartered bank may establish an account to receive deposits from a lessor acting as a trustee for funds received and held by such trustee pursuant to paragraph (a) of subsection (3) of section 15 B of chapter 186. Such account may be established as required by said section 15 B for the purpose of holding security deposits taken by a lessor of residential dwelling units owned or managed by said lessor, but the terms of said account shall be such as to place said deposit beyond the claim of a creditor of the lessor, including a foreclosing mortgagee or trustee in bankruptcy, and as will provide for the transfer of said deposit to a subsequent owner of any property for which such security deposit was taken. Interest accruing on said deposit shall be paid to the lessor pursuant to the terms of the deposit. Withdrawals and payments made by the corporation from said account shall discharge the liability of said corporation to all persons.

Section 10. Any bank or federally chartered bank may establish an account or accounts to receive deposits from a manager or managing agent acting as a trustee for funds received and held by such trustee pursuant to paragraph (2) of subsection (f) of section 10 of chapter 183A. Such account or accounts may be established as required by said section ten for the purpose of holding condominium funds taken by a manager or managing agent, but the terms of said account or accounts shall be such as to place said deposit beyond the claim of a creditor of the manager or managing agent, including a foreclosing mortgagee or trustee in bankruptcy, and as will provide for the transfer of said deposit to the organization of unit owners or subsequent manager or managing agent, as determined by the organization of unit owners. Interest accruing on said deposit shall be paid to the organization of unit owners pursuant to the terms of the deposit. Withdrawals and payments made by the bank or federally chartered bank from said

account or accounts shall discharge the liability of said bank or federally chartered bank to all persons.

Section 11. When a passbook or other instrument as evidence of a depositor's account issued by any bank has been lost, stolen or destroyed, the person in whose name it was issued, or in the case of a joint account, by the joint owners thereof may make written application to such bank for payment of the amount of the deposit represented by said book or other instrument or for issuance of a duplicate book or other instrument therefor. The application shall include an affidavit signed and sworn to that the person, or persons, making such application is a lawful owner, or are the lawful owners, of said passbook or other instrument, that said passbook or other instrument has been lost, stolen or destroyed, and that no lawful owner has, in any way, transferred, pledged or assigned said passbook or other instrument or any interest in the deposits therein. The application shall further include an agreement, in writing, to indemnify the bank from and against any and all claims, expenses and liabilities in any way resulting from the bank's action on the application by the payment of amounts due on said passbook or other instrument or by the issuance of a duplicate book or other instrument therefor. All signatures contained with such application shall be duly notarized. Upon receipt of such application, the bank may pay the amount due on said passbook or other instrument or may issue a duplicate book or other instrument therefor. The provisions of this section shall apply to passbooks and other instruments issued by a bank which subsequently has merged in, consolidated with or transferred its deposit liabilities to another bank.

When payment is made or a duplicate book or other instrument is issued in accordance with this section and after presentation of reasonable identification, a bank shall not be liable to any person on account of its action on the application, payments of the amount due on said passbook or other instrument or issuance of a duplicate book or other instrument therefor, except that a bank may be liable to a transferee, pledgee or assignee who, prior to such action, payment or issuance, has given the bank written notice of the transfer, pledge or assignment.

Section 12. Deposits standing in the individual name of a deceased depositor of a bank or federally chartered bank shall be paid to his legal representative, but if the deposit does not exceed $10,000 and there has been no demand for payment from a duly appointed executor or administrator, payment may be made, in the discretion of the treasurer or other duly authorized officer of the bank or federally chartered bank, or pursuant to special vote of its board, after the expiration of 30 days from the death of such depositor, to the surviving spouse of said deceased depositor or if there be no surviving spouse, to the next of kin of such deceased upon presentation of a copy of the decedent's death certificate and the surrender of the deposit book or other instrument, if any, evidencing the deposit. Any such bank or federally chartered bank may pay an order, drawn by a person who has funds on deposit to meet the same, notwithstanding the death of the drawer, if presentation is made within thirty days after the date of such order, and at any time if the corporation has not received written notice of the death of the drawer; provided, however, that in either event, that such funds would, on the date of such payment, have been

subject to withdrawal by the drawer if living. Payments made under authority of any provision of this section shall discharge the liability of the bank or federally chartered bank to all persons to the extent of such payments.

Section 13. Whenever in the judgment of the board there is an unusual demand by such depositors for withdrawals the bank may, with the approval of the commissioner, and whenever in the opinion of the commissioner there is such an unusual demand the bank shall upon his order, require such a depositor to give written notice of his intention to withdraw the whole or any part of such deposits or to apply for a loan secured by such deposit, such notice to be for such period not exceeding 6 months, as may be determined by the commissioner, which period may, in his discretion, be extended but not beyond 1 year from the date of notice, and until such a requirement has been revoked by the commissioner, the foregoing limitations as to payments by way of withdrawal or loan applicable in case of a general requirement as aforesaid shall apply to such deposits.

Such bank shall not advertise for such deposits in newspapers, by posters or other written solicitation, while any requirement of notice of intention to withdraw is in effect, unless the advertisement shall contain, in type not smaller than the largest type thereof, a statement that such deposits may not be paid out, by way of withdrawal or loan, except in accordance with the terms of the requirement, which terms shall be set forth in such statement.

Section 14. Any agreement between a depositor and any bank which exculpates such bank when a deposit account, or any part thereof, is paid by such bank to a person unlawfully presenting a passbook, or other instrument as evidence of such account is hereby declared to be contrary to public policy and void.

Section 15. Any designation of any beneficiary in connection with and as provided by an instrument intended to establish a pension, profit-sharing, or other deferred compensation or retirement plan, trust or custodial account described in one or more of the following sections of the Internal Revenue Code of the United States, and in effect from time to time, shall be effective according to its terms, notwithstanding any purported testamentary disposition allowed by statute, by operation of law or otherwise to the contrary; section 401(a), section 401(f), section 403(b)(7), section 405(a), section 408(a), and section 408(h). Nothing in this section is intended to limit, by implication or otherwise, any nonstatutory right of an employee to designate one or more beneficiaries of the employee’s interest under any retirement plan not described in this section or under any other employee benefit plan.

Section 16. Whenever a bank as a consequence of a default of a debt owed to said bank by a depositor or shareholder, makes a transfer of funds of such depositor or shareholder to reduce or extinguish said debt, such depositor or shareholder shall be notified forthwith of such transfer by written notice sent by first class mail directed to his last known address; provided, however, that no such transfer shall be made if such debt is the result of consumer credit granted

under the Truth-in-Lending act, 15 USC 1601 et. seq. A depositor or shareholder to whom such notice has not been sent shall be entitled to recover the amount of any actual damages.

Section 17. A person indebted to a bank may, when proceeded against for the collection of such indebtedness or for the enforcement of any security therefor, set off or recoup the amount of a deposit in such bank held and owned by him at the time of the commencement of such proceeding; provided, however, that if a proceeding in equity has been commenced to restrain the bank from doing its actual business, or if possession of such bank has been taken over by the commissioner as provided in section 22 of chapter 167 or as otherwise provided by law, no deposit shall be so set off or recouped by any such person unless held and owned by him on the date of the commencement of such proceeding or of possession so taken, and the right of set off or recoupment shall be determined as of such date whether the indebtedness of the depositor, or the deposit, is then due or payable or becomes due or payable at a later date. Any indebtedness against which a deposit is permitted to be set off or recouped as aforesaid may be secured or unsecured. Section three of chapter 232 shall not apply to a set off hereunder, except that any party to a joint account may set off the joint deposit against his individual debt to such bank. Notwithstanding the foregoing, a judgment shall not be rendered against such bank in favor of the defendant for any balance found due from it if a proceeding in equity has been commenced against the bank or possession thereof has been taken as aforesaid. The word “deposit”, as used in this section, shall include interest due thereon.

Section 18. If, in an action against a bank for money on deposit therewith, it appears that the same fund is claimed by another party than the plaintiff, whether by the husband or wife of the plaintiff, or otherwise, the court in which such action is pending, on the petition of the bank and on such notice to the plaintiff and to such claimants as the court considers proper, may order the proceedings to be amended by making such claimants defendants thereto, and thereupon the rights and interests of the several parties in and to said funds shall be heard and determined. Such deposits may remain with the bank until final judgment and shall be paid as the court orders, or may be paid into court to await final judgment, and when so paid into court, the action shall be discontinued as to such bank and its liability for such deposit shall cease. The taxable costs of the bank in such actions shall be in the discretion of the court and may be charged upon the fund.

Section 19. No bank, federally-chartered bank or other corporation doing a banking business in the commonwealth, in this section called the depository, shall be required to recognize an adverse claim to a deposit standing on his or its books to the credit of or to securities held for the account of any person, except by virtue of the service upon him or it of appropriate process issued by a court of competent jurisdiction in a suit or action to which such person, or his executors or administrators, has been made a party, unless the adverse claimant gives bond satisfactory to the depository and the adverse claimant to hold harmless and indemnify it from any liability, loss, damage, costs and expenses whatsoever on account of such adverse claim, or files with the depository an affidavit setting forth facts showing a reasonable

cause for belief that a fiduciary relationship exists between such person and said adverse claimant and that such person is about to misappropriate the deposit or securities in question.

Section 20. Notwithstanding the provisions of any general or special law to the contrary, a bank, a federal bank or a Massachusetts branch as defined in section 1 of chapter 167, shall not be required to repay any deposit made at a branch of such bank, federal bank or Massachusetts branch located in a foreign country, or any deposit made with any of the foregoing in the currency of a foreign country if repayment of such deposit or the use of such assets denominated in said foreign currency is prevented, prohibited or otherwise blocked due to (a) an act of war, insurrection or civil strife; or (b) any action by a foreign government or instrumentality, or authority asserting governmental, military or police power of any kind, whether such authority be recognized as a de facto or de jure government, or by any entity, political or revolutionary movement or otherwise that usurps, supervenes or otherwise materially impairs the normal operation of civil authority; or (c) the closure of such foreign branch in order to prevent, in the reasonable judgment of the bank, harm to the bank's employees or property.

The obligation to repay any such deposit shall not be transferred to and may not be enforced against any other branch of such bank, federal bank or Massachusetts branch.

Prior to the opening of any account for a retail customer that is subject to this section and with respect to any such account in existence on the effective date of this section, upon said effective date, such bank, federal bank or Massachusetts branch shall disclose to the prospective account holder the effect of the provisions of this section. Such bank, federal bank or Massachusetts branch shall also disclose to all current account holders the effect of the provisions of this section. Any such bank, federal bank or Massachusetts branch which fails to provide such disclosure shall not be entitled to avail itself of the provisions of this section.

SECTION 33. Section 3 of chapter 167E of the General Laws is hereby amended by striking out subsection (f) as appearing in the 2010 Official Edition and inserting in place thereof the following subsection:—

(f) Notwithstanding subsection (a) to (e), inclusive reverse mortgage loans on owner occupied dwellings shall be subject to sections 7 and 7A.

SECTION 34. Section 2 of chapter 167F of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out paragraphs 7 and 7A and inserting in place thereof the following three paragraphs:—

7. To invest in the capital stock or shares of one or more wholly owned subsidiary corporations, limited liability corporations or trusts, including any corporation or trust which is treated as a real estate mortgage investment conduit under 26 U.S.C. 860D, or such other forms of organization permitted by the commissioner, organized and operated solely for the purpose of performing functions that the bank itself is empowered to perform directly; provided however,

that if the aggregate amount invested or proposed to be invested in any one subsidiary exceeds 5 percent of the assets of the bank that excess investment shall be made only with the approval of the commissioner and under the limitations and conditions he may impose.

7A. To invest subject to the approval of the commissioner and under such limitations or conditions as he may impose, in the capital stock or shares of one or more wholly owned subsidiary corporations, limited liability corporations or trusts or such other forms of organization permitted by the commissioner, organized and operated solely for the purpose holding or investing in other real estate owned.

7B. To merge with one or more of its nonbank subsidiaries or affiliates with the bank as the continuing entity.

SECTION 35. Paragraph 22 of section 2 of said chapter 167F, as so appearing, is hereby further amended by striking out, in lines 256 and 257, the words “subject to such restrictions as may be imposed by the commissioner, to” and inserting in place thereof the word:— To

SECTION 36. Section 2 of said chapter 167F, as so appearing, is hereby further amended by striking out paragraphs 31 and 32 and inserting in place thereof the following two paragraphs:—

31. To exercise any power and engage in any activity that is permissible for a federal bank or out-of-state bank, as defined in section 1 of chapter 167, by providing 30 days written notice in advance to the commissioner; provided, however, that the activity is not otherwise prohibited under the laws of the commonwealth; provided, further, that the activity shall be subject to the same limitations and restrictions that are applicable to the federal or out-of-state bank; and provided, further, that the activity authorized for the out-of-state bank has been permitted by the Federal Deposit Insurance Corporation under section 24 of the Federal Deposit Insurance Act and Part 362 of the regulations thereunder. In the event that federal or out-of-state banks lose the authority to exercise any power or engage in any activity based upon which comparable authority was granted to state chartered banks pursuant to this paragraph, then unless such authority is authorized by another law of the commonwealth, or a rule, regulation or policy adopted pursuant to such other law of the commonwealth, or by a judicial decision, the authority shall be revoked for state chartered banks pursuant to this paragraph.

32. To engage in an activity and to acquire and retain the shares of any company engaged in any activity that the bank determines to be financial in nature or incidental to the financial activity that is complementary to a financial activity and does not pose a substantial risk to the safety and soundness of the bank by providing 30 days written notice in advance to the commissioner. In determining whether an activity is financial in nature or incidental or complementary thereto, the bank shall consider, but shall not be limited to, those activities considered to be financial in nature or incidental to the financial activity or an activity that is complementary to a financial activity under section 103, section 121 and section 122 of Public

Law 106-102, entitled the “Gramm-Leach-Bliley Act of 1999”. Notwithstanding any general or special law to the contrary, this chapter does not authorize a bank or a subsidiary or affiliate of a bank to sell title insurance.

SECTION 37. Section 6 of said chapter 167F is hereby repealed.

SECTION 38. Said chapter 167F, as so appearing, is hereby further amended by adding the following section:—

Section 10. A bank may or in participation with a federal bank, a foreign bank, an out-of-state bank or an out-of state federal bank as defined in section 1 of chapter 167 invest in, establish, operate or subscribe for services from another bank, federal bank, foreign bank, out-of-state bank or out-of-state federal bank or a subsidiary thereof or any other business entity for the purpose of obtaining for or furnishing to the bank technology, compliance, internal audits, human resource or other operation functions, management

or staff generally required by a bank.

SECTION 39. Section 3 of chapter 167G, as appearing in the 2010 Official Edition, is hereby amended by striking out paragraphs 1 and 2 and inserting in place thereof the following 2 paragraphs:—

1. To hold money or property in trust or on deposit from, personal representatives, voluntary personal representatives, assignees, conservators and trustees upon such terms and conditions as may be agreed upon;

2. To be appointed and to act as personal representative, voluntary personal representative of a will of the estate of any person, receiver, assignee, guardian, conservator or trustee under a will or instrument creating a trust for the care and management of property, under the same circumstances, in the same manner, and subject to the same control by the court having jurisdiction of the same, as a legally qualified individual; to act in any other fiduciary capacity not expressly prohibited by the laws of this commonwealth.

SECTION 40. Said section 3 of said chapter 167G is hereby further amended by striking the second paragraph of paragraph 9 and inserting in place thereof the following paragraph:—

Any such collective investment fund shall be administered in accordance with a written declaration of trust which shall provide that if property is held by such corporation or association as a fiduciary together with a co-fiduciary or co-fiduciaries, such property may be invested in such collective investment fund only with the written consent of such co-fiduciary or co-fiduciaries, but that in no case shall any other notice or consent be required for the making of any such investment. An account of the administration of each such collective investment fund shall be prepared annually, shall be audited by an independent certified public accountant and a copy of such account and of the audit report thereon shall be made available to any interested party

upon written request. All expenses of the administration of such collective investment fund, including the cost of the annual audit, shall be borne by the fund, but the corporation or association shall absorb the costs of establishing any such collective investment fund.

SECTION 41. Said section 3 of chapter 167G is hereby further amended by striking out paragraph 11 and inserting in place thereof the following paragraph:—

11. Any association or corporation authorized to do a banking business and to exercise trust powers in the commonwealth while acting as a fiduciary is authorized, in the absence of an express provision to the contrary in the instrument, judgment, decree or order creating a trust or other fiduciary relationship, to purchase for the fiduciary estate, directly from underwriters or distributors or in the secondary market, bonds, or other securities which are underwritten or distributed by such association or corporation or an affiliate thereof or by any syndicate which includes such association or corporation or affiliate thereof and securities of any investment company or investment trust for which such association or corporation or any affiliate thereof acts as adviser, distributor, transfer agent, registrar, sponsor, manager, shareholder servicing agent, custodian, broker, dealer, or lender of money or securities; provided, however, that (1) nothing in this section shall affect the degree of prudence which is required of fiduciaries generally under the common law of the commonwealth or the charging of reasonable compensation and (2) any such bonds or securities so purchased shall have sufficient liquidity and quality to satisfy the principles of fiduciary investment. Any such association or corporation purchasing bonds or securities pursuant to this paragraph shall, in any written communication or account statement reflecting such purchase, disclose the fact that it or an affiliate may have an interest in the underwriting or distribution of such bonds or securities and any capacities in which it or an affiliate acts for the issuer of such securities. Any such association or corporation purchasing securities of an investment company or investment trust pursuant to this paragraph shall disclose the provision of the stated services, and the receipt of compensation for such services, annually by mailing a statement or letter describing the same, to the last known address of each person to whom statements for the fiduciary estate are rendered.

SECTION 42. Said chapter 167G is hereby further amended by striking out section 8, as so appearing, and inserting in place thereof the following section:—

Section 8. Notwithstanding any provision of section four, funds held in the trust department of any bank awaiting investment or distribution may be deposited in its banking department if such bank shall first transfer to its trust department, to be held as security therefor, bonds, notes, bills and certificates of indebtedness of the United States, of this commonwealth, or of any of the states or any other securities in which the bank may legally invest, of an aggregate value of not less in amount than funds so deposited, and such bank shall at all times maintain the value of such security at such amount; provided, however, that such security shall not be required to the extent that the funds so deposited are insured by the Federal Deposit Insurance Corporation.

SECTION 43. Section 1 of chapter 167H as appearing in the 2010 Official Edition is hereby amended by inserting after the definition of "Commissioner" the following definition:—

"Interim Bank", a Massachusetts or federal bank, out-of-state bank or out-of-state federal bank organized solely to participate in and facilitate an acquisition, reorganization or other corporate transaction. A Massachusetts bank which is an interim bank shall be organized under chapter 167I.

SECTION 44. Section 2 of Chapter 167H of the General Laws, as so appearing, is hereby amended by striking out said section 2 and inserting in place thereof the following section:—

Section 2. (a) Notwithstanding the provisions of any general or special law to the contrary, a mutual banking institution that is a savings bank may reorganize so as to become a mutual holding company by (1) establishing a subsidiary banking institution as a stock savings bank in accordance with section three, and transferring to such subsidiary banking institution the substantial part of its assets and liabilities, including all of its deposit liabilities or (2) by structuring the reorganization under any procedures acceptable to the commissioner, including but not limited to the merger of the existing mutual bank with and into a savings bank established for the purpose of completing the reorganization; provided, that for the purpose of facilitating a multi-step reorganization the commissioner may, subject to such terms and conditions as he may impose, grant any and all certificates and approvals to establish and control a new mutual savings bank. Upon such reorganization, all persons who prior thereto held depository rights with respect to or other rights as creditors of such mutual banking institution shall have such rights solely with respect to the said subsidiary banking institution and the corresponding liability or obligation of the mutual banking institution to such persons shall be assumed by the subsidiary banking institution. All persons who had liquidation rights pursuant to section 33 of chapter 168 with respect to the mutual banking institution shall continue to have such rights solely with respect to said mutual holding company.

(b) Notwithstanding the provisions of any general or special law to the contrary, a mutual banking institution that is a cooperative bank may reorganize so as to become a mutual holding company by (1) establishing a subsidiary banking institution as a stock cooperative bank in accordance with section three, and transferring to such subsidiary banking institution the substantial part of its assets and liabilities, including all of its deposit liabilities or (2) by structuring the reorganization under any procedures acceptable to the commissioner, including but not limited to the merger of the existing mutual bank with and into a cooperative bank established for the purpose of completing the reorganization; provided, that for the purpose of facilitating a multi-step reorganization the commissioner may, subject to such terms and conditions as he may impose, grant any and all certificates and approvals to establish and control a new cooperative bank. Upon such reorganization, all persons who prior thereto held depository rights with respect to or other rights as creditors of such mutual banking institution shall have such rights solely with respect to the said subsidiary banking institution and the corresponding

liability or obligation of the mutual banking institution to such persons shall be assumed by the subsidiary banking institution. All persons who had liquidation rights pursuant to section 27 of chapter 170 with respect to the mutual banking institution shall continue to have such rights solely with respect to said mutual holding company.

(c) Any reorganization of a mutual banking institution pursuant to subsection (a) shall be approved by a majority of the board of trustees and by a majority of the corporators present and voting in each case at the annual meeting or at a special meeting called, in accordance with the by-laws, for such purpose. Any such reorganization pursuant to subsection (b) shall be approved by a majority of the board of directors and by a majority of the shareholders present and voting in each case at the annual meeting or at a special meeting called, in accordance with the by-laws, for such purpose.

SECTION 45. Section 7 of chapter 167H as so appearing, is hereby amended by striking out clause (2) and inserting in place the following new clause:—

(2) Acquire a mutual banking institution, a credit union, as defined in chapter 171, a federal credit union, as defined in chapter 171, a federal bank, as defined in section 1 of chapter 167 in mutual form, an out-of-state bank, as defined in section 1 of chapter 167 in mutual form, and an out-of-state federal bank, as defined in section 1 of chapter 167 in mutual form through consolidation or merger of such institution with the subsidiary banking institution or interim bank subsidiary of the mutual holding company.

SECTION 46. Chapter 167H, as so appearing, is hereby further amended by adding the following section:—

Section 12. A mutual company directly or indirectly controlling or owning one or more wholly owned stock bank subsidiaries or stock holding companies may elect to convert from a mutual holding company to a mutual banking institution organized under the original charter of its subsidiary banking institution subject to approval of the commissioner and subject to the following conditions.

(a) The conversion of the mutual holding company to a mutual banking institution shall be effected pursuant to a plan of conversion approved by the commissioner and a vote of two-thirds of the corporators of the mutual holding company;

(b) All direct or indirect wholly owned stock bank subsidiaries and stock holding companies of the mutual holding company shall be merged into the resulting mutual banking institution;

(c) The reorganized mutual banking institution shall assume all assets and liabilities of any direct or indirect wholly owned stock bank subsidiary or stock holding company and shall

retain deposit insurance from the Federal Deposit Insurance Corporation and the excess deposit insurer of its subsidiary banking institution;

(d) Such other provisions as the commissioner may require. The commissioner may promulgate rules and regulations to carry out the provisions of this section.

SECTION 47. The General Laws are hereby amended by inserting after chapter 167H the following two chapters:—

CHAPTER 167I

CORPORATE BANK TRANSACTIONS: MERGERS, CONSOLIDATIONS, PURCHASE OF ASSETS AND CONVERSIONS

Section 1. As used in this chapter, the following words shall, unless the context otherwise requires, have the following meanings:—

"Bank", an association or corporation chartered by the commonwealth under chapter 168, 170 or 172.

"Board", the board of trustees or directors, as the case may be, of a bank or thrift institution, and the board of directors of a federally chartered stock bank.

"Capital stock", the sum of the par value of the preferred and common shares of capital stock of a stock bank, issued and outstanding.

"Commissioner", the commissioner of banks.

"Co-operative bank", a bank governed by the provisions of chapter 170.

"Credit union", a corporation organized under chapter 171 or corresponding provisions of earlier law.

"Federally-chartered bank", a national banking association, or federal savings and loan association or federal savings bank in stock form, the main office of which is located in the commonwealth or in another state.

"Federally-chartered credit union", a credit union organized under the Federal Credit Union Act.

"Foreign bank" an association or corporation authorized to do banking business which exists by authority of a country other than the United States.

"Mutual bank", a savings bank chartered by the commonwealth pursuant to chapter 168 or a co-operative bank chartered by the commonwealth pursuant to chapter 170 in mutual form.

"Mutual holding company" a holding company organized under chapter 167H.

"Out-of-state bank", an association or corporation in stock form authorized to do banking business, the main office of which is located outside the commonwealth and which exists by authority of a state of the United States other than the commonwealth.

"Savings bank", a bank governed by the provisions of chapter 168.

"Stock bank", an association or corporation chartered in stock form by the commonwealth under the provisions of chapter 168 or 170, or which has reorganized or converted to become a stockholder form of organization under the provisions of chapter 168 or 170, or a trust company as defined in chapter 172.

"Subsidiary banking institution", the banking institution which is the direct or indirect subsidiary of a mutual holding company.

"Surplus account", an account so designated on the books of a bank and consisting of amounts required by law.

"Thrift institution", a banking institution in mutual or cooperative form organized under the laws of another state or a federal savings and loan association or federal savings bank in mutual form the main office of which is located in the commonwealth or in another state .

"Trust company", a bank governed by the provisions of chapter 172.

"Voting body", shall mean corporators of a savings bank in mutual form, shareholders of a co-operative bank not in stock form, and the stockholders of a stock bank with rights to vote in corporate transactions.

Section 2. One or more mutual banks may merge or consolidate into a single mutual bank, and one or more mutual banks and one or more thrift institutions may merge or consolidate into a single mutual bank or thrift institution , upon such terms as shall have been approved by a vote of at least two-thirds of the board of each mutual bank and, in the case of a merger or consolidation of one or more mutual banks and thrift institutions, by the board of each thrift institution in accordance with the laws under which each such thrift institution is organized, and as shall have been approved in writing by the commissioner. The terms of any such merger or consolidation shall be approved by a two-thirds vote of the voting body of each mutual bank and, in the case of a merger or consolidation of one or more mutual banks and thrift institutions, by the depositors, corporators, shareholders or members, as applicable, of each thrift institution in accordance with the laws under which such thrift institution is organized. A request for such approval by the commissioner shall be accompanied by an investigation fee the amount of which shall be determined annually by the commissioner of administration under the provisions of section three B of chapter seven, a copy of the terms of any definitive merger or consolidation agreement reached by the merging or consolidating institutions, and certified copies of the vote

of the board of each mutual bank and, in the case of a merger or consolidation of one or more mutual banks and thrift institutions, certified copies of the vote of the board of each thrift institution. If the commissioner, after such notice and hearings as he may require, is satisfied that a merger or consolidation can be effected on terms approved by him and he finds that such a merger or consolidation is in the interests of the depositors of any merging or consolidating savings bank and the shareholders of any merging or consolidating co-operative bank, such merger or consolidation may be approved by him subject to his direction. Before becoming effective, any merger or consolidation authorized by this section, hereinafter referred to as a "consolidation", shall have been approved by a vote of at least two-thirds of the voting body of each mutual bank at meetings specially called to consider the subject and, in the case of a merger or consolidation of one or more mutual banks and thrift institutions, approved by a vote of the depositors, corporators, shareholders or members, as applicable, of each such thrift institution in accordance with the laws under which each such thrift institution is organized; provided, however, that in the case of a co-operative bank the consolidation shall be approved by vote of at least two-thirds of those shareholders present, qualified to vote and voting at each such meeting.

Notice of such meetings shall be given in accordance with applicable law and the by-laws of such merging or consolidating institutions. A certificate under the hands of the presidents and clerks or other duly authorized officers of all merging or consolidating institutions setting forth that each institution, respectively, has complied with the requirements of this section shall be submitted to the commissioner who, if he shall approve such consolidation, shall endorse his approval upon such certificate. No such transaction under this section shall be consummated until arrangements satisfactory to any excess deposit insurer of each mutual bank have been made and notice thereof has been received by the commissioner.

The offices and depots of any mutual bank and the offices of any thrift institution merged or consolidated under the provisions of this section, may be maintained as branch offices or depots, respectively, of the continuing institution with the written permission of, and under such conditions, if any, as may be approved by the commissioner.

If the merging or consolidating corporations or thrift institutions are chartered by or, in the case of federal savings and loan associations or federal mutual savings banks, have their main offices located in and are authorized to do business in different states, then from and after the effective date of the merger or consolidation, the citizenship and residency requirements set forth in the General Laws shall no longer apply, and any citizen of the United States may serve the continuing corporation.

In making a finding that such merger or consolidation is in the interests of depositors and shareholders, the commissioner shall also determine whether or not competition among banking institutions will be unreasonably affected and whether or not public convenience and advantage will be promoted. In making such determination, the commissioner shall consider, but not be limited to, a showing of net new benefits. For the purpose of this section, the term "net new

benefits" shall mean initial capital investments, job creation plans, consumer and business services, commitments to maintain and open branch offices within the continuing institution's Community Reinvestment Act assessment area, and such other matters as the commissioner may determine.

Section 3. One or more stock banks may merge or consolidate into a single stock bank, and one or more stock banks, federally-chartered banks, and out-of-state banks may merge or consolidate into a single stock bank, federally-chartered bank or out-of-state bank upon such terms as shall have been approved by a vote of at least two-thirds of the board of each stock bank and, in the case of a merger or consolidation of one or more stock banks with one or more federally-chartered banks or out-of-state banks, by the board of each out-of-state bank or federally-chartered bank in accordance with the laws under which each such out-of-state bank or federally-chartered bank is organized, and as shall have been approved in writing by the commissioner. The terms of any such merger or consolidation shall be approved by a two-thirds vote of the voting body of each stock bank and, in the case of a merger or consolidation of one or more stock banks with one or more federally-chartered banks or out-of-state banks, by the stockholders of such out-of-state bank or federally-chartered bank with rights to vote on the merger or consolidation in accordance with the laws under which such out-of-state bank or federally-chartered bank is organized. A request for approval by the commissioner of such a consolidation or merger shall be accompanied by an investigation fee, the amount of which shall be determined annually by the commissioner of administration under the provision of section three B of chapter seven, a copy of the terms of any definitive merger or consolidation agreement reached by the merging or consolidating institutions, and certified copies of the vote of the board of each stock bank and, in the case of a merger or consolidation of one or more stock banks with one or more out-of-state banks or federally-chartered banks, certified copies of the vote of the board of each out-of-state bank or federally-chartered bank. If the commissioner, after such notice and hearings as he may require, is satisfied that a merger or consolidation can be effected on terms consistent with the standards set forth in this section, such merger or consolidation may be approved by him subject to his direction. Before becoming effective, any merger or consolidation authorized by this section, hereinafter referred to as a "consolidation", shall have been approved by a vote of at least two-thirds of the voting body of each stock bank at meetings specially called to consider the subject and, in the case of a merger or consolidation of one or more stock banks with one or more out-of-state banks or federally-chartered banks, by the stockholders of such out-of-state bank or federally-chartered bank with rights to vote on the merger or consolidation in accordance with the laws under which such out-of-state bank or federally-chartered bank is organized. A certificate under the hands of the presidents and clerks or other duly authorized officers of all merging or consolidating institutions setting forth that each institution, respectively, has complied with the requirements of this section shall be submitted to the commissioner who, if he shall approve such consolidation, shall endorse his approval upon such certificate. No such transaction under this section shall be consummated until arrangements satisfactory to any excess deposit insurer of each stock bank, if applicable,

have been made and notice thereof has been received by the commissioner. The offices and depots of any stock bank and the offices of any other institution merged or consolidated under this section may be maintained as branch offices or depots, respectively, of the continuing institution with the written permission of and under such conditions, if any, as may be approved by the commissioner.

If a federally-chartered bank or out-of-state bank is the continuing institution, then from and after the effective date of the merger or consolidation, the citizenship and residency requirements for directors set forth in the General Laws shall no longer apply.

For the purposes of this section, the value of the stock of stockholders of a stock bank who have, as provided in section 13.21 and section 13.23 of chapter 156D, objected to any action authorized herein shall be ascertained in the manner provided in sections 13.01 and 13.03 to section 13.31 inclusive, of chapter 156D.

The provisions of section 11.07 of chapter 156D shall apply to consolidations and mergers of state-chartered stock corporations authorized under this section provided that, for this purpose, references in said section 11.07 to said chapter 156D shall be deemed to be the chapter of the General Laws governing such stock corporation, and references in said section 11.07 to articles of organization shall be deemed to be to the articles of organization, including any special act of incorporation, as from time to time amended.

In deciding whether or not to approve such consolidation or merger the commissioner shall determine whether or not competition among banking institutions will be unreasonably affected and whether or not public convenience and advantage will be promoted. In making such determination, the commissioner shall consider, but not be limited to, a showing of net new benefits. For the purpose of this section, the term “net new benefits” shall mean initial capital investments, job creation plans, consumer and business services, commitments to maintain and open branch offices within the continuing institution’s Community Reinvestment Act assessment area, and such other matters as the commissioner may determine.

Section 4. Any one or more mutual banks or subsidiary banking institutions and any one or more credit unions, or federal credit unions may merge or consolidate into a single mutual bank or subsidiary banking institution upon such terms as shall have been approved by a vote of at least two-thirds of the board of each mutual bank and the board of directors of each credit union, and shall have been approved in writing by the commissioner. The terms of any such merger or consolidation shall be approved by the voting body of each mutual bank and the shareholders of each credit union in the manner prescribed herein. A request for such approval by the commissioner shall be accompanied by an investigation fee, the amount of which shall be determined annually by the commissioner of administration under the provisions of section three B of chapter seven, a copy of the terms of any agreement reached by the respective boards, and certified copies of the votes of such boards. If the commissioner, after such notice and hearing as

he may require, is satisfied that a merger or consolidation can be effected on terms approved by him and he finds that such merger or consolidation is in the interests of the depositors and shareholders of the institutions concerned, such merger or consolidation may be approved by him subject to his direction. In making a finding that any such merger or consolidation is in the interests of depositors and shareholders, the commissioner shall also determine whether or not competition among banking institutions will be unreasonably affected and whether or not public convenience and advantage will be promoted. In making such determination, the commissioner shall consider, but not be limited to, a showing of net new benefits. For the purposes of this section, the term "net new benefits" shall mean initial capital investments, job creation plans, consumer and business services, commitments to maintain and open branch offices within the bank's delineated community, as such term is used within section fourteen of chapter one hundred and sixty-seven, and such other matters as the commissioner may determine.

Before becoming effective, any merger or consolidation authorized by this section, hereinafter sometimes referred to as a "consolidation", shall have been approved by a vote of at least two-thirds of the voting body of each mutual bank or subsidiary banking institution present, qualified to vote and voting at a meeting specially called to consider the subject and approved by a vote of at least a majority of the shareholders of each credit union present, qualified to vote, and voting at a meeting specially called for that purpose. Notice for such meetings shall be given in accordance with the relevant provisions of law. A certificate under the hands of the presidents and clerks or other duly authorized officers of all merging or consolidating corporations and credit unions setting forth that each institution, respectively, has complied with the requirements of this section shall be submitted to the commissioner who, if he shall approve such consolidation, shall endorse his approval upon such certificate. No such transaction under this section shall be consummated until arrangements satisfactory to any excess deposit insurer of each such bank or credit union, if applicable have been made and notice thereof has been received by the commissioner.

The offices and depots of any credit union merged or consolidated under this section may be maintained as branch offices or depots of the continuing corporation with the written permission of, and under such conditions, if any, as approved by the commissioner.

Section 5. If the commissioner has certified to the Depositors Insurance Fund or the Co-operative Central Bank that it is unsafe or inexpedient for a member bank to continue to transact business, as provided in section 4 of chapter 43 of the acts of 1934 or section 4 of chapter 73 of the acts of 1934, such member bank may be consolidated with or sell its assets to another savings bank or co-operative bank as applicable on an expedited basis, notwithstanding any inconsistent provisions contained in other laws governing such transactions provided that the following conditions are satisfied:

(1) The terms and conditions of the proposed consolidation or purchase and sale of assets are set forth in a written plan or agreement between the continuing corporation and the

Depositors Insurance Fund or the Co-operative Central Bank on behalf of the certified member bank.

(2) The consolidation or purchase and sale of assets and the written plan or agreement setting forth such arrangement be approved by a vote of at least two-thirds of the board of the continuing corporation at a meeting duly called for such purpose and by a vote of at least two-thirds of the board of directors of the Depositors Insurance Fund or the Co-operative Central Bank at a meeting duly called for such purpose.

(3) The commissioner determines that (a) failure to take immediate action to effect a consolidation or sale of assets of the certified member bank with or to another savings bank or co-operative bank as applicable is likely to undermine public confidence in banks, (b) the best interests of the depositors of the certified member bank, the depositors of the continuing corporation and the Depositors Insurance Fund or the Co-operative Central Bank will be served by an expedited consolidation or sale of assets, and (c) the public convenience and advantage will be served by the proposed consolidation or sale of assets.

(4) The commissioner approves in writing the proposed consolidation or purchase and sale of assets, subject to such terms and conditions as may be deemed appropriate by him.

Upon the effective date of any consolidation pursuant to this section, the rights and obligations of the certified member bank, the continuing corporation and their respective depositors, debtors and creditors shall be governed by section 7.

A certificate endorsed by the president and clerk, or two other duly authorized officers of the continuing corporation and the Depositors Insurance Fund or the Co-operative Central Bank on behalf of the certified member bank stating that each corporation, respectively, has complied with the requirements of this section, shall be submitted to the commissioner who, if he approves such consolidation or sale of assets, shall endorse said approval upon such certificate and thereupon such consolidation or sale of assets shall become effective at the close of business on such date.

At any time, and from time to time after the consolidation has become effective, copies of the certificate may be certified and issued by the commissioner and may be filed in the several registries of deeds and land court registry districts of the commonwealth and in any filing offices established under chapter 106. Such certification shall be conclusive evidence for all purposes of the succession by the continuing corporation to all rights and interests of the certified corporation.

In the event the Deposit Insurance Fund of the Depositors Insurance Fund or the Share Insurance Fund of the Co-operative Central Bank ceases to insure the deposits or shares of a member bank and the commissioner determines that grounds exist to require his immediate assumption of possession and control of its assets under section 22 of chapter 167, he shall, upon

assumption of possession and control of such member bank's assets, have all powers granted in this section to the Deposit Insurance Fund or the Co-operative Central Bank to effect a consolidation or sale of assets on behalf of such corporation.

For the purposes of this section, the term "member bank" shall mean a savings bank in the Depositors Insurance Fund and a co-operative bank in the Co-operative Central Bank.

Section 6. The commissioner shall not approve an application for a merger or consolidation pursuant to this chapter if the bank sought to be acquired has been in existence for a period of less than 3 years or if, as a result of any such merger, the applicant would control in excess of 30 percent of the total deposits, exclusive of foreign deposits, of all depository institutions in the commonwealth insured by the Federal Deposit Insurance Corporation, or any successor corporation thereto; provided, however, that either said age requirement or concentration limit, or both, may be waived by the commissioner if economic conditions warrant such waiver. For the purposes of this section, the term "foreign deposits" shall mean deposits received in a foreign country and deposits in Edge and Agreement subsidiaries and international banking facilities.

Section 7. For any consolidation or merger under the preceding sections Articles of consolidation or merger shall be filed with the state secretary which shall set forth the due adoption of an agreement of consolidation or merger and shall state: (i) the names of the corporations and the name of the resulting or surviving corporation; (ii) the effective date of the consolidation or merger determined pursuant to the agreement of consolidation or merger; and, (iii) any amendment to the articles of organization of the surviving corporation to be effected pursuant to the agreement of merger. Such articles of consolidation or merger shall be signed by the president or a vice president and the clerk or an assistant clerk of each corporation, who shall state under the penalties of perjury that the agreement of consolidation or merger has been duly executed on behalf of such corporation and has been approved as required.

The form on which articles of consolidation or merger are filed shall also contain the following information which shall not for any purpose be treated as a permanent part of the articles of organization of the resulting or surviving corporation:

(1) the post office address of the initial principal office of the resulting or surviving corporation in the commonwealth;

(2) the name, residence and post office address of each of the initial trustees or directors and the president, treasurer and clerk of the resulting or surviving corporation;

(3) the fiscal year of the resulting or surviving corporation initially adopted;

(4) the date initially fixed in the by-laws for the annual meeting of the shareholders or members of the resulting or surviving corporation.

The consolidation or merger shall become effective when the articles of consolidation or merger are filed in accordance with sections 1.23 and 1.25 six of chapter 156D, unless said articles specify a later effective date, in which event the consolidation or merger shall become effective on such later date. Upon consolidation of any such institutions, as herein provided:

1. The corporate existence of all but one of the consolidating institutions shall be discontinued and consolidated into that of the remaining institution, which shall continue. All and singular the rights, privileges and franchises of each discontinuing institution and its right, title and interest to all property of whatever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest or asset of conceivable value or benefit then existing which would inure to it under an unconsolidated existence, shall be deemed fully and finally, and without any right of reversion, transferred to or vested in the continuing institution, without further act or deed, and such continuing institution shall have and hold the same in its own right as fully as if the same was possessed and held by the discontinuing institution from which it was, by operation of the provisions hereof, transferred, and other provisions of law relative to limitations on the number of directors, corporators or trustees and on the investment of funds of such institutions shall not apply.

2. A discontinuing institution's rights, obligations and relations to any shareholder, or depositor, creditor, trustee or beneficiary of any trust, or other person, as of the effective date of the consolidation, shall remain unimpaired, and the continuing institution shall, by the consolidation, succeed to all such relations, obligations and liabilities, as though it had itself assumed the relation or incurred the obligation or liability; and its liabilities and obligations to creditors existing for any cause whatsoever shall not be impaired by the consolidation; nor shall any obligation or liability of any shareholder or depositor in any such institution, continuing or discontinuing, which is party to the consolidation, be affected by any consolidation, but such obligations and liabilities shall continue as fully and to the same extent as the same existed before the consolidation, and the provisions relative to the limitations on shares and deposits, shall not apply.

3. A pending action or other judicial proceeding to which any of the consolidating institutions is a party shall not be deemed to have abated or to have discontinued by reason of the consolidation, but may be prosecuted to final judgment, order or decree in the same manner as if the consolidation has not been made; or the continuing institution may be substituted as a party to any such action or proceeding to which the discontinuing institution was a party, and any judgment, order or decree may be rendered for or against the continuing institution that might have been rendered for or against such discontinuing institution if such consolidation had not occurred.

4. After such consolidation, a foreclosure of a mortgage begun by any discontinuing institution may be completed by the continuing institution, and publication begun by the discontinuing institution may be continued in the name of the discontinuing institution. Any

certificate of possession, affidavit of sale or foreclosure deed relative to such foreclosure shall be executed by the proper officers in behalf of whichever of such institution actually took possession or made the sale, but any such instrument executed in behalf of the continuing institution shall recite that it is the successor of the discontinuing institution which commenced the foreclosure.

5. A new name may be adopted as the name of the continuing institution at the special meetings called as herein provided, and it shall become the name of the continuing institution upon the approval of the consolidation, without further action under the laws of the commonwealth as to change or adoption of a new name on the part of the continuing institution.

6. Any consolidation may be approved and effected pursuant to this section, notwithstanding that the percentage which the aggregate value of the guaranty fund, surplus and other reserves, of any of the consolidating institutions, bears to its liabilities including share liabilities, exceeds such percentage of any of the other consolidating institutions, and any consolidating institution having such an excess of percentage shall not be required to make any distribution to its shareholders or depositors.

Section 8. With the approval of the commissioner, any bank may advance or loan upon or purchase the whole or any part of the assets or stock of any bank, out-of-state bank, federally-chartered bank, thrift institution, credit union or federally-chartered credit union including any state-chartered bank in possession of the commissioner under sections 22 to 36, inclusive, of chapter 167 and any state-chartered bank assisted by or in possession of its insurer and may participate in such an advance, loan or purchase with one or more banks so located. The request for such approval shall be accompanied by an investigation fee, the amount of which shall be determined annually by the commissioner of administration under the provision of section 3B of chapter 7. Such advance, loan or purchase may be made upon such terms and conditions as shall have been approved by vote of at least two-thirds of the board of the bank and the applicable board of such other bank or federally chartered bank.

Such bank or banks making or participating in such an advance, loan or purchase for the purpose of effecting the same, may assume and agree to pay the whole or any part of the deposit and other liabilities of any other bank, out-of-state bank, federally-chartered bank, thrift institution, credit union or federally-chartered credit union upon such terms and conditions and subject to such adjustments as may be approved by the commissioner. In the event of such approval by the commissioner, other provisions of law applicable to the investment of funds of a savings bank therein shall not apply.

No such transaction under this section shall be consummated until arrangements satisfactory to any excess deposit insurer of each such bank, if applicable, have been made and notice thereof has been received by the commissioner.

The commissioner may impose such conditions and restrictions as he may deem necessary or advisable in respect to the deposit or other liabilities as hereinbefore provided. In the case of any new bank formed for the purpose of purchasing any or all the assets and assuming any or all the liabilities of any bank in possession or assisted as aforesaid, the commissioner may impose such other and further conditions and restrictions concerning the business, investments and operations of such new bank as he may deem necessary or advisable. So much of section 8 of chapter 167J as provide that no person shall hold an office in two banks at the same time shall not prevent an officer, trustee or director of any other bank from serving as an officer, trustee or director of such new bank, or of a bank or federally-chartered bank the assets and liabilities or stock of which shall have been purchased and assumed by a bank hereunder.

Before all or substantially all of the assets or stock of any bank shall be sold, such action shall be approved by the voting body of the bank, out-of-state bank, federally-chartered bank, thrift institution, credit union or federally-chartered credit union at a special meeting called for that purpose, of the corporation proposing to sell its assets or stock by a two-thirds vote of the voting body present, qualified to vote and voting of a mutual bank and by the voting body in a stock bank. Notice of such special meeting shall be given by the clerk in accordance with the provisions of section 9A.

In deciding whether or not to approve any such advance, loan or purchase, the commissioner shall determine whether or not competition among banking institutions will be unreasonably affected and whether or not public convenience and advantage will be promoted. In making such determination, the commissioner shall consider, but not be limited to, a showing of net new benefits. For the purpose of this section, the term “net new benefits” shall mean initial capital investments, job creation plans, consumer and business services, commitments to maintain and open branch offices within a bank’s delineated local community, as such term is used within section 14 of chapter 167, and such other matters as the commissioner may determine.

Section 9. Notwithstanding any general or special law to the contrary, a mutual bank, subject to approval of the commissioner, may convert to a stock bank.

Any mutual bank which converts to a stock bank shall have all the powers and privileges of a savings bank or co-operative bank as applicable.

The commissioner shall have the authority to conduct a supervisory conversion of a mutual bank to stock form if the commissioner determines that upon liquidation of the mutual bank there would be no equity value realizable by the depositors of the mutual bank.

The commissioner shall prescribe from time to time such rules and regulations as may be necessary or proper in carrying out the provisions of this section.

Section 10. A credit union may convert to a mutual bank pursuant to section 80A of chapter 171. A federally-chartered credit union may convert to a mutual bank pursuant to the provisions of the Federal Credit Union Act subject to the approval of the commissioner under such conditions as he may impose and applicable provisions of subsection (m) of section 80A of chapter 171.

Section. 11. A mutual bank or stock bank, by vote at least two-thirds of its voting body, at a meeting duly called for the purpose, preceded by a notice in writing sent to each member of the voting body and to the commissioner by mail at least 60 days before said meeting, may consolidate or merge into or convert into a federally-chartered bank or thrift institution in accordance with the laws of the United States and without the approval of any authority of the commonwealth.

Section 12. By any votes required under federal law and the filing of such documents as the commissioner shall prescribe and under such terms and conditions as he may impose, a federally-chartered bank or thrift institution, upon approval by the commissioner, shall be converted into a bank chartered under chapters 168, 170 or 172, and shall not, in connection with or upon such conversion, be subject to the requirements of the General Laws with respect to the organization and commencement of business of such a bank; provided, however, that such conversion shall not be in contravention of the laws of the United States.

Section 13. A company having capital stock which desires to acquire all the capital stock of any stock bank shall, together with such stock bank, submit, to the commissioner a written plan of acquisition of such stock. Such plan shall be in form satisfactory to the commissioner, shall specify the stock bank the stock of which is to be acquired by the company shall prescribe the terms and conditions of the acquisition and the mode of carrying it into effect, including the manner of exchanging the shares of the corporation for shares or other securities of the company. Any such plan may provide for the payment of cash in lieu of the issuance of fractional shares of the company. At the time of submitting said written plan of acquisition, an investigation fee, the amount of which shall be determined annually by the commissioner of administration under the provisions of section 3B of chapter 7, shall be paid to the commissioner of banks by the company.

There shall also be submitted with said plan of acquisition of stock, a certificate of any officer or duly authorized representative, certifying that such plan has been approved by the board of directors or other governing body of the company by a majority vote of all the members thereof, and a certificate of any officer or duly authorized representative of each stock bank, the acquisition of all the capital stock of which is provided for, certifying that such plan has been approved by the board of directors of such corporation by a majority vote of all the members thereof, and that such plan was thereafter submitted to the stockholders of such stock bank at a meeting thereof held upon notice of at least 15 days, specifying the time, place and object of such meeting and addressed to each stockholder at the address appearing upon the books of the

corporation and that such plan has been approved at such meeting by the vote of stockholders owning at least two-thirds in amount of the stock of such corporation.

The commissioner shall examine the plan of acquisition of stock so submitted, and after making such investigation thereof as he deems appropriate he shall, within 60 days after receipt thereof approve or disapprove such plan of acquisition in case such company is not, and would not upon the effectiveness of such plan become, a bank holding company. In approving any such plan, the commissioner may attach such conditions thereto as he deems advisable.

If the commissioner finds that competition among banking institutions will not be unreasonably affected and that public convenience and advantage will be promoted he shall approve such plan of acquisition, and shall endorse his approval thereon and a copy of the plan bearing such endorsement shall be filed within 30 days thereafter in the office of the commissioner. Upon such filing, the plan, and the acquisition provided for therein, shall become effective, unless a later date is specified in the plan, in which event the plan and such acquisition shall become effective upon such later date.

A stockholder of any such corporation which shall have approved such plan of acquisition, who objects to such action, in the manner provided in sections 13.21 and 13.23 of chapter 156D, shall be entitled, if such plan shall have become effective, to demand payment for his stock from such corporation and an appraisal thereof in accordance with the provisions of sections 13.01 and 13.03 to 13.31, inclusive, of chapter 156D, which provisions, as modified for the purposes of this paragraph by the provisions hereof, are hereby made applicable in all such cases, and such stockholder and such corporation shall have the rights and duties and follow the procedure set forth in said sections.

Any stock bank shall have the power to organize a company for the purposes contemplated by this section; and in connection with such organization and the development of a plan of acquisition, any such corporation may incur organization and other expenses in such amounts, in the aggregate, not exceeding two percent of its capital stock, surplus account and undivided profits as the commissioner may approve.

Any such company shall engage directly or indirectly only in such activities as are now or may hereafter be proper activities for bank holding companies registered under the Bank Holding Company Act of 1956, including, without limiting the generality of the foregoing, the issuance and sale of commercial paper and acquiring, managing or controlling a bank, a federally-chartered bank or an out-of-state bank.

The provisions of the following section shall not apply to an acquisition under this section. A company which acquires any such corporation under this section shall be deemed a bank holding company subject to the provisions of section 5 of chapter 167A. For the purposes of this section, the word “company” shall have the same meaning as defined in subparagraph (c) of section 1 of chapter 167A.

Section 14. No person, acting directly or indirectly or through or in concert with one or more other persons, shall acquire control of any stock bank, through a purchase, assignment, transfer, pledge or other disposition of voting stock of such bank unless the commissioner has been given sixty days prior written notice of such proposed acquisition and within said 60 days the commissioner has not issued a notice disapproving the proposed acquisition or extending for up to another 30 days the period during which such a disapproval may issue. The period for disapproval may be further extended only if the commissioner determines that the acquiring party has not furnished all the material required hereinafter for a notice of proposed acquisition or that in the commissioner's judgment any material information submitted is substantially inaccurate. An acquisition may be made prior to expiration of the disapproval period if the commissioner issues written notice of the commissioner's intent not to disapprove the action. A notice of proposed acquisition filed pursuant to this section shall contain the following information:

(1) The identity, personal history, business background and experience of each person by whom or on whose behalf the acquisition is to be made, including his material business activities and affiliations during the past 5 years, and a description of any material pending legal or administrative proceedings in which he is a party and any criminal indictment or conviction of such person by a state or federal court.

(2) A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the 5 fiscal years immediately preceding the date of the notice, together with related statements of income and source and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied, and an interim statement of the assets and liabilities for each such person, together with related statements of income and source and application of funds, as of a date not more than 90 days prior to the date of the filing of the notice.

(3) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made.

(4) The identity, source and amount of the funds or other consideration used or to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with such persons.

(5) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the stock bank, to sell its assets or merge it with any company or to make any other major change in its business or corporate structure or management.

(6) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on his behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of such employment, retainer or arrangement for compensation.

(7) Copies of all invitations or tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition.

(8) Any additional relevant information and in such form as the commissioner may require by specific request in connection with any particular notice.

The commissioner may disapprove any proposed acquisition if: (1) the proposed acquisition of control would result in a monopoly; (2) the effect of the proposed acquisition of control may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade and the anti-competitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served; (3) the financial condition of any acquiring person is such as might jeopardize the financial stability of the stock bank or prejudice the interests of the depositors of such bank; (4) the competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of such bank, or in the interest of the public to permit such person to control the stock bank; or (5) any acquiring person neglects, fails or refuses to furnish all the information required by the commissioner. Any disapproval shall be in writing to the acquiring party and shall include a statement of the basis for such disapproval. Within 10 days of the receipt of a notice of disapproval the acquiring party may request a hearing to be held by the commissioner or his designee. Such hearing shall be held under the provisions of chapter 30A and regulations issued thereunder.

For the purposes of this section, the term “person” shall mean an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein; and the term “control” shall mean the power, directly or indirectly, to direct the management or policies of any such corporation or to vote 25 per centum or more of any class of voting securities of any such corporation.

The provisions of this section do not alter or amend the authorities of the commissioner or the Board of Bank Incorporation set out in any other sections of law.

Whoever violates the provisions of this section shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months, or both such fine and imprisonment.

Section 15. Subject to the written approval of the commissioner, a bank may be dissolved and liquidate its affairs if authorized by a vote passed, at a meeting specially called to consider the subject, by at least two-thirds of the voting body of the bank. A committee of 3 members shall thereupon be elected, and, under such regulations as may be prescribed by the commissioner, shall liquidate the assets, and after satisfying all debts of the bank shall distribute the remaining proceeds among those entitled thereto in proportion to their respective interests therein.

For the purposes of this section the word "members" shall mean trustees in a savings bank in mutual form; shareholders in a co-operative bank in mutual form; and stockholders in a bank in stock form.

Section 16. (a) Upon a merger or a consolidation by a savings bank with and into a bank, a federally-chartered bank or an out-of-state bank, other than a savings bank, such savings bank, hereinafter referred to as a former member bank, shall cease to be a member bank in the Depositors Insurance Fund. Notwithstanding any other provision of law, upon any such merger or consolidation, such savings bank shall not succeed to or acquire any rights, including but not limited to rights to dividends or to the proceeds of any distribution in complete or partial dissolution or liquidation, in the Depositors Insurance Fund, or in its Liquidity Fund or Deposit Insurance Fund.

A savings bank shall send a notice in writing by registered mail to the Depositors Insurance Fund at least 60 days before the meeting of the corporators or stockholders, as applicable, to vote on the merger or consolidation with and into a bank, a federally-chartered bank or an out-of-state bank, other than a savings bank.

(b) Upon the acceptance by a savings bank of a federal charter it shall cease to be a member bank in the Depositors Insurance Fund. Notwithstanding any other provision of law, following its acceptance of a federal charter such corporation shall not retain, succeed to, or acquire any rights, including but not limited to rights to dividends or to the proceeds of any distribution in complete or partial dissolution or liquidation, in the Depositors Insurance Fund, or in its Liquidity Fund or Deposit Insurance Fund, except to the extent specifically provided in this paragraph. In the event that such corporation shall, subsequent to its acceptance of a federal charter, (i) convert to a Massachusetts-chartered savings bank and become a member of the Depositors Insurance Fund, or (ii) become a federal member of the Depositors Insurance Fund, such corporation shall, for so long as it shall remain a member or federal member bank of the Depositors Insurance Fund participate in any dividends paid pursuant to section 3 of chapter 43 of the acts of 1934 and in any distributions made pursuant to section 10 of said chapter 43, and in any dividends paid and any withdrawals or returns of deposits authorized pursuant to section 4 of chapter 44 of the acts of 1932, in each case based upon the retained amounts paid in by such corporation to the Deposit Insurance Fund and the Liquidity Fund, respectively, without regard to whether such amounts were paid before or after acceptance of a federal charter, or upon the

unexpended portion thereof, in the same manner and to the same extent as it would have been entitled to participate if such corporation had not accepted a federal charter.

Upon the conversion of any such corporation into a federal charter, the corporate existence of such bank shall not terminate, but such federally-chartered bank shall be deemed to be a continuation of the entity of the savings bank so converted and all property of the converted savings bank, including its rights, titles, and interests in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest and asset of any conceivable value or benefit then existing, or pertaining to it or which would inure to it, shall immediately, by act of law and without any conveyance or transfer and without any further act or deed, remain and be vested in and continue and be the property of such federally-chartered bank into which the savings bank has converted itself, and such federal bank shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held and enjoyed by the converting savings bank, and such federal bank as of the time of the taking effect of such conversion shall continue to have and succeed to all the rights, obligations, and relations of the converting savings bank. All pending actions and other judicial proceedings to which the converting savings bank is a party shall not be deemed to have been abated or to have been discontinued by reason of such conversion, but may be prosecuted to final judgment, order, or decree in the same manner as if such conversion into such federal bank had not been made and such federal bank resulting from such conversion may continue such action in its corporate name as a federal bank, and any judgment, order or decree may be rendered for or against it, which might have been rendered for or against the converting savings bank theretofore involved in such judicial proceedings.

The predecessor corporation or the succeeding association shall pay to said deposit insurance fund or make provision for payment thereto of a sum equal to 3 annual assessments, at the percentage rate in effect at the time the predecessor corporation ceased to be a member bank and computed on the basis of its deposits as shown by its last annual report to the commissioner preceding such conversion or, at its option or at the option of the succeeding association, as shown by the records of the predecessor corporation on the effective date of conversion. Until such sum shall have been paid in full, payments on account thereof shall be made annually or oftener by the predecessor corporation or the succeeding association; provided, that not less than one-third of such sum shall be paid annually. If any such one-third shall not be so paid or if, at the end of 3 years from the time the predecessor corporation ceased to be a member bank such sum shall not have been paid in full, the entire balance thereof may be recovered by the Fund, together with interest thereon, in any manner provided by law for the collection of debts. The predecessor corporation or the succeeding association may authorize the deduction of such sum in whole or in part, from the amount, if any, of the portions of said other assessments to which the succeeding association may be entitled as hereinbefore provided. If, however, by federal law or regulation a federal bank converting therefrom to a savings bank, is required to pay to the federal deposit insurance corporation a sum equal to annual premiums or assessments for other

than a period of 3 years, then the number of annual assessments payable to said share insurance fund under this section shall be for the same number of years as is so required.

Any such corporation which accepts or has accepted a federal charter after January 1, 1983 may apply to the Depositors Insurance Fund for insurance coverage of its deposits in excess of the amount insured by a federal deposit insurance agency, hereinafter referred to as "excess insurance", in accordance with the requirements of chapter 44 of the acts of 1932 and chapter 43 of the acts of 1934; provided, however, that no such corporation shall apply for such excess insurance unless such corporation shall have capital and surplus if a stock institution or surplus if a mutual institution, less any intangible asset value, equal to or greater than six per cent of total assets. The Depositors Insurance Fund shall not accept for excess insurance coverage any such corporation which fails to meet the requirements specified above or the requirements set out in section 19 of said chapter 43. For purposes of this section, federal deposit insurance agency shall mean Federal Deposit Insurance Corporation or any successor to such corporation.

The commissioner may establish the procedure to be followed by a federally-chartered bank converting into a savings bank; provided, however, that no such conversion shall become effective unless approved in writing by the commissioner; and provided, further, that the commissioner shall not grant such approval until he has received notice from the Depositors Insurance Fund that arrangements satisfactory to it have been made for such conversion.

(c) Upon the conversion of a federally-chartered bank authorized to conduct business in the commonwealth the corporate existence of such association or bank shall not terminate, but the state-chartered savings bank shall be deemed to be a continuation of the entity of the association or bank so converted and all property of the converted association or bank including its rights, titles and interests in and to all property of whatsoever kind, whether real, personal, or mixed, and things in action, and every right, privilege, interest, and asset of any conceivable value or benefit then existing, or pertaining to it, or which would inure to it, shall immediately by act of law and without any conveyance or transfer and without any further act or deed remain and be vested in and continue and be the property of such savings bank into which the federal bank has converted itself, and such savings bank shall have, hold and enjoy the same in its own right as fully and to the extent as the same was possessed, held and enjoyed by the converting association or bank and such savings bank as of the time of the taking effect of such conversion shall continue to have and succeed to all the rights, obligations, and relations of the converting association or bank. All pending actions and other judicial proceedings to which the converting federal bank is a party shall not be deemed to have been abated or to have been discontinued by reasons of such conversion, but may be prosecuted to final judgment, order or decree in the same manner as if such conversion into such savings bank had not been made and such savings bank resulting from such conversion may continue such action in its corporate name as a savings bank, and any judgment, order or decree may be rendered for or against it, which might have been rendered for or against such converting federal association or bank theretofore involved in such judicial proceedings.

Upon the completion of the conversion of a federal bank into a savings bank under the provisions of this chapter, said savings bank shall become a member of the Depositors Insurance Fund, hereinafter called the Fund, and of the Deposit Insurance Fund thereof. Before such succeeding corporation shall commence business as a savings bank, it shall pay into the Liquidity Fund of the Fund, an amount equal to the deposit required of a member bank thereof a similar size, as of the date of said certificate, plus such additional amount based upon the surplus of said Reserve Fund, as the directors of the Fund, with the approval of the commissioner, shall determine to be equitable. In addition to the payment to said Reserve Fund, the succeeding corporation shall pay to the Deposit Insurance Fund such proportion of the current and annual assessment as shall have accrued to the date of said certificate.

After compliance with the foregoing requirements, the succeeding corporation shall thereafter be entitled to exercise all of the rights and privileges, and shall be subject to all of its duties and obligations of a savings bank and shall conduct its business subject to the provisions of this chapter and of other applicable laws; provided, however, that, with the approval of the commissioner, the succeeding corporation shall have reasonable time after the effective date of the conversion within which to comply with any particular provisions of such laws not hereinbefore specifically provided for and which it shall be unable to comply with on or before said date.

Section 17. (a) Upon a proposal to merge or consolidate a co-operative bank with and into a bank, other than a co-operative bank, a federally-chartered bank or an out-of-state bank or conversion to a federal charter such co-operative bank shall send a notice in writing by registered mail to the Co-operative Central Bank, hereinafter call the central bank, at least 60 days before the meeting of the directors to vote on the merger, consolidation or conversion.

(b) Upon the acceptance by a co-operative bank of a federal charter and the commissioner has received from the state secretary a certificate that such co-operative bank, hereinafter referred to as the predecessor corporation, has been duly recorded for dissolution, the following further provisions shall apply:

1. The central bank shall pay to said succeeding association from the fund representing deposits of member banks made pursuant to said chapter 45, hereinafter called the Reserve Fund, an amount equal to not more than the aggregate of all deposits made by the predecessor corporation held in said Reserve Fund on the effective date of the conversion, less all indebtedness of such corporation to the central bank; provided, however, that no part of the income, surplus, undivided profits or other reserves held by the central bank in said Reserve Fund shall be so paid.

2. All amounts required to be paid by the predecessor corporation while a member bank to the Share Insurance Fund of the central bank pursuant to section 1 of chapter 73, including the income, surplus, undivided profits and other reserves of the Share Insurance Fund, shall be

retained by the central bank as a charge for insurance of the shares of such corporation while a member of the said Share Insurance Fund. Such corporation shall, participate in any distributions authorized and made pursuant to section 9 of chapter 73 of the acts of 1934, but the aggregate amount of such distributions shall be limited to an amount equal to the amount the corporation would have received had the Share Insurance Fund been liquidated at the time such corporation accepted its federal charter. Thereafter the succeeding bank shall be entitled to receive from the central bank the portions, if any, of such other assessments not so paid or required as shall be determined by the central bank with the approval of the commissioner, and such determination shall be final and conclusive upon the central bank, the predecessor corporation and the succeeding bank and all other persons then or thereafter interested; provided, that the supreme judicial court shall have jurisdiction to review and to confirm or modify such determination upon the petition of the predecessor corporation or the succeeding bank filed within 10 days after receipt thereby of notice of such determination. The central bank, in its discretion and subject to the approval of the commissioner, may make disposition of such other assessments, at any time after such conversion is completed, by adjustment pursuant to an agreement with the predecessor corporation or the succeeding bank and may pay thereto such amount as may be so agreed upon.

3. The predecessor corporation or the succeeding bank shall, subject to the last sentence of this paragraph, pay to said share insurance fund or make provision for payment thereto of a sum equal to 3 annual assessments, referred to in said section 1 of chapter 73 at the percentage rate in effect at the time the predecessor corporation ceased to be a member bank and computed on the basis of its share liabilities and notes payable as shown by its last annual report to the commissioner preceding such conversion or, at its option or at the option of the succeeding associations, as shown by the records of the predecessor corporation on the effective date of conversion. Until such sum shall have been paid in full, payments on account thereof shall be made annually or oftener by the predecessor corporation or the succeeding bank; provided, however, that not less than one-third of such sum shall be paid annually. If any such one-third shall not be so paid or if, at the end of 3 years from the time the predecessor corporation ceased to be a member bank such sum shall not have been paid in full, the entire balance thereof may be incurred by the central bank, together with interest thereon, in any manner provided by law for the collection of debts. The predecessor corporation or the succeeding bank may authorize the deduction of such sum in whole or in part, from the amount, if any, of the portions of said other assessments to which the succeeding bank may be entitled as hereinbefore provided. If, however, by federal law or regulation a federal bank converting therefrom to a co-operative bank, is required to pay to the federal deposit insurance corporation a sum equal to annual premiums or assessments for other than a period of three years, then the number of annual assessments payable to said share insurance fund under this section shall be for the same number of years as is so required.

(c) The commissioner may establish the procedure to be followed by a federal bank or federal thrift converting into a co-operative bank; provided, however, that no such conversion

shall become effective unless approved in writing by the commissioner. The commissioner shall not grant such approval until the commissioner has received notice from the Share Insurance Fund of the Co-operative Central Bank established under chapter 73 of the acts of 1934, hereinafter called the central bank, that arrangements satisfactory to it have been made for such conversion.

If an application for conversion is approved by the commissioner as above provided, such federal bank or federal thrift shall cause to be filed with the state secretary the name, residence and post-office address of each of the officers and directors of such federal bank or federal thrift, a copy of its proposed by-laws amended to conform with the requirements of section 7 and such other information as said secretary may require.

After approval of such conversion by the commissioner, and receipt by the commissioner of satisfactory evidence that all federal laws and regulations relative to such conversion have been or will be duly complied with, the commissioner shall cause to be filed with the state secretary a certificate of the commissioner's approval. After receipt of such certificate by said state secretary, if the state secretary finds that the requirements of this section have been satisfactorily complied with, the state secretary shall so certify and upon receipt of a fee, the amount of which shall be determined annually by the secretary of administration and finance under section 3B of chapter 7, said state secretary shall issue to said officers and directors in such form as the state secretary may prescribe, a certificate of incorporation as a co-operative bank.

Simultaneously with the receipt of such certificate, such bank, hereinafter referred to as the succeeding corporation, shall become a member of the central bank and of the Share Insurance Fund thereof. Before such succeeding corporation shall commence business as a co-operative bank, it shall pay into the Reserve Fund of the central bank, established under chapter 45 of the acts of 1932, an amount equal to the deposit required of a member bank thereof of similar size, as of the date of said certificate, plus such additional amount based upon the surplus of said reserve fund, as the directors of the central bank, with the approval of the commissioner, shall determine to be equitable.

In addition to the payment to said reserve fund, the succeeding corporation shall pay to said Share Insurance Fund or make provision for payment thereto of such a sum as the directors of the central bank, with the approval of the commissioner, shall determine to be equitable; and provided, that the succeeding corporation shall pay to said Share Insurance Fund such proportion of any current annual assessment as shall have accrued to the date of said certificate.

After compliance with the foregoing requirements, the succeeding corporation shall thereafter be entitled to exercise all of the rights and privileges and shall be subject to all of the duties and obligations of a co-operative bank and shall conduct its business subject to this chapter and of other applicable laws; provided that, with the approval of the commissioner, the succeeding corporation shall have reasonable time after the effective date of the conversion

within which to comply with any particular laws not hereinbefore specifically provided for and which it shall be unable to comply with on or before said date.

Section 18. Notwithstanding the provisions of any general or special law to the contrary, the commissioner may, subject to such terms and conditions as he may impose, grant a certificate to establish an interim bank, which may be a savings bank, co-operative bank or a trust company, owned by a bank holding company or a banking institution as defined in chapter 167A or a mutual holding company as defined in chapter 167H for the sole purpose of facilitating a multi-step corporate transaction involving a bank as defined in chapter 167; provided, however, that the interim bank under this chapter, chapter 167A, 167H, 167I or any other chapter shall not receive deposits, or otherwise carry on a banking business under the laws of the commonwealth.

CHAPTER 167J

CORPORATE GOVERNANCE PROVISIONS AND REQUIREMENTS

Section 1. As used in this chapter, the following words shall, unless the context otherwise requires, have the following meanings:—

"Bank", an association or corporation chartered by the commonwealth under chapter 167H, 168, 170 or 172.

"Board", the board of trustees or directors, as the case may be, in a bank.

"Capital stock", the sum of the par value of the preferred and common shares of capital stock of a stock corporation, issued and outstanding.

"Commissioner", the commissioner of banks.

"Mutual Bank", an association or corporation chartered by the commonwealth under chapter 168 or 170 which is in mutual form.

"Stock corporation", a savings bank under the provisions of chapter 168, a cooperative bank under the provisions of chapter 170, which has been chartered, converted or reorganized to a stockholder form of corporation, or a trust company under chapter 172.

"Surplus account", an account so designated on the books of a bank and consisting of amounts required by law.

Section 2. Officers and employees of a bank shall be bonded to the extent and in the form determined by the board of directors or board of trustees.

Section 3. In addition to the duties imposed by law upon the treasurer of a bank, or the officer or employee thereof charged with the duties and functions usually performed by the treasurer, he shall also be responsible for the performance of all acts and duties required of such

corporation by the provisions of chapters 167, 167A to 167J, inclusive, 168, 170, 172 and other laws as such provisions are applicable to such officer or to such bank except in so far as such performance has been expressly imposed on some other officer or employee of such bank by its regulations or by-laws or by provision of law.

Section 4. Any officer, trustee, director, agent or employee of any bank, who knowingly and willfully does any act forbidden to him or to such bank by any provision of chapters 167, 167A to 167J, inclusive, 168, 170, 172, and other laws as such provisions are applicable to such officer or to such bank, or who knowingly and willfully aids or abets the doing of any act so forbidden to such bank or to any other officer, director, agent or employee thereof, or who knowingly and willfully fails to do any act required of him by any such provision, or who knowingly and willfully fails to do any act which is required of such bank by any such provision the performance of which is imposed on him by the by-laws or regulations of the bank or by law or the responsibility for the non-performance of which is placed upon him by law shall, if no other penalty against him in his aforesaid capacity is specifically provided, be punished by a fine of not more than $1,000 or by imprisonment for not more than 1 year, or both.

Section 5. No officer, director, trustee, employee or attorney of such corporation shall be a beneficiary of or receive, directly or indirectly, any fee, commission, gift or other consideration for or in connection with any business of such corporation. This section shall not prohibit any such officer, director, trustee, employee or attorney from receiving interest on a deposit made by him or his usual salary or fee as such director or trustee or a reasonable fee for services rendered to such corporation or from borrowing from such corporation in accordance with law, or from sharing in commissions, profits or other benefits derived by any firm, association or corporation, in which he is interested, arising out of any transaction with said corporation if such transaction is made in the regular course of business upon terms as favorable to the corporation as those offered to other persons. The commissioner may require a full disclosure to be made on such forms as he may prescribe by regulations or otherwise, of all commissions, profits or other benefits realized in any such transaction.

Section 6. Whoever violates any provisions of sections 5 and 10 shall be punished by a fine of not more than $5,000 or by imprisonment for not more than 1 year, or both such fine and imprisonment.

Section 7. A bank may pay interest on deposit accounts in accordance with applicable law. Rates of interest may vary based on the type of account or on the terms and conditions applicable to the account. Such corporation by its by-laws, may provide that fractional parts of a dollar shall not be included in principal in computing interest, and may provide that interest shall not be paid on deposits of less than 10 dollars.

Section 8. A trustee, a director or other officer of bank may at the same time be a director, trustee or other officer of a savings bank, co-operative bank or credit union, state or

federally chartered savings and loan association, trust company, or national banking association if, in such case, there is in force a permit therefor issued by the commissioner in writing with the reasons thereon stating why the public interest warrants its issuance, after reasonable notice and an opportunity to be heard, who is hereby authorized to issue such permit if, in his judgment, it is not incompatible with the public interest, and to revoke any such permit whenever he finds, after reasonable notice and opportunity to be heard, that the public interest warrants its revocation except that the provisions of this section shall not apply to any director or other officer who held such position at the incorporation of said trust company. Any person serving as a director, trustee or other officer of a bank that does not make real estate mortgage loans and does not accept savings deposits from natural persons, may at the same time serve as a director, corporator, trustee or other officer of a savings bank, co-operative bank, trust company, state or federally chartered savings and loan association, or national banking association.

Notwithstanding the provisions of this section, a director, officer or employee of a bank may at the same time be a director, officer or employee of a banking institution if such bank and banking institution are affiliates of the same bank or mutual holding company. For the purposes of this section, the terms “banking institution” and “affiliate” shall have the same meanings as set forth in section 1 of chapter 167A.

Section 9. Each bank shall, annually, within 30 days after the last business day of December make a report to the commissioner in such form as he may prescribe showing accurately its condition at the close of business on that day, and containing such other information as the commissioner may require. A statement of condition of a bank shall be available for examination for reasonable purposes by stockholders or their authorized agents at the principal office during business hours.

Each such corporation shall prepare a balance sheet, in accordance with generally accepted accounting principles, which presents fairly its condition as of the last business day of its fiscal year. A copy of a statement of condition shall be made available to a depositor upon request.

Section 10. An officer, director or trustee of a bank, except as provided in this section, shall not borrow from or otherwise become indebted to the bank of which he is an officer, director or trustee and a bank, except as provided in this section, shall not make a loan or extend credit in any other manner to any of its officers, directors or trustees. An officer, director or trustee of a bank may borrow and a bank may make a loan or extend credit to its officers, directors or trustees subject to the terms and conditions in compliance with subsection (g) of section 2I of chapter 167.

Section 11. At intervals that shall not be less frequent than quarterly, the treasurer or other officer or committee designated by the board of directors or trustees shall submit to a meeting of the board, or to a meeting of a committee, if the receipt of the reports has been

delegated by the board to that committee, a written report, over his signature, for the period running from the closing date of the last report to a date not more than 18 days before the date of the meeting at which the report is submitted. The report shall be filed with the records of the meeting and shall be retained for a period of 6 years from the date of the meeting. The report shall provide a summary of the transactions and other information requested by the board.

Section 12. At least once during each 12 months following their elections and more often if required by the commissioner, the auditing committee of a mutual bank shall have an audit made of the balance sheet of the bank and such other financial statements as it may prescribe.

The audit shall be made by an independent certified public accountant as set forth in the last paragraph of section 33 of chapter 13 in accordance with generally accepted auditing standards and in such other form and manner at such time within said 12 months as the auditing committee may prescribe. Within 30 days after its election, the auditing committee shall appoint an accountant.

The accountant shall report in writing to the auditing committee the results of the audit. At the next meeting of the trustees or directors of the mutual institution thereafter, the auditing committee shall render a report, which shall be read and signed by the committee, stating the nature, extent and results of the audit and whether it accepts the accountant's report.

The auditing committee shall file with the commissioner a copy of the accountant's report within 30 days after its receipt and maintain another copy with the records of the bank. If the auditing committee fails to have an audit as herein provided, the commissioner shall have an audit made by an independent certified public accountant as set forth in the last paragraph of section 33 of chapter 13 in such form and manner as the commissioner may prescribe, and the expense shall be paid by the bank.

Section 13. A bank shall maintain capital and surplus if a stock corporation or a surplus account if a mutual institution necessary to be deemed, at a minimum, adequately capitalized as determined by the federal deposit insurance agency which insures the deposits of the bank or, if applicable, by the Commissioner.

Section 14. The capital stock of a stock corporation shall be subject to the following provisions:

A. Classes. — The capital stock of such corporation may consist of common stock and 1 or more classes of preferred stock. The issuance of any such capital stock shall require the prior approval of the commissioner, and shall be subject to such conditions as the commissioner may impose.

B. Preferred Stock. — The preferred stock may contain such provisions relative to preferences, voting powers, retirement, dividend and conversion rights and participation in

control and management as the by-laws and articles of organization may, with the approval of the commissioner, provide; but the holders thereof shall not be held individually responsible as such holders for any debts, contracts or engagements of such corporation and shall not be liable for assessments to restore impairments in its capital. In case dividends on the preferred stock are to be cumulative, no dividends shall be declared or paid on common stock until all such cumulative dividends shall have been paid in full and all requirements of any retirement fund shall have been met; and if such corporation is placed in voluntary liquidation, or a conservator is appointed therefor, or possession of its property and business has been taken by the commissioner, no payments shall be made to the holders of the common stock until the holders of the preferred stock shall have been paid in full such amounts as may, with the approval of the commissioner, be provided in the articles of organization or amendments thereof, not in excess of the purchase price or other consideration received by the corporation for such preferred stock, plus all accumulated unpaid dividends.

C. Issue. — No stock specified in the agreement of association shall be issued until the par value and pro rata portion of surplus account and undivided profits account shall be paid in full in cash. No additional stock shall be issued until the par value thereof is paid in full in cash or such other consideration as shall be approved by the commissioner or is in its possession as surplus account; provided, that no stock shall be issued against the surplus account unless, after such issue, the surplus account shall amount to at least fifty per cent of the total capital stock.

D. Increase or Reduction. — Any such corporation may, subject to the approval of the commissioner, increase or reduce its capital stock in the manner provided by section 10.03 of chapter 156D; provided, however, that the capital stock shall not be reduced to less than the minimum amounts set forth by law; and provided, further, that, in the case of reorganization of any such corporation in possession of the commissioner under section 22 of chapter 167 or in possession of a conservator under chapter 167, the capital stock outstanding at the time of possession taken by the commissioner or conservator may be cancelled in whole or in part or other disposition thereof made in accordance with any plan of reorganization approved by the commissioner and the supreme judicial court.

E. Change of Par Value. — Any such stock corporation may change the par value of its shares in the manner provided by section 10.03 of chapter 156D.

F. Rights and Options. — The terms and conditions of any rights or options issued by any such stock corporation, including those outstanding on the effective date of this section, may include, without limitation, restrictions or conditions that preclude or limit the exercise, transfer, receipt or holding of such rights or options by any person or persons owning or offering to acquire a specified number or percentage of the outstanding stock or other securities of the corporation, or any transferees of any such persons, or that preclude or limit such actions based on such other factors, including the nature or identity of such persons, as the directors determine to be reasonable and in the best interests of the corporation. Nothing contained in this section

shall affect the duties or standard of care of a director. The issuance of any shares of the capital stock of the corporation upon the exercise of any such options or rights shall require the prior approval of the commissioner and shall be subject to such conditions as the commissioner may impose.

Section 15. The registrar, transfer agent or other officer or agent of any such stock corporation having charge of its stockholders' records or ledger shall, within 10 days after recording thereon any transfer of stock of the corporation which makes the transferee the owner of record of 10 per cent or more of the outstanding stock with voting power, report such transfer to the commissioner. Any agent or broker holding 10 per cent or more of such stock for the benefit of one or more persons shall, upon written request of the commissioner, report to him the names of such persons. Whoever violates this section shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.

Section 16. The directors may fix in advance a time, which, unless a shorter period is provided in the by-laws, shall be not more than 60 days before the date of any meeting of the stockholders or the date for the payment of any dividend or the making of any distribution to stockholders or the last day on which the consent or dissent of stockholders may be effectively expressed for any purpose, as the record date for determining the stockholders having the right to notice of and to vote at such meeting and any adjournment thereof or the right to receive such dividend or distribution or the right to give such consent or dissent, and in such case only stockholders of record on such record date shall have such right, notwithstanding any transfer of stock on the books of the bank after the record date; or without fixing such record date the directors may for any of such purposes close the transfer books for all or any part of such period.

Section 17. The board of directors may declare from net profits cash dividends annually, semi-annually or quarterly, but not more frequently, and noncash dividends at any time. No dividends shall be declared, credited or paid so long as there is any impairment of capital stock. No stock corporation having outstanding preferred stock shall, except as otherwise authorized by the commissioner, declare dividends upon common stock for any period other than a period for which dividends are declared upon preferred stock.

The approval of said commissioner shall be required if the total of all dividends declared by a stock corporation in any calendar year shall exceed the total of its net profits for that year combined with its retained net profits of the preceding 2 years, less any required transfer to surplus or a fund for the retirement of any preferred stock.

For the purposes of this section, the words net profits shall mean the remainder of all earnings from current operations plus actual recoveries on loans and investments and other assets after deducting from the total thereof all current operating expenses, actual losses, accrued dividends on preferred stock, if any, and all federal and state taxes.

Section 18. Such stock corporation may grant options to purchase, issue and sell shares of its capital stock to its directors, officers and employees, or to a trustee on their behalf, without first offering the same to its shareholders, for such consideration, not less than par value, and upon such terms and conditions as shall be approved by its board of directors, by the holders of a majority of the stock entitled to vote with respect thereto, and by the commissioner. In the absence of fraud, the sufficiency of consideration as so approved shall be conclusively presumed.

Section 19. Such corporation may establish stock purchase plans, restricted stock purchase plans and stock grant plans for employees, officers and directors thereof, whether such director is an employee or non-employee of the corporation. Any such plan shall be subject to such terms and conditions as shall be approved by the board of directors of the bank, by the holders of a majority of the stock thereof entitled to vote with respect thereto, and by the commissioner. In the absence of fraud, the sufficiency of consideration as so approved shall be conclusively presumed. Notwithstanding the provisions of subsection C of section 14, stock may be issued for intangible property or services if permitted by the plan approved as provided in this section, without the approval of the specific form of such non-cash consideration by the commissioner.

Section 20. A. A stock company may, subject to the approval of the commissioner and upon vote of the holders of at least two-thirds of each class of its capital stock at an annual meeting or a special meeting duly called for the purpose, preceded in either case by a notice in writing sent to each stockholder of record by registered mail at least 10 days before said meeting, issue and sell its capital notes or debentures of any maturity. The indebtedness evidenced by any such capital notes or debentures, including the principal thereof and premium, if any, and interest thereon, shall be subordinate to the claims of depositors and other creditors of such corporation, except claims in respect of other capital notes or debentures of such corporation at least equally subordinated, in accordance with such provisions for subordination as shall be approved by the commissioner, and such subordination shall be specifically enforceable by any interested person, including the commissioner or any conservator appointed by the commissioner whenever possession of the property and business of such corporation shall have been taken by the commissioner or such conservator. Any such issue of capital notes or debentures may contain such other provisions as the commissioner may approve, including provision for conversion rights. The commissioner in his discretion may by regulation provide that any such capital notes or debentures shall to the extent set forth in such regulation be treated as part of the capital funds of the issuing stock corporation for purposes of any of the provisions of this chapter.

B. Nothing in subsection A shall be construed as limiting the power of any such corporation to borrow money otherwise than through the issuance and sale of such capital notes or debentures, provided that no such corporation shall engage in the business of issuing and selling to depositors, customers or others its unsecured promissory notes except in accordance with such regulations as the commissioner in his discretion may adopt as to the conduct of such business or, in the absence of such regulations, with the prior approval of the commissioner. Any

regulations adopted by the commissioner in accordance with the foregoing provisions of this subsection B may impose limitations on the aggregate amount of such promissory notes at any time outstanding, and the interest cost thereof, and may further require that reserves shall be maintained against the indebtedness evidenced thereby, all by classes of trust companies or otherwise.

SECTION 48. The General Laws are hereby amended by striking out chapter 168, as appearing in the 2010 Official Edition, and inserting in place thereof the following chapter: —

CHAPTER 168

SAVINGS BANKS

Section 1. The following words as used in this chapter, unless the context otherwise requires, shall have the following meanings:—

"Board", or "Board of Bank Incorporation", a board consisting of the commissioner of banks, the commissioner of revenue and the state treasurer.

"Capital Stock"' the sum of the par value of the preferred and common shares of capital stock, issued and outstanding.

"Commissioner", the commissioner of banks.

"Corporator"' a original incorporator

"Incorporators", subscribers to the agreement of association for the purpose of forming a savings bank under the provisions of this chapter.

"Mutual bank", a savings bank, institution for savings or savings institution incorporated as such in the commonwealth in mutual form.

"Savings bank", a savings bank, institution for savings or savings institution incorporated as such in this commonwealth.

"Stock bank", a savings bank, institution for savings or savings institution incorporated as such in the commonwealth in stock form which has been chartered or reorganized or converted to a stockholder form of corporation.

"Stockholder", a registered owner of shares of capital stock of a stock savings bank

"Such corporation" or "such bank", a savings bank, institution for savings and a savings institution incorporated as such in this commonwealth.

Section 2. A savings bank shall have all the powers expressly granted by law and whatever further incidental powers may fairly be implied from those expressly conferred and

such as are reasonably necessary to enable it to exercise fully those powers according to common or accepted banking customs and usages.

Section 3. Any such corporation organized prior to January 1, 1955 shall be subject to this chapter and chapters 167C to 167G, inclusive, Chapter 167I and 167J so far as is consistent with the provisions of its charter, and may, by vote of its corporators at its annual meeting or at a meeting called for the purpose, accept any provision of this chapter which is inconsistent with its charter. Any such corporation organized after January 1, 1955, shall be subject to this chapter and chapters 167C to 167G, inclusive and Chapters 167I and 167J.

Section 4. A savings bank shall upon its incorporation have such capital structure as the board of bank incorporation shall deem adequate. Such capital structure may vary by the board based on the application and business plan submitted.

Section 5. Fifteen or more individuals who associate themselves by a written agreement for the purpose of forming a savings bank may, upon compliance with sections 4 to 9, inclusive, become a corporation, with all the powers and privileges and subject to all the duties, restrictions and liabilities set forth in all general laws relating to such corporations. The agreement of association shall specifically state:

(a) That the incorporators thereto associate themselves with the intention of forming a corporation;

(b) The name by which the corporation shall be known;

(c) The location of the principal office of the corporation, which shall be within the commonwealth;

(d) The purposes for which the corporation is formed and the nature of the business to be transacted;

(e) The amount and classes of its capital stock, and the number of shares into which any class is to be divided; the amount of the surplus account and the amount of the undivided profits account for a stock bank, the amount of the surplus account for a mutual bank; and

(f) The name of each incorporator and his residence, post office address, and the number of shares of capital stock, if any, which he agrees to take and the class or classes of such shares.

Each incorporator shall subscribe his name to the agreement of association.

Section 6. A notice of the intention of the incorporators to form such a savings bank shall be given to the board of bank incorporation.

A notice in such form as said board shall approve, shall be published at least once a week, for 3 successive weeks, in 1 or more newspapers designated by the board, and published in

the city or town in which it is proposed to establish the savings bank, or if there is no newspaper in such city or town, in a newspaper published in the city or town which is nearest to the proposed location. Such notice shall specify the names of the proposed incorporators, the name of the corporation and the location of the same. The subscribers to said agreement shall apply to the board for a certificate that public convenience and advantage will be promoted by the establishment of such savings bank. Such an application for a proposed savings bank shall be accompanied by an investigation fee, the amount of which shall be determined by the commissioner of administration under the provision of section 3B of chapter 7. In determining whether the public convenience and advantage will be promoted by the establishment of such savings bank, the board shall consider the adequacy of its capital structure, the general character of its management, the adequacy of banking facilities in the area, and the convenience and needs of the community to be served. The board may grant such certificate, which shall be deemed to be revoked if the applicants therefor do not become incorporated and begin business within 1 year after its date of issue. If the board refuses to issue such certificate, no further proceeding may be taken by the applicant during the year next following the date of such refusal except with the approval of the board, but the applicant may renew his application as of right after 1 year from the date of such refusal, and he may dispense with further notice or publication unless the board orders such notice or publication.

Section 7. The first meeting of the incorporators shall be called by a notice signed either by that incorporator who is designated in the agreement for the purpose, or by a majority of the incorporators, and such notice shall state the time, place and purposes of the meeting. A copy of the notice shall, at least 7 days before the day appointed for the meeting, be given to each incorporator or left at his residence or usual place of business, or deposited in the post office, postage prepaid, and addressed to him at his residence or usual place of business, and another copy thereof and an affidavit of one of the signers that the notice has been duly served shall be recorded with the records of the corporation. If all the incorporators shall, in writing endorsed upon the agreement of association, waive such notice and fix the time and place of the meeting, no notice shall be required. At such first meeting, or at any adjournment thereof, the incorporators shall organize by the choice by ballot of a temporary clerk who shall be sworn, by the adoption of by-laws and by the election in such manner as the by-laws may determine, a clerk or secretary, and such other officers as the by-laws may prescribe, trustees for a mutual bank or directors for a stock bank. The temporary clerk shall make and attest a record of the proceedings until the clerk or secretary has been chosen and sworn, including a record of such choice and qualification.

Section 8. The president, clerk or secretary and a majority of the trustees or directors, as applicable, elected at such first meeting shall make and sign under penalties of perjury articles of organization in duplicate, setting forth—

(a) A true copy of the agreement of association, the names of the subscribers thereto, and the name, residence and post office address of each of the officers and directors or trustees as applicable;

(b) The date of the first meeting and the successive adjournments thereof, if any.

One duplicate original of the articles so signed shall be submitted to the commissioner, and the other, together with the records of the proposed corporation, to the state secretary, who shall examine the same, and who may require such amendment thereof or such additional information as he may consider necessary. If he finds that the articles conform to the 4 preceding sections relative to the organization of the corporation and that section 6 has been complied with, he shall so certify and endorse his approval thereon. The articles shall be filed within 30 days thereafter in the office of the state secretary, who, upon receipt of a fee, the amount of which shall be determined annually by the commissioner of administration under the provision of section 3 B of chapter 7, said state secretary shall issue a certificate of incorporation in the following form:

COMMONWEALTH OF MASSACHUSETTS

Be it known that whereas (the names of the subscribers to the agreement of association) have associated themselves with the intention of forming a corporation under the name of (the name of the corporation), for the purpose (the purpose declared in the agreement of association), with a capital stock or surplus, as applicable, of (the amount fixed in the agreement of association), and have complied with the statutes of the commonwealth in such case made and provided, as appears from the articles of organization of said corporation, duly approved by the state secretary and recorded in this office: Now, therefore, I (the name of the state secretary), secretary of the commonwealth of Massachusetts, do hereby certify that said (the names of the subscribers to the agreement of association), their associates and successors, are legally organized and established as, and are hereby made, an existing corporation under the name of (name of the corporation), with the powers, rights and privileges, and subject to the limitations, duties and restrictions, which by the law appertain thereto.

Witness my official signature hereunto subscribed and the great seal of the commonwealth of Massachusetts hereunto affixed, this day of in the year (the date of the filing of the articles of organization).

The state secretary shall sign the certificate of incorporation and cause the great seal of the commonwealth to be thereto affixed, and such certificate shall have the force and effect of a special charter. The existence of every such corporation shall begin upon the filing of the articles of organization in the office of the state secretary. He shall also cause a record of the certificate of incorporation to be made, and such certificate, or such record, or a certified copy thereof, shall be conclusive evidence of the existence of such corporation.

A bank may amend its articles of organization if approved by its board and submitted to and approved by the bank's governing body except as provided in sections 10.05, 10.07 and 14.34 of chapter 156D. After approval by the board and governing body, the amendment shall be submitted to the commissioner for his endorsement thereon before delivering the amendment to the secretary of state for filing.

Section 9. When all the capital stock has been issued for a stock bank, a list of the stockholders, with the name, residence and post office address of each, and the number of shares in each class held by each stockholder, shall be filed with the board of bank incorporation, which list shall be verified by the clerk of the corporation. Upon receipt of such list the board shall cause an examination to be made of the method of payment of the capital stock, or the surplus account if a mutual bank of the personnel of the corporation, including the officers and directors or trustees thereof, and if, after such examination, it appears that the whole capital stock, surplus account and undivided profits account for a stock bank or surplus account for a mutual bank have been paid in cash, that all requirements of law have been complied with, that the bank is a member of the Federal Deposit Insurance Corporation, and that the qualifications of the personnel are satisfactory, the board shall, if satisfied that the public convenience and advantage will be promoted thereby, issue a certificate authorizing such corporation to begin the transaction of business. No such corporation shall begin the transaction of business until such a certificate has been granted.

Section 10. A mutual bank shall be subject to sections 11 to 21A, inclusive and a stock bank shall be subject to sections 21A to 26 inclusive.

Section 11. Meetings of the corporators, board of trustees and board of investment of a mutual bank shall be held in the town wherein the main office of the corporation is located, or at any other place within the counties in which the bank has a branch office.

Section 12. A mutual bank shall have at least 25 corporators and may, at a legal meeting of the corporators, elect by ballot to be a corporator any person who is a resident of the commonwealth, or any person who resides in another state; provided, however, that not less than three-fourths of said corporators shall be citizens of the commonwealth and residents therein at any one time. Corporators shall be elected for a term of 10 years, but a corporator shall not serve beyond the retirement age as established by the bank's by-laws. No person shall serve as a corporator of more than one savings bank, and no corporator shall, after January 1, 1975, serve as an officer or director of a national bank, trust company, co-operative bank, savings and loan association or credit union. A corporator shall, at the time of his election or within 30 days thereafter, be a depositor of such corporation. Any person serving as a corporator of a savings bank may at the same time serve as a director or, other officer of a trust company or a national bank that does not make real estate mortgage loans and does not accept savings deposits from natural persons.

No person shall continue to be a corporator after removing from the commonwealth unless, at the annual meeting following such removal, the corporators shall vote to continue such person as a corporator subject to the limitations of this section applicable to nonresident corporators.

Any person may, at an annual or special meeting of the corporators, cease to be a corporator if, at least 3 days before such meeting, he has filed with the clerk a written notice of his intention so to do. If a corporator fails to attend 2 consecutive annual meetings, his membership may, by vote of the corporators at their next annual meeting, be declared forfeited; and such action and vote when recorded shall be evidence of such forfeiture. Not more than three-fifths of the corporators of any such corporation shall be trustees or officers thereof at any one time.

Section 13. The annual meeting of the corporators of a mutual bank shall be held at a time as the by-laws direct. Special meetings may be held by order of the trustees or upon written request of at least 10 corporators addressed to the clerk who shall give notice of special meetings upon that order or request. In the absence or inability of the clerk to serve, the president or a vice president may give the notice required by this section. At least 7 days before the date of the meeting, written notice of the meeting shall be mailed to each corporator. The names of those present at a meeting shall be entered in the records of the corporation. A quorum shall consist of not less than 13 corporators or 25 per cent of the total number of corporators, whichever is the greater; but, not more than 50 corporators shall be necessary to constitute a quorum.

Section 14. A mutual bank shall have a board of trustees, subject to the following provisions:—

1. Number. — The board shall consist of not less than 11 trustees and such additional number, if any, as may be provided in the by-laws.

2. Qualifications. — The business of the corporation shall be managed by a board of trustees, of which not less than a majority shall be citizens of the commonwealth. A trustee at the time of his election or within 30 days thereafter, shall be a depositor of the corporation. At least 2 trustees of the board at the time of their election shall be residents of the city or town where the main office or a branch office of the corporation is located.

3. Election. — All trustees shall be elected by and from the corporators, except that any vacancy in the board arising between annual meetings from death, resignation or otherwise, may be filled by the trustees until the next annual meeting at which the corporators may elect a trustee for the balance, if any, of the unexpired term. The trustees shall be divided into 3 groups as nearly equal in number as possible, and one of such groups shall be elected annually for a term of 3 years, provided, however, that during the minimum time necessary to accomplish the foregoing, one of said groups may be elected for a term of 1 year and one for a term of 2 years.

Upon the election as trustee of a person who has not been theretofore a trustee of such corporation, the clerk shall send forthwith to the commissioner the name and address of such person and the clerk shall transmit to such person a copy of the laws relating to savings banks. A number of trustees, not exceeding two, may be elected by vote of a majority of the trustees then in office if the by-laws so proscribe.

4. Termination of Office. — If a trustee fails to attend four consecutive regular quarterly meetings of the board of trustees, said board may declare his office to be vacant at its next regular quarterly meeting, and if a trustee fails to attend eight consecutive regular quarterly meetings of said board, it shall declare his office to be vacant at its next regular quarterly meeting, but this provision shall not apply to a trustee while he is serving on active duty as a member of the Armed Forces of the United States. Any trustee whose office is declared to be vacant as provided in this paragraph shall not be re-elected as a trustee except upon vote of at least two-thirds of all the corporators of such corporation passed at a subsequent annual meeting.

The by-laws may authorize the continuance, as honorary trustees, of those persons who shall have served as trustee for 10 years or more. Such honorary trustee may be elected for an indefinite term and shall not be included in determining the minimum number of trustees provided under paragraph 1, or the number of trustees to be elected annually as provided in paragraph 4 of this section. Such honorary trustee shall not be deemed to be an officer or member of the board of trustees of such corporation, shall not receive compensation or be required to attend meetings or be authorized or required to perform any duties.

The office of any trustee who seeks, or against whom, an order of relief is entered in a personal capacity, pursuant to Title 11 of the United States Code, or who, on examination in a supplementary process proceeding, has been found unable to pay a judgment, shall thereby be vacated. A record of any such vacancy shall be entered upon the books of the corporation. Any trustee whose office is so vacated shall again be eligible to serve as a trustee upon the receipt of a discharge in bankruptcy under Chapter 7 of said Title 11; the completion of all payments required pursuant to a plan of reorganization under Chapter 11 thereof; the completion of all payments under a plan of debt adjustment under Chapter 13 thereof; or the payment of said judgment.

The commissioner may recommend the removal of any trustee, officer or employee who in his opinion has abused his trust, or has been negligent in the performance of his duties, and upon such recommendation the trustees may remove or discharge such trustee, officer or employee. The trustees shall act upon such recommendation within 30 days after receiving the same and neither such trustees nor the commissioner shall be personally liable for any action taken by them in good faith in connection with any such recommendation or removal.

Section 15. A regular meeting of the board of trustees of a mutual bank shall be held at least once in 3 months, for the purposes set forth in this section and for the transaction of other

business. Special meetings may be called by the president, or shall be called by the clerk if requested in writing by at least 3 trustees. Notices of meetings shall be given in the manner and to the extent provided in the by-laws. Unless the articles of incorporation, the by-laws or a resolution of the board otherwise provide, members of the board of trustees or any committee designated thereby may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting may simultaneously hear each other, and participation by such means shall constitute presence in person at a meeting. Members may transmit any written authorizations that may be required during the meeting by electronic facsimile or other commercially acceptable transmission. A quorum shall consist of not less than a majority of the trustees, and if there be less than a quorum then a majority of those present may adjourn the meeting until the next regular meeting or until another time or times prior thereto.

A record shall be made by the clerk at each meeting of the transactions of the trustees and of the names of those present, and a copy of the aforesaid report of the board of investment shall be filed and preserved with the records of the corporation.

Section 16. (a) A mutual bank shall have a board of investment of not less than 5 members, who shall be trustees of the corporation. Only 1 of the persons holding the office or performing the duties of president, executive vice president, senior vice president or treasurer shall at the same time be a member of the board of investment. The board shall elect a clerk who may, but need not be a member of the board. The board of investment may invite 1 or more trustees who are not members of the board to attend its meetings during the monthly, quarterly or semi-annual periods as the board may determine.

(b) At least quarterly, the treasurer or other officer designated by the board of investment shall submit to the board of investment, a written report, over his signature, covering the period for which the report has not yet been submitted.

Section 17. In addition to the trustees and members of the board of investment, the officers of a mutual bank shall be a president, 1 or more vice presidents, a treasurer, a clerk and, subject to applicable provisions of the by-laws, such other officers as from time to time may be determined by the trustees to be necessary for the management of the affairs of such corporation, provided that the duties of any such other officer shall not be in conflict with those of the president or treasurer. As used in this section and in section 20 and sections 2 and 5 of chapter167J, the term “operating officers” shall mean and include the president, vice presidents, any assistant vice presidents, the treasurer, any vice treasurer, assistant treasurers, any branch managers, any person performing the duties of auditor, and such other officers as may be designated as operating officers by vote of the board of trustees.

The president shall be a trustee. A vice president may perform the duties of the president to the extent authorized in the by-laws. The treasurer may at the same time be a vice president. A

vice treasurer or an assistant treasurer may perform all the duties of the treasurer. The clerk shall be the clerk of the corporation and clerk of the trustees.

An operating officer of the corporation shall not hold the office or perform the duties of president, vice president, cashier or treasurer of a national banking association or a trust company, and the operating officer shall be governed by section 8 of chapter 167J with respect to holding office in another savings bank or in a co-operative bank or federal savings and loan association.

Section 18. The clerk of a mutual bank and such members of the board of trustees as may be required to be elected under the provisions of section 14 shall be elected at the annual meeting or at a special meeting of the corporators between meetings of the corporation. The president shall be elected by the trustees. If any such office becomes vacant during the year the trustees may, except as otherwise provided in this chapter, fill the vacancy or approve a new officer until the next annual meeting.

The members of the board of investment, the treasurer, vice treasurer, assistant treasurers, vice presidents and such other officers as may be determined to be necessary as provided in section 17, shall be elected by the trustees and shall hold office during their pleasure, and the trustees may fill vacancies in such offices at any time.

All trustees and other officers shall be sworn, and shall hold their several offices until others are elected and qualified in their stead; and a record of such qualification shall be made and preserved with the records of such corporation. If a person elected as trustee or other officer of such corporation does not, within 45 days thereafter, take the oath of office, his office thereupon shall become vacant; provided, that such oath may be taken in person at any office of such corporation or may be taken in writing before a notary public or justice of the peace and transmitted to such corporation within said period.

Section 19. Each person elected to office at the annual meeting or at any other meeting of the corporators or trustees, who is not present at the meeting at which he was elected shall be notified, in writing, of his election by the clerk of the corporation. The notice shall be sent within 10 days after the meeting to the last known address of that person. Within 60 days after the annual meeting, the clerk shall cause to be filed with the records of the corporation a list containing the following information: (1) the names of the corporators indicating those who are trustees; and (2) the names of the president, vice presidents, treasurer, members of the board of investment, and members of the auditing committee. A copy of the list shall be furnished to the commissioner within 10 days after filing with the records of the corporation.

Section 20. At least once during each 12 month period, the trustees shall elect an auditing committee of not less than 3 trustees who shall not be operating officers or members of the board of investment. The members of such committee shall take an oath of office in the manner and within the period prescribed by section 14, and a record thereof shall be made and preserved as

provided in said section. The trustees may elect or authorize to be appointed such other committees as the by-laws may provide or as the trustees from time to time may determine. The trustees shall authorize the compensation, if any, to be paid to the members of the committees.

Section 21. The by-laws of the corporation may provide for any and all matters relative to the business and affairs of the corporation as appropriate to exercise all powers necessary, convenient or incidental to the purposes for which the corporation was formed.

Section 21A. The following provisions shall apply to meetings of the board and its committees for both a savings bank in mutual form or in stock form.

(a) Unless the articles of organization or bylaws provide that action required or permitted by this chapter or other provisions of the General Laws to be taken by the directors may be taken only at a meeting, the action may be taken without a meeting if the action is taken by the unanimous consent of the members of the board of directors. The action must be evidenced by 1 or more consents describing the action taken, in writing, signed by each director, or delivered to the corporation by electronic transmission, to the address specified by the corporation for the purpose or, if no address has been specified, to the principal office of the corporation, addressed to the secretary or other officer or agent having custody of the records of proceedings of directors, and included in the minutes or filed with the corporate records reflecting the action taken.

(b) Action taken under this section is effective when the last director signs or delivers the consent, unless the consent specifies a different effective date.

(c) A consent signed or delivered under this section has the effect of a meeting vote and may be described as such in any document.

(d) The provisions of this section shall also apply to committees and their members.

Section 22. A stock bank may adopt by-laws for the proper management of its affairs and as appropriate to exercise all powers necessary, convenient or incidental to the purposes for which the corporation was formed. It may also establish regulations controlling the assignment and transfer of its shares. A majority in interest of the stockholders entitled to vote shall constitute a quorum at any meeting unless the by-laws require more than a majority.

Section 23. Stockholders entitled to vote may vote in person or by proxy. No proxy dated more than 6 months before the date of the meeting named therein shall be valid, and no proxy shall be valid after the final adjournment of such meeting. A proxy with respect to stock held in the name of 2 or more persons shall be valid if executed by any one of them unless at or prior to the exercise of the proxy such corporation receives a specific written notice to the contrary from any 1 of them. A proxy purporting to be executed by or on behalf of a stockholder shall be deemed valid unless challenged at or prior to its exercise, and the burden of proving invalidity

shall rest on the challenger. Except as otherwise provided in the articles of organization or by-laws of the corporation, special meetings of the stockholders may be called pursuant to the provisions of section 7.02 of chapter 156D.

Section 24. The business of a stock bank shall be managed by a board of not less than 7 nor more than 25 directors. A majority of the directors shall be citizens of the commonwealth and resident therein. The directors shall be elected, in such manner as is provided in the by-laws, by the stockholders at their annual meeting or at a special meeting called for the purpose; provided, however, that if the by-laws so prescribe, a number of directors, not exceeding 2, may be elected by vote of a majority of the directors then in office. The directors shall hold office for such term, not exceeding 3 years, as is provided in the by-laws and until their successors are selected and have qualified. A director shall be eligible for reelection. Any vacancy in the board may be filled by appointment by the remaining directors and any director so appointed shall hold his office until the next election.

Each director shall own, in his own right and free of any lien or encumbrance, common stock, either of such corporation or of a company owning 75 per cent or more of the stock of such corporation, having a par value, or a fair market value on the date the person became a director, of not less than $1,000. Any director who ceases to be the owner of the required number of shares of stock, or who becomes in any other manner disqualified, shall vacate his office forthwith. Each director, when appointed or elected, shall take an oath that he will faithfully perform the duties of his office and that he is the owner, in his own right and free of any lien or encumbrance, of the amount of stock required by this section. The oath shall be taken before a notary public or justice of the peace, who is not an officer of such corporation, and a record of the oath shall be made a part of the records of such corporation.

The office of any director who seeks, or against whom, an order of relief is entered in a personal capacity, pursuant to Title 11 of the United States Code, or who, on examination in a supplementary process proceeding, has been found unable to pay a judgment, shall thereby be vacated. A record of any such vacancy shall be entered upon the books of the corporation. Any director whose office is so vacated shall again be eligible to serve as or director upon the receipt of a discharge in bankruptcy under Chapter 7 of said Title 11; the completion of all payments required pursuant to a plan of reorganization under Chapter 11 thereof; the completion of all payments under a plan of debt adjustment under Chapter 13 thereof; or the payment of said judgment.

In determining what he or she reasonably believes to be in the best interests of such corporation, in considering proposed business combinations, as defined in paragraph (c) of section 3 of chapter 110F, a director may consider the interests of the corporation’s employees, suppliers, creditors and customers; the economy of the state, region and nation, community and societal considerations, and the long-term and short-term interests of the corporation and its

stockholders, including the possibility that these interests may be best served by the continued independence of the corporation.

Each stock bank shall have an executive committee of not less than 3 members, who shall be elected by and from the directors and shall hold office during their pleasure. An executive committee may take any action that could be taken by the board of directors except that an executive committee may not: (1) authorize dividends or other distributions to shareholders; (2) approve or propose to the corporation's shareholders actions that require the approval of the corporation's shareholders; (3) change the number of members of the board of directors, remove directors from office or fill vacancies on the board of directors; (4) amend the corporation's articles of organization; (5) adopt, amend or repeal the corporation's by-laws; (6) authorize or approve reacquisition of shares of capital stock, except according to a formula or method prescribed by the board of directors; (7) take any action specifically required by law or regulation to be taken by the entire board of directors, or (8) approve a transaction described in section 8 of chapter 167I.

Section 25. The clerk or secretary shall be elected by the stockholders at their annual meeting or at a special meeting duly called for the purpose.

The president shall be elected by and from the board of directors and shall be chairman thereof unless the board designates a director in lieu of the president to be chairman. The directors shall elect the treasurer and any other officers. The president as may be required or permitted by law or by-law may select other officers. The officers elected by the board shall hold their respective offices during the pleasure of the directors. The directors may fill a vacancy in the office of clerk or secretary until the next meeting of the stockholders.

Section 26. The board of directors shall meet at intervals, that shall not be less frequent than quarterly, but, upon application in writing by the corporation, the commissioner may waive or modify this requirement. Unless the articles of organization, the by-laws, or a resolution of the board otherwise provide, members of the board of directors or a committee designated thereby may participate in a meeting of the board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting may simultaneously hear each other, and participation by those means shall constitute presence in person at a meeting. Members may transmit written authorizations that may be required during the meeting by electronic facsimile or other commercially acceptable transmission.

Section 27. Fifteen or more savings banks may form the Savings Banks Employees Retirement Association in this section, and in sections 28 and 29, called the association for the purpose of providing retirement benefits services through retirement plans that are qualified under section 401 of the federal Internal Revenue Code, to members of the association and their customers, as hereinafter provided. The association, in its name and by or through its authorized officers, may (a) make agreements and investments subject to limitations as from time to time

may be prescribed by law or the by-laws of the association, (b) sue and be sued, plead and be impleaded, (c) enforce liens and other obligations and foreclose mortgages held by the association on or with respect to real or personal property situated in the commonwealth or in any state or territory of the United States, (d) adopt an official seal and alter the same at pleasure, and (e) do other acts and things necessary to carry out the powers conferred upon it by law and its by-laws.

Any bank or credit union chartered by the commonwealth, any bank or credit union which has converted to federal charter and has its main office located in the commonwealth, any bank or credit union chartered by the federal government, by a state of the United States other than the commonwealth or by the District of Columbia and which has its main office or a branch office located in the commonwealth, the Massachusetts Bankers Association and its successors and any bank which is a voting member thereof, the Savings Banks Employees Retirement Association, the Depositors Insurance Fund, and other banking institutions with their main office or any branch office located in the commonwealth, as may from time to time be provided for in the by-laws of the association, and the respective employees of each of the foregoing, shall be eligible for membership in the association; but, no bank that was eligible to be a member of the association before January 1, 2004, shall be eligible to become a member of the Cooperative Banks Employees Retirement Association or the Credit Union Employees Retirement Association unless and until the Cooperative Banks Employees Retirement Association and the Credit Union Employees Retirement Association permits a member to transfer from any or all of the qualified plans provided by said association, assets and liabilities, attributed to the member's employees, to 1 or more qualified plans not provided by said association. For the purposes of this section and sections 28 and 29, a reference to "bank" or "banks" shall, unless the context otherwise requires, mean any or all of the organizations named or referred to in this paragraph, a reference to "trustees" of a bank shall, unless the context otherwise requires, mean the governing body of any such organization, including, if applicable, the board of directors; and a reference to "customer" shall mean any person or business who has established a contractual relationship for banking business purposes with any banking institution located in the commonwealth which is a member of the association.

Eligible employees may contribute a portion of their salaries or wages, to be deducted by the employing banks and paid to the plans or the retirement association. A participating bank may contribute to or under plans of the retirement association for its employees to the extent determined by its board of trustees. Contributions and benefits under the plans of the retirement association shall not exceed the limits, if any, imposed on such plans by the Internal Revenue Code and the Employees Retirement Income Security Act of 1974, in this section called the Code and ERISA, respectively.

If the commissioner finds that the continuation of contributions by a participating bank subject to his authority may affect its safety and soundness, including reducing its risk-based capital ratio below any prescribed regulatory level, said commissioner may order the bank to (a)

freeze its benefits and cease further funding for future benefit accruals under any plans qualified under section 401 of the federal Internal Revenue Code; (b) revise its benefits for future service under any such plans so that contributions on account of any employee will be limited to an appropriate percentage of compensation; or (c) terminate its participation in any such plans.

The funds contributed by participating banks and their employees shall be held or used by the trustees of the association for the purchase of annuities or payment of retirement benefits to eligible employees, for payments to beneficiaries or representatives of any member employee of the participating bank dying before reaching the age of retirement, and for the payment to any employee retiring from service before becoming entitled to a pension or annuity. Funds held under any of the said plans shall be held or used by the retirement association to the extent required by the Code and ERISA for the exclusive purpose of providing plan benefits to participating members; but, to the extent permitted by law, funds of the plans may be used to defray reasonable expenses of administering the retirement association and the plans, and expenses of investing the assets of the plans may be charged against the funds of the plans. To the extent that expenses of the retirement association or said plans are not otherwise paid, they shall be paid by participating banks on a proportionate basis, as provided in the by-laws of the retirement association. The association shall annually provide to each member a report of assets and liabilities attributable to its participants in any or all qualified plans adopted by a member.

A participating bank, by vote of its board of directors, and a customer may adopt 1 or more of the plans of the retirement association for the benefit of its employees. Any such bank which has adopted a plan of the retirement association for its employees may, if it is otherwise eligible, also establish an employee stock ownership plan.

In any calendar year, the association or bank by vote of its governing board, may directly supplement the retirement benefits being paid to retired employees or their beneficiaries on account of service; but, no supplement of a retirement benefit shall exceed the retirement benefit multiplied by the increase in the cost of living since the retirement began. The increase in the cost of living is the percentage by which the national monthly consumer price index for all urban consumers issued by the bureau of labor statistics of the United States Department of Labor for the last November before the year in which payment is made is greater than the beginning index figure. The beginning index figure is the average of such monthly consumer price index figures for the year in which a retirement benefit was first paid to or with respect to a former employee. No bank may become obligated to pay in future years any supplement authorized by this paragraph.

Membership in the association is voluntary and any bank may establish or provide qualified retirement plans for its employees independent of the association; but, nothing contained herein shall be construed so as to require any bank to provide qualified retirement plans to its employees.

Section 28. The by-laws of the association shall be submitted to the commissioner and shall prescribe the manner in which, and the officers and agents by whom, the association may be conducted and the manner in which its funds may be invested and paid out. Such association shall be formed when its by-laws have been approved and agreed to by a majority of the trustees of each of 15 or more savings banks, and have been approved by the commissioner. Such association shall annually, on or before December 1, report to the commissioner such statements of its membership and financial transactions for the year ending on the preceding October 31 as the commissioner may consider necessary to show its business and standing. The commissioner may verify such statement by an examination of the books and papers of the association.

The association shall not be subject to chapter 32 or chapter 175 or to such other provisions of law as relate to insurance companies or other retirement associations.

Section 29. The property of the association, the portion of the wages or salary of any employee deducted or to be deducted under sections 39 and 40, the right of an employee to an annuity or pension, and all his rights in the funds of the association, shall be exempt from taxation and from the operation of any law relating to insolvency, and shall not be attached or taken on execution or other process to satisfy any debt or liability of the association, a participating bank, or any employee member of the association. No assignment of any right in or to said funds or of any pension or annuity payable under section thirty-nine shall be valid, except that deferred annuity contracts purchased by a participating bank on account of past service of eligible employees may be assigned to such bank prior to actual retirement.

Nothing in this section shall prevent an employee’s annuity or pension from being attached, taken on execution, assigned, or subject to other process to satisfy a support order under chapters 208, 209, or 273.

Section 30. The participating members of the Savings Banks Employees Retirement Association, established by section 39 shall constitute as the Savings Banks Employees Benefit Association, in this section and in sections 43 and 44 called the benefit association, for the purpose of providing retirement benefits through retirement plans which are not qualified plans under section 401 of the Internal Revenue Code of the United States and for establishing employee welfare benefit plans, in this section called plans, for eligible employees of participating organizations. The benefit association, in its name and by or through its authorized officers, may (a) establish plans and related trusts for eligible members participating therein, (b) make agreements, establish trusts and make or cause to be made investments subject to such limitations as may from time to time be prescribed by law or by the by-laws of the benefit association, (c) sue and be sued, plead and be impleaded, (d) enforce liens and other obligations and foreclose mortgages held by the benefit association on or with respect to real or personal property situated in the commonwealth or in any state or territory of the United States, (e) adopt an official seal and alter the same at pleasure, and (f) do such other acts that may be necessary to carry out the powers conferred upon it by law and its by-laws.

For the purposes of this section and sections 43 and 44, reference to “bank” and “banks” shall, unless the context otherwise requires, mean and include any or all member organizations and a reference to “trustees” of a bank shall, unless the context otherwise requires, mean and include the governing body of each of such organizations.

Eligible employees may contribute a portion of their salaries or wages to or under plans established by the benefit association, to be deducted by the employing banks and paid to the benefit association. A participating bank may contribute to or under plans of the benefit association to the extent determined by its trustees. Contributions and benefits under the plans of the benefit association shall not exceed the limits, if any, imposed on such plans by the Internal Revenue Code of 1954, as amended, and the Employee Retirement Income Security Act of 1974, as amended, in this section called the Code and ERISA, respectively.

All plans maintained by the benefit association shall conform to the Code and funds held under the plans of the benefit association shall be invested in such manner as the benefit association shall determine, consistent with the by-laws. Funds held under plans of the benefit association shall be held by or used by the benefit association for the exclusive purpose of providing plan benefits to eligible members and, as determined by the benefit association, may be used to defray reasonable expenses of administering the plans and investing the assets of the plans. To the extent that expenses necessary for the administration of the benefit association or the plans of the benefit association are not paid from the plans, they shall be paid by participating banks on a proportionate basis, as provided in the by-laws.

A participating bank, by vote of its trustees, may adopt one or more of the plans of the benefit association for the benefit of its employees and their beneficiaries. Nothing in this section shall be construed so as to prevent any such bank from establishing its own employee welfare benefit plans or non-qualified retirement plan.

Section 31. The trustees of the Savings Banks Employees Retirement Association, on the effective date of this section, shall prepare the by-laws of the benefit association and file the same with the commissioner. The said by-laws shall prescribe the manner in which, and the officers and agents by whom, the benefit association will be conducted and the manner in which its funds may be invested and paid out. They shall also provide that the said trustees of the Savings Banks Employees Retirement Association shall serve as the initial trustees of the benefit association and shall continue such service for the term prescribed in such by-laws and for the election of subsequent trustees. Such benefit association shall annually, within 6 months after the close of its fiscal year, report to the commissioner such statements of its membership and financial transactions as the commissioner may consider necessary to show its business and standing. The commissioner may verify such statement by an examination of the books and papers of the benefit association.

The benefit association shall not be subject to chapter thirty-two or chapter one hundred and seventy-five or to such other provisions of law as relate to insurance companies or other benefit associations.

Section 32. The property of the benefit association shall be exempt from taxation and from the operation of any law relating to insolvency, and shall not be attached or taken on execution or other process to satisfy any debt or liability of the benefit association, a participating bank, or any employee member of the benefit association. No assignment of any right in or to said funds or of any pension or annuity payable under section forty-two shall be valid, except that deferred annuity contracts purchased by a participating bank on account of past service of eligible employees may be assigned to such bank prior to actual retirement.

Nothing in this section shall prevent an employee's annuity or pension from being attached, taken on execution, assigned, or subject to other process to satisfy a support order under chapter 208, 209, or 273.

SECTION 49. The General Laws are hereby amended by striking out Chapter 170 as appearing in the 2010 Official Edition and inserting in place thereof the following Chapter 172:—

CHAPTER 170

CO-OPERATIVE BANKS

Section 1. The following words as used in this chapter, unless the context otherwise requires, shall have the following meanings:—

"Board or board of bank incorporation", a board consisting of the commissioner of banks, the commissioner of revenue, and the commissioner.

"Capital Stock", the sum of the par value of the preferred and common shares of capital stock, issued and outstanding.

"Commissioner", the commissioner of banks.

"Corporation" or "bank", a co-operative bank incorporated as such in this commonwealth.

"Mutual bank", a co-operative bank incorporated as such in the commonwealth in mutual form.

"Shareholder" or "member", a depositor or holder of any shares or accounts referred to in chapter 167D.

"Shareholders' meeting" or "meeting of shareholders", any annual or special meeting of members of the corporation entitled to vote.

"Stock bank", a co-operative bank incorporated as such in the commonwealth in stock form which has been chartered or reorganized or converted to a stockholder form of corporation.

"Surplus account", an account so designated on the books of a stock co-operative bank and consisting of such amounts as shall be required by law or shall be transferred thereto by vote of the board of directors.

Section 2. A co-operative bank shall have all the powers expressly granted by law and whatever further incidental powers may fairly be implied from those expressly conferred and such as are reasonably necessary to enable it to exercise fully those powers according to common or accepted banking customs and usages.

Section 3. A corporation formed pursuant to section 2 may authorize, at a meeting duly called for the purpose, by vote of two-thirds of the shareholders present and voting a change of its corporate name. Within 60 days after any meeting at which such change has been authorized, articles of amendment, signed under the penalties of perjury by the executive officer and by the clerk, setting forth such change and the due adoption thereof, shall be delivered to the state secretary for filing.

Section 4. A co-operative bank shall upon its incorporation have such capital structure as the board of bank incorporation shall deem adequate. Such capital structure may vary by the board based on the application and business plan submitted.

Section 5. Fifteen or more individuals who associate themselves by a written agreement for the purpose of forming a co-operative bank may, upon compliance with sections 4 to 9, inclusive, become a corporation, with all the powers and privileges and subject to all the duties, restrictions and liabilities set forth in all laws relating to such corporations. The agreement of association shall specifically state:

(a) That the subscribers thereto associate themselves with the intention of forming a corporation;

(b) The name by which the corporation shall be known;

(c) The location of the principal office of the corporation, which shall be within the commonwealth;

(d) The purposes for which the corporation is formed and the nature of the business to be transacted;

(e) The amount and classes of its capital stock, and the number of shares into which any class is to be divided; the amount of the surplus account and the amount of the undivided profits account for a stock bank, the amount of the surplus account for a co-operative bank; and

(f) The name of each incorporator and his residence, post office address, and the number of shares of capital stock, if any, which he agrees to take, and the class or classes of such shares.

Each incorporator shall subscribe his name to the agreement of association.

Section 6. A notice of the intention of the subscribers to form such a co-operative bank shall be given to the board of bank incorporation. A notice in such form as said board shall approve, shall be published at least once a week, for 3 successive weeks, in 1 or more newspapers designated by the board, and published in the city or town in which it is proposed to establish the co-operative bank, or if there is no newspaper in such city or town, in a newspaper published in the city or town which is nearest to the proposed location. Such notice shall specify the names of the proposed incorporators, the name of the corporation and the location of the same. The subscribers to said agreement shall apply to the board for a certificate that public convenience and advantage will be promoted by the establishment of the co-operative bank. Such an application for a proposed co-operative bank shall be accompanied by an investigation fee, the amount of which shall be determined by the commissioner of administration under the provision of section 3B of chapter 7. In determining whether the public convenience and advantage will be promoted by the establishment of such co-operative bank, the board shall consider the adequacy of its capital structure, the general character of its management, the adequacy of banking facilities in the area, and the convenience and needs of the community to be served. The board may grant such certificate, which shall be deemed to be revoked if the applicants therefor do not become incorporated and begin business within 1 year after its date of issue. If the board refuses to issue such certificate, no further proceeding may be taken by the applicant during the year next following the date of such refusal except with the approval of the board, but the applicant may renew his application as of right after 1 year from the date of such refusal, and he may dispense with further notice or publication unless the board orders such notice or publication.

Section 7. The first meeting of the incorporators shall be called by a notice signed either by that incorporator who is designated in the agreement for the purpose, or by a majority of the incorporators, and such notice shall state the time, place and purposes of the meeting. A copy of the notice shall, at least 7 days before the day appointed for the meeting, be given to each incorporator or left at his residence or usual place of business, or deposited in the post office, postage prepaid, and addressed to him at his residence or usual place of business, and another copy thereof and an affidavit of one of the signers that the notice has been duly served shall be recorded with the records of the corporation. If all the incorporators shall, in writing endorsed upon the agreement of association, waive such notice and fix the time and place of the meeting, no notice shall be required. At the first meeting, or at any adjournment thereof, the incorporators

shall elect by ballot a temporary clerk who shall be sworn, adopt by-laws and in such manner as the by-laws may determine, elect directors, a clerk or secretary, and such other officers as the by-laws may prescribe. The temporary clerk shall make and attest a record of the proceedings until the clerk or secretary has been chosen and sworn, including a record of such choice and qualification.

Section 8. The president, clerk or secretary and a majority of the directors, as applicable, elected at such first meeting shall make and sign under penalties of perjury articles of organization in duplicate, setting forth—

(a) A true copy of the agreement of association, the names of the subscribers thereto, and the name, residence and post office address of each of the officers and directors as applicable of the company;

(b) The date of the first meeting and the successive adjournments thereof, if any.

One duplicate original of the articles so signed shall be submitted to the commissioner, and the other, together with the records of the proposed corporation, to the state secretary, who shall examine the same, and who may require such amendment thereof or such additional information as he may consider necessary. If the commissioner finds that the articles conform to the 4 preceding sections relative to the organization of the corporation and that section 6 has been complied with, he shall so certify and endorse his approval thereon. The articles shall be filed within 30 days thereafter in the office of the state secretary, who, upon receipt of a fee, the amount of which shall be determined annually by the commissioner of administration under the provision of section 3 B of chapter 7, the state secretary shall issue a certificate of incorporation in the following form:

COMMONWEALTH OF MASSACHUSETTS

Be it known that whereas (the names of the subscribers to the agreement of association) have associated themselves with the intention of forming a corporation under the name of (the name of the corporation), for the purpose (the purpose declared in the agreement of association), with a capital stock or surplus, as applicable, of (the amount fixed in the agreement of association), and have complied with the statutes of the commonwealth in such case made and provided, as appears from the articles of organization of said corporation, duly approved by the state secretary and recorded in this office: Now, therefore, I (the name of the state secretary), secretary of the commonwealth of Massachusetts, do hereby certify that said (the names of the subscribers to the agreement of association), their associates and successors, are legally organized and established as, and are hereby made, an existing corporation under the name of (name of the corporation), with the powers, rights and privileges, and subject to the limitations, duties and restrictions, which by the law appertain thereto.

Witness my official signature hereunto subscribed and the great seal of the commonwealth of Massachusetts hereunto affixed, this day of in the year (the date of the filing of the articles of organization).

The state secretary shall sign the certificate of incorporation and cause the great seal of the commonwealth to be thereto affixed, and such certificate shall have the force and effect of a special charter. The existence of every such corporation shall begin upon the filing of the articles of organization in the office of the state secretary. He shall also cause a record of the certificate of incorporation to be made, and such certificate, or such record, or a certified copy thereof, shall be conclusive evidence of the existence of such corporation.

A bank may amend its articles of organization if approved by its board and submitted to and approved by the bank's governing body except as provided in sections 10.05, 10.07 and 14.34 of chapter 156D. After approval by the board and governing body, the amendment shall be submitted to the commissioner for his endorsement thereon before delivering the amendment to the secretary of state for filing.

Section 9. When all the capital stock has been issued for a stock bank, a list of the stockholders, with the name, residence and post office address of each, and the number of shares in each class held by each stockholder, shall be filed with the board of bank incorporation, which list shall be verified by the clerk of the corporation. Upon receipt of such list the board shall cause an examination to be made of the method of payment of the capital stock, or the surplus account if a mutual bank of the personnel of the corporation, including the officers and directors or trustees thereof, and if, after such examination, it appears that the whole capital stock, surplus account and undivided profits account for a stock bank or surplus account for a mutual bank have been paid in cash, that all requirements of law have been complied with, that the bank is a member of the Federal Deposit Insurance Corporation, and that the qualifications of the personnel are satisfactory, the board shall, if satisfied that the public convenience and advantage will be promoted thereby, issue a certificate authorizing such corporation to begin the transaction of business. No such corporation shall begin the transaction of business until such a certificate has been granted.

Section 10. A mutual bank shall be subject to sections 11 to 15, inclusive and a stock bank shall be subject to sections 16 to 21 inclusive. Section 21 shall apply to both a mutual and a stock bank.

Section 11. The shareholders of a mutual bank shall make and adopt the necessary by-laws consistent with law for the government of its affairs. The by-laws may provide for matters relative to the business and affairs of the corporation as appropriate to exercise all powers necessary, convenient or incidental to the purposes for which the corporation was formed.

The clerk of the corporation shall give notice of all regular and special meetings of the shareholders by publishing notice thereof, at least 7 days before the meeting, in one or more

newspapers published in the city or town wherein the main office of the corporation is situated or, if there is no newspaper published therein, then in a newspaper published in a nearby city or town in the same county; and for this purpose a newspaper which by its title page purports to be printed or published in such city, town or county and which has a circulation therein, shall be deemed to have been published therein. Such notice shall state the day, hour and place of the meeting and shall contain a brief statement of the nature of the business to be acted upon, except as may be provided in the by-laws with respect to the removal of officers and directors.

The board of directors shall meet at intervals of not more than 2 months; provided however, that upon application in writing by the corporation, the commissioner may waive or modify this requirement. Unless the articles of incorporation, the by-laws or a resolution of the board otherwise provide, members of the board of directors or any committee designated thereby may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting may simultaneously hear each other, and participation by such means shall constitute presence in person at a meeting. Members may transmit any written authorizations that may be required during the meeting by electronic facsimile or other commercially acceptable transmission.

Section 12. Each person who is recorded on the books of the corporation as the holder of one or more shares or accounts referred to in chapter 167D shall be deemed a member and shareholder of and depositor in the corporation.

Each member shall be entitled to 1 vote at all shareholders' meetings, subject to the limitations contained in this section and such limitations, if any, as may be contained in the by-laws.

At any meeting, no person who votes in 1 capacity shall be entitled to vote in any other capacity. A co-owner of any shares or accounts who does not vote in any other capacity may vote as the representative of the co-owners. A corporate fiduciary or other corporation or a partnership or association may vote by a person duly authorized, if such person does not otherwise vote, but a fiduciary, whether individual, corporate or otherwise, may vote on behalf of one trust or estate only. No person shall be entitled to vote either as a member or in any representative capacity unless such person shall have attained the age of 18 years. No person shall vote by proxy except as otherwise may be expressly authorized by law.

Section 13. The business and affairs of every such corporation shall be managed by a board of not less than 5 and, except as otherwise provided by law, not more than 15 directors. The shareholders shall elect the directors, each of whom shall be a citizen of the United States and at least a majority of whom shall be citizens of the commonwealth and residents therein. Directors shall be divided into three classes as nearly equal in number as possible, and one of such classes shall be elected annually for a term of three years; provided, that during the minimum time necessary to accomplish the foregoing, one of said classes may be elected for a

term of 1 year and one for a term of 2 years. All vacancies in the board or in any office may be filled by the board of directors for the unexpired term. A number of directors, not exceeding two, may be elected by vote of a majority of the directors then in office if the by-laws so proscribe. The directors may employ such additional assistance and appoint or constitute such committees and advisory directors as they may deem necessary and determine the reasonable compensation therefor. The directors may authorize the continuance as honorary directors of those persons who shall have served as directors for ten years or more and such honorary directors may be designated by the directors for an indefinite term and shall not be included in determining the minimum number of directors or the number of directors to be elected annually as provided herein. No such honorary director shall be deemed to be an officer or member of the board of directors of such corporation, nor shall he receive compensation or be required to attend meetings or be authorized or required to perform any duties. Except as otherwise provided in the by-laws, the directors may delegate to any officers, assistants and employees such functions, powers and authority as the directors deem advisable.

The clerk of the corporation shall be chosen by the shareholders, and the president, vice president, treasurer, assistant treasurers, if any, and other officers whose election is not otherwise herein expressly provided for, shall be chosen by the board of directors.

All directors and other officers shall be elected by ballot and shall be shareholders when nominated and elected. Each officer when appointed or elected shall take an oath that he will faithfully and impartially discharge the duties devolving upon him, and the fact that the oath has been taken shall be entered in the records of the corporation; and if a person appointed or elected does not, within 30 days thereafter, take the oath, his office shall thereupon become vacant. All officers shall continue to hold their offices until their successors shall have been chosen and qualified.

If an officer ceases to be a shareholder, his office may be declared vacant by the board of directors. If a director fails both to attend the regular meetings of the board and to perform any of the duties devolving upon him as such director for 6 consecutive months, his office may be declared to be vacant by the board at the next regular meeting and if he so fails for 12 consecutive months, his office shall be declared to be vacant by the board at the next regular meeting. A record of any vacancy shall be entered upon the books of the corporation, and a transcript shall be sent by mail to the person whose office has been made vacant.

The office of any director who seeks, or against whom, an order of relief is entered in a personal capacity, pursuant to Title 11 of the United States Code, or who, on examination in a supplementary process proceeding, has been found unable to pay a judgment, shall thereby be vacated. A record of any such vacancy shall be entered upon the books of the corporation. Any director whose office is so vacated shall again be eligible to serve as a trustee or director upon the receipt of a discharge in bankruptcy under Chapter 7 of said Title 11; the completion of all payments required pursuant to a plan of reorganization under Chapter 11 thereof; the completion

of all payments under a plan of debt adjustment under Chapter 13 thereof; or the payment of said judgment.

The records of all meetings of the corporation shall be read at such meetings by a shareholder other than the clerk and the records of all meetings of the board of directors shall be read at such meetings by a director.

Section 14. At the first meeting of the board of directors, after the annual meeting of shareholders, the board shall elect from its own members a security committee of at least 3 members, at least 2 of whom shall report upon all real estate offered as security for loans made by the corporation, after having examined such real estate or after it shall have been examined by 1 or more appraisers considered to be qualified by the directors and appointed by them for that purpose. In no case, however, shall any member of the security committee or any appraiser make an official report upon property offered as security for a loan if he has a personal interest in the property or in the proposed loan.

The security committee shall perform other duties as may be required by law, and exercise other powers as delegated to it by the board of directors. At each meeting of the board of directors, the security committee or an officer designated by it shall submit a report to the board of directors.

At the first meeting of the board of directors after the annual meeting of a mutual bank, the board shall elect an audit committee of not less than 3 directors who shall not be operating officers or members of the security committee. The members of the audit committee shall take an oath of office in the manner and within the period prescribed by section 9 and a record thereof shall be made and preserved as provided in said section 9. The directors shall determine the compensation, if any, to be paid to the members of the security committee and the audit committee.

Section 15. The treasurer shall keep the financial accounts and have charge of all books and papers necessary therefor, and dispose of and secure the safekeeping of all money, securities and property of the corporation, in the manner and subject to the limitations from time to time designated by the board of directors, subject to applicable provisions of law.

Such corporation may provide in its by-laws for assistant treasurers. An assistant treasurer may perform all the duties of the treasurer.

Section 16. Such corporation may adopt by-laws for the proper management of its affairs and as appropriate to exercise all powers necessary, convenient or incidental to the purposes for which the corporation was formed. It may also establish regulations controlling the assignment and transfer of its shares. A majority in interest of the stockholders entitled to vote shall constitute a quorum at any meeting unless the by-laws require more than a majority.

Section 17. Stockholders entitled to vote may vote in person or by proxy. No proxy dated more than six months before the date of the meeting named therein shall be valid, and no proxy shall be valid after the final adjournment of such meeting. A proxy with respect to stock held in the name of 2 or more persons shall be valid if executed by any 1 of them unless at or prior to the exercise of the proxy such corporation receives a specific written notice to the contrary from any 1 of them. A proxy purporting to be executed by or on behalf of a stockholder shall be deemed valid unless challenged at or prior to its exercise, and the burden of proving invalidity shall rest on the challenger. Except as otherwise provided in the articles of organization or by-laws of the corporation, special meetings of the stockholders may be called pursuant to the provisions of section 7.02 of chapter 156D.

Section 18. The business of such corporation shall be managed by a board of not less than 7 nor more than 25 directors. A majority of the directors shall be citizens of the commonwealth and resident therein. The directors shall be elected, in such manner as is provided in the by-laws, by the stockholders at their annual meeting or at a special meeting called for the purpose; provided, however, that if the by-laws so prescribe, a number of directors, not exceeding 2, may be elected by vote of a majority of the directors then in office. The directors shall hold office for such term, not exceeding three years, as is provided in the by-laws and until their successors are selected and have qualified. A director shall be eligible for reelection. Any vacancy in the board may be filled by appointment by the remaining directors and any director so appointed shall hold his office until the next election.

A director of a stock bank shall own, in his own right and free of any lien or encumbrance, common stock, either of such corporation or of a company owning 75 per cent or more of the stock of such corporation, having a par value, or a fair market value on the date the person became a director, of not less than $1,000. Any director who ceases to be the owner of the required number of shares of stock shall vacate his office forthwith. Each director, when appointed or elected, shall take an oath that he will faithfully perform the duties of his office and that he is the owner, in his own right and free of any lien or encumbrance, of the amount of stock required by this section. The oath shall be taken before a notary public or justice of the peace, and a record of the oath shall be made a part of the records of such corporation.

The office of any director who seeks, or against whom, an order of relief is entered in a personal capacity, pursuant to Title 11 of the United States Code, or who, on examination in a supplementary process proceeding, has been found unable to pay a judgment, shall thereby be vacated. A record of any such vacancy shall be entered upon the books of the corporation. Any director whose office is so vacated shall again be eligible to serve as or director upon the receipt of a discharge in bankruptcy under Chapter 7 of said Title 11; the completion of all payments required pursuant to a plan of reorganization under Chapter 11 thereof; the completion of all payments under a plan of debt adjustment under Chapter 13 thereof; or the payment of said judgment.

In determining what he or she reasonably believes to be in the best interests of such corporation, in considering proposed business combinations, as defined in paragraph (c) of section three of chapter 110F, a director may consider the interests of the corporation's employees, suppliers, creditors and customers; the economy of the state, region and nation, community and societal considerations, and the long-term and short-term interests of the corporation and its stockholders, including the possibility that these interests may be best served by the continued independence of the corporation.

Each such corporation shall have an executive committee of not less than 3 members, who shall be elected by and from the directors and shall hold office during their pleasure. An executive committee may take any action that could be taken by the board of directors except that an executive committee may not: (1) authorize dividends or other distributions to shareholders; (2) approve or propose to the corporation's shareholders actions that require the approval of the corporation's shareholders; (3) change the number of members of the board of directors, remove directors from office or fill vacancies on the board of directors; (4) amend the corporation's articles of organization; (5) adopt, amend or repeal the corporation's by-laws; (6) authorize or approve reacquisition of shares of capital stock, except according to a formula or method prescribed by the board of directors; (7) take any action specifically required by law or regulation to be taken by the entire board of directors, or (8) approve a transaction described in section 8 of chapter 167I.

Section 19. The clerk or secretary shall be elected by the stockholders at their annual meeting or at a special meeting duly called for the purpose.

The president shall be elected by and from the board of directors and shall be chairman thereof unless the board designates a director in lieu of the president to be chairman. The directors shall elect the president, the vice president(s), treasurer and any other officers. The president as may be permitted by law or by-law may select other officers. The officers elected by the board shall hold their respective offices during the pleasure of the directors. The directors may fill a vacancy in the office of clerk or secretary until the next meeting of the stockholders.

Section 20. The following provisions shall apply to meetings of the board and its committees for both a savings bank in mutual form or in stock form.

(a) Unless the articles of organization or bylaws provide that action required or permitted by this chapter or other provisions of the General Laws to be taken by the directors may be taken only at a meeting, the action may be taken without a meeting if the action is taken by the unanimous consent of the members of the board of directors. The action must be evidenced by 1 or more consents describing the action taken, in writing, signed by each director, or delivered to the corporation by electronic transmission, to the address specified by the corporation for the purpose or, if no address has been specified, to the principal office of the corporation, addressed to the secretary or other officer or agent having custody of the records of proceedings of

directors, and included in the minutes or filed with the corporate records reflecting the action taken.

(b) Action taken under this section is effective when the last director signs or delivers the consent, unless the consent specifies a different effective date.

(c) A consent signed or delivered under this section has the effect of a meeting vote and may be described as such in any document.

(d) The provisions of this section shall also apply to committees of the board and the members thereof.

Section 21. Fifteen or more cooperative banks may form the Cooperative Banks Employees Retirement Association, in this section and in sections 22 and 23 called the retirement association, for the purpose of providing retirement benefits services through retirement plans which are qualified under Section 401 of the Internal Revenue Code, in this section called plans, to employees and customers of members of the association, as hereinafter provided. The retirement association, in its name and by and through its authorized officers, may (a) establish plans and related trusts for its members, (b) make agreements and investments subject to such limitations as from time to time may be prescribed by law or the by-laws of the retirement association, (c) establish divisions, departments and other operating units within the retirement association, and provide the same with appropriate names or other identifications, to assist the retirement association in carrying out the powers conferred upon it by law and its by-laws, (d) sue and be sued, plead and be impleaded, (e) enforce liens and other obligations and foreclose mortgages held by the retirement association on or with respect to real or personal property situated in the commonwealth or in any state or territory of the United States, (f) adopt an official seal and alter the same at pleasure, and (g) do such other acts and things as may be necessary to carry out the powers conferred upon it by law and its by-laws.

Any bank or credit union chartered by the commonwealth, any such bank or credit union which has converted to federal charter and has its main office located in the commonwealth, any bank or credit union chartered by the federal government, by a state of the United States other than the commonwealth or by the District of Columbia and which has its main office or a branch office located in the commonwealth, the Massachusetts Bankers Association and its successors and any bank which is a voting member thereof, the Cooperative Banks Employees Retirement Association, the Cooperative Central Bank, and such other banking institutions with their main office or any branch office located in the commonwealth, as may from time to time be provided for in the by-laws of the association, and the respective employees of each of the foregoing, shall be eligible for membership in the association; but, no bank that was eligible to be a member of the association before January 1, 2004, shall be eligible to become a member of the Savings Banks Employees Retirement Association or the Credit Union Employees Retirement Association, unless and until the Savings Banks Employees Retirement Association and the

Credit Union Employees Retirement Association permits a member to transfer from any or all of the qualified plans provided by said association, assets and liabilities, attributed to the member's employees, to 1 or more qualified plans not provided by said association. For the purposes of this section, and sections 22 and 23, a reference to "bank" or "banks" shall, unless the context otherwise requires, mean and include any or all of the organizations named or referred to in this paragraph, reference to "board of directors" of a bank shall also, unless the context otherwise requires, mean and include the governing body of such organizations, and reference to "customer" shall mean any person or business who has established a contractual relationship for banking business purposes with any banking institution located in the commonwealth which is a member of the association.

Eligible employees may contribute a portion of their salaries and wages to or under plans established by the retirement association, to be deducted by the employing banks and paid to the plans or the retirement association. A participating bank may contribute to or under plans of the retirement association to the extent determined by its board of trustees. Contributions and benefits under the plans of the retirement association shall not exceed the limits, if any, imposed on such plans by the Internal Revenue Code of 1954 and the Employees Retirement Income Security Act of 1974, in this section called the Code and ERISA, respectively.

If the commissioner finds that the continuation of contributions by a participating bank subject to his authority may affect its safety and soundness, including reducing its risk-based capital ratio below any prescribed regulatory level, said commissioner may order the bank to (a) freeze its benefits and cease further funding for future benefit accruals under any plans qualified under section 401 of the federal Internal Revenue Code; (b) revise its benefits for future service under any such plans so that contributions on account of any employee will be limited to an appropriate percentage of compensation; or (c) terminate its participation in any such plans.

All plans maintained by the retirement association shall conform to the Code and ERISA and funds held under any such plans shall be invested in a manner as the retirement association shall determine. Copies of all plans shall be filed with the commissioner. Funds held under any of said plans shall be held by or used by the retirement association to the extent required by the Code and ERISA for the exclusive purpose of providing plan benefits to participating members; but, to the extent permitted by law, funds of the plans may be used to defray reasonable expenses of administering the retirement association and the plans, and expenses of investing the assets of the plans may be charged against the funds of the plans. To the extent that expenses necessary for the administration of the retirement association or the said plans are not paid from the plans, they shall be paid by participating banks on a proportionate basis, as provided in the by-laws of the retirement association. The association shall annually provide to each member a report of assets and liabilities attributable to its participants in any or all qualified plans adopted by a member.

A participating bank, by vote of its board of directors, and a customer may adopt 1 or more of the plans of the retirement association for the benefit of its employees. Any bank which has adopted a plan of the retirement association for its employees may, if it is otherwise eligible, also establish an employee stock ownership plan.

A bank, by vote of its board of directors, may directly or indirectly by means of a contribution to 1 or more of the trust funds held by the trustees of the retirement association supplement the retirement benefits being paid to its former employees or their beneficiaries on account of bank service; but, no supplement of a retirement benefit shall exceed the retirement benefit multiplied by the increase in the cost of living since the retirement began. The increase in the cost of living is the percentage by which the national monthly consumer price index for all urban consumers issued by the bureau of labor statistics of the United States Department of Labor for the last November before the year in which payment is made is greater than the beginning index figure. The beginning index figure is the average of such monthly consumer price index figures for the year in which a retirement benefit was first paid to or with respect to a former employee. Except with respect to supplements first voted by a financial institution's governing board on or after January 1, 1981, and which are paid through 1 or more of the trust funds held by the trustees of the retirement association, no employing unit may become obligated to pay in future years any supplement authorized by this paragraph.

Membership in the association is voluntary and any bank may establish or provide qualified retirement plans for its employees independent of the association; but, nothing contained herein shall be construed as requiring any bank to provide qualified retirement plans to its employees.

Section 22. The by-laws of the retirement association, and any amendments thereto, shall be submitted to the commissioner and shall prescribe the manner in which, and the officers and agents by whom, the retirement association may be conducted and the manner in which its funds may be invested and paid out. Such retirement association shall be formed when its by-laws have been approved and agreed to by a majority of the trustees of each of 15 or more cooperative banks and have been approved by the commissioner. The association shall annually, on or before August 1 report to the commissioner such statements of its membership and financial transactions for the year ending on the preceding December 31st as the commissioner may consider necessary to show its business and standing. The commissioner may verify such statement by an examination of the books and papers of the retirement association. The retirement association shall not be subject to chapter 32 or chapter 175 or other laws as relate to insurance companies or other retirement associations.

Section 23. The property of the retirement association, the portion of the wages or salary of any employee deducted or to be deducted under sections 30 and 31, the right of an employee to an annuity or pension, and all his rights in the funds of the retirement association, shall be exempt from taxation and from the operation of any law relating to insolvency, and shall not be

attached or taken on execution or other process to satisfy any debt or liability of the retirement association, a participating bank, or any employee member of the retirement association. No assignment of any right in or to said funds or of any pension or annuity payable under section thirty shall be valid, except that deferred annuity contracts purchased by a participating bank on account of past service of eligible employees may be assigned to such bank prior to actual retirement.

Nothing in this section shall prevent an employee's annuity or pension from being attached, taken on execution, assigned, or subject to other process to satisfy a support order under chapter 208, 209, or 273.

Section 24. The participating members of the Co-operative Banks Employees Retirement Association, established by section thirty, shall constitute as the Co-operative Banks Employees Benefit Association, in this section and in sections thirty-four and thirty-five called the benefit association, for the purpose of providing retirement benefits through retirement plans which are not qualified plans under Section 401 of the Internal Revenue Code of the United States and for establishing employee welfare benefit plans, in this section called plans, for eligible employees of participating organizations. The benefit association, in its name and by or through its authorized officers, may (a) establish plans and related trusts for eligible members participating therein, (b) make agreements, establish trusts and make or cause to be made investments subject to such limitations as may from time to time be prescribed by law or by the by-laws of the benefit association, (c) sue and be sued, plead and be impleaded, (d) enforce liens and other obligations and foreclose mortgages held by the benefit association on or with respect to real or personal property situated in the commonwealth or in any state or territory of the United States, (e) adopt an official seal and alter the same at pleasure, and (f) do such other acts that may be necessary to carry out the powers conferred upon it by law and its by-laws.

For the purposes of this section and sections 22 and 23, reference to "bank" and "banks" shall, unless the context otherwise requires, mean and include any or all member organizations and a reference to "directors" of a bank shall, unless the context otherwise requires, mean and include the governing body of each of such organizations.

Eligible employees may contribute a portion of their salaries or wages to or under plans established by the benefit association, to be deducted by the employing banks and paid to the benefit association. A participating bank may contribute to or under plans of the benefit association to the extent determined by its directors. Contributions and benefits under the plans of the benefit association shall not exceed the limits, if any, imposed on such plans by the Internal Revenue Code of 1986 as amended, and the Employee Retirement Income Security Act of 1974, as amended, in this section called the Code and ERISA, respectively.

All plans maintained by the benefit association shall conform to the Code and funds held under the plans of the benefit association shall be invested in such manner as the benefit

association shall determine, consistent with the by-laws. Funds held under plans of the benefit association shall be held by or used by the benefit association for the exclusive purpose of providing plan benefits to eligible members and, as determined by the benefit association, may be used to defray reasonable expenses of administering the plans and investing the assets of the plans. To the extent that expenses necessary for the administration of the benefit association or the plans of the benefit association are not paid from the plans, they shall be paid by participating banks on a proportionate basis, as provided in the by-laws.

A participating bank, by vote of its directors may adopt one or more of the plans of the benefit association for the benefit of its employees and their beneficiaries.

Nothing in this section shall be construed so as to prevent any such bank from establishing its own employee welfare benefit plans or non-qualified retirement plan.

Section 25. The trustees of the Co-operative Banks Employees Retirement Association shall prepare the by-laws of the benefit association and file the same with the commissioner. Said by-laws shall prescribe the manner in which, and the officers and agents by whom, the benefit association will be conducted and the manner in which its funds may be invested and paid out. They shall also provide that the said trustees of the Co-operative Banks Employees Retirement Association shall serve as the initial trustees of the benefit association and shall continue such service for the term prescribed in such by-laws and for the election of subsequent trustees.

Such benefit association shall annually, within 6 months after the close of its fiscal year, report to the commissioner such statements of its membership and financial transactions as the commissioner may consider necessary to show its business and standing. The commissioner may verify such statement by an examination of the books and papers of the benefit association.

The benefit association shall not be subject to chapter thirty-two or chapter one hundred and seventy-five or to such other provisions of law as relate to insurance companies or other benefit associations.

Section 26. The property of the benefit association shall be exempt from taxation and from the operation of any law relating to insolvency, and shall not be attached or taken on execution or other process to satisfy any debt or liability of the benefit association, a participating bank, or any employee member of the benefit association. No assignment of any right in or to said funds or of any pension or annuity payable under section 33 shall be valid, except that deferred annuity contracts purchased by a participating bank on account of past service of eligible employees may be assigned to such bank prior to actual retirement.

Nothing in this section shall prevent an employee’s annuity or pension from being attached, taken on execution, assigned, or subject to other process to satisfy a support order under 208, 209, or 273.

SECTION 50. Chapter 171 of the General Laws is hereby amended by striking out sections 78A and 78B as appearing in the 2010 Official Edition and inserting in place thereof the following section:—

Section 78A. Any one or more credit unions may merge or consolidate with one or more savings banks as defined in section 1 of chapter 168 or one or more co-operative banks as defined in section 1 of chapter 170 or one or more subsidiary banking institutions as defined in section 1 of chapter 168H and section 4 of chapter 167I.

SECTION 51. The General Laws are hereby amended by striking out Chapter 172 as appearing in the 2010 Official Edition and inserting in place thereof the following Chapter 172:—

CHAPTER 172

TRUST COMPANIES

Section 1. Wherever used in this chapter, unless the context otherwise requires, the following words shall have the following meanings:—

"Board" or "board of bank incorporation", a board consisting of the commissioner of banks, the commissioner of revenue, and the state treasurer.

"Capital stock", the sum of the par value of the preferred and common shares of capital stock, issued and outstanding.

"Commissioner", the commissioner of banks.

"Common stock", the shares of capital stock of a trust company, other than preferred stock..

"Incorporators", subscribers to the agreement of association for the purpose of forming a trust company under the provisions of this chapter.

"Officer", any individual designated as such in accordance with the by-laws including, whether or not so designated, the president, vice-president, treasurer, and the clerk or secretary, or any individual who performs the duties appropriate to those offices.

"Stockholder", a registered owner of shares of capital stock of a trust company.

"Surplus account", an account so designated on the books of a trust company and consisting of such amounts as shall be required by law or shall be transferred thereto by vote of the board of directors.

"Trust company" or "such corporation", a trust company incorporated as such in the commonwealth.

Section 2. A trust company shall have all the powers expressly granted by law and whatever further incidental powers may fairly be implied from those expressly conferred and such as are reasonably necessary to enable it to exercise fully those powers according to common or accepted banking customs and usages.

Section 3. No person, other than a trust company, shall use the words “trust company”, even though said words may be separated by one or more other words, as part of his or its name or in any representation describing his or its business, powers, services or functions. Any person who violates this section shall be punished by a fine of $100 for each day during which such violation continues.

Section 4. A trust company shall upon its incorporation have such capital structure as the board of bank incorporation shall deem adequate. Such capital structure may vary by the board based on the application and business plan submitted.

Section 5. Fifteen or more individuals who associate themselves by a written agreement for the purpose of forming a trust company may, upon compliance with sections 4 to 9, inclusive, become a corporation, with all the powers and privileges and subject to all the duties, restrictions and liabilities set forth in all general laws relating to such corporations. The agreement of association shall specifically state:

(a) That the subscribers thereto associate themselves with the intention of forming a corporation;

(b) The name by which the corporation shall be known;

(c) The location of the principal office of the corporation, which shall be within the commonwealth;

(d) The purposes for which the corporation is formed and the nature of the business to be transacted;

(e) The amount and classes of its capital stock, and the number of shares into which any class is to be divided;

(f) the amount of the surplus account;

(g) the amount of the undivided profits account; and

(h) the name of each incorporator and his residence, post office address, and the number of shares of capital stock, if any, which he agrees to take and the class or classes of such shares.

Each incorporator shall subscribe his name to the agreement of association.

Section 6. A notice of the intention of the subscribers to form such a trust company shall be given to the board of bank incorporation.

A notice in such form as said board shall approve, shall be published at least once a week, for 3 successive weeks, in 1 or more newspapers designated by the board, and published in the city or town in which it is proposed to establish the trust company, or if there is no newspaper in such city or town, in a newspaper published in the city or town which is nearest to the proposed location. Such notice shall specify the names of the proposed incorporators, the name of the corporation and the location of the same. The subscribers to said agreement shall apply to the board for a certificate that public convenience and advantage will be promoted by the establishment of such trust company. Such an application for a proposed trust company shall be accompanied by an investigation fee, the amount of which shall be determined by the commissioner of administration under the provision of section 3B of chapter 7. In determining whether the public convenience and advantage will be promoted by the establishment of such trust company, the board shall consider the adequacy of its capital structure, the general character of its management, the adequacy of banking facilities in the area, and the convenience and needs of the community to be served. The board may grant such certificate, which shall be deemed to be revoked if the applicants therefor do not become incorporated and begin business within one year after its date of issue. If the board refuses to issue such certificate, no further proceeding may be taken by the applicant during the year next following the date of such refusal except with the approval of the board, but the applicant may renew his application as of right after 1 year from the date of such refusal, and he may dispense with further notice or publication unless the board orders such notice or publication.

Section 7. The first meeting of the incorporators shall be called by a notice signed either by that incorporator who is designated in the agreement for the purpose, or by a majority of the incorporators, and such notice shall state the time, place and purposes of the meeting. A copy of the notice shall, at least 7 days before the day appointed for the meeting, be given to each incorporator or left at his residence or usual place of business, or deposited in the post office, postage prepaid, and addressed to him at his residence or usual place of business, and another copy thereof and an affidavit of 1 of the signers that the notice has been duly served shall be recorded with the records of the corporation. If all the incorporators shall, in writing endorsed upon the agreement of association, waive such notice and fix the time and place of the meeting, no notice shall be required. At such first meeting, or at any adjournment thereof, the incorporators shall organize by the choice by ballot of a temporary clerk who shall be sworn, by the adoption of by-laws and by the election in such manner as the by-laws may determine, of directors, a clerk or secretary, and such other officers as the by-laws may prescribe. The temporary clerk shall make and attest a record of the proceedings until the clerk or secretary has been chosen and sworn, including a record of such choice and qualification.

Section 8. The president, clerk or secretary and a majority of the directors as applicable elected at such first meeting shall make and sign under penalties of perjury articles of organization in duplicate, setting forth—

(a) A true copy of the agreement of association, the names of the subscribers thereto, and the name, residence and post office address of each of the officers and directors or trustees as applicable of the company;

(b) The date of the first meeting and the successive adjournments thereof, if any.

One duplicate original of the articles so signed shall be submitted to the commissioner, and the other, together with the records of the proposed corporation, to the state secretary, who shall examine the same, and who may require such amendment thereof or such additional information as he may consider necessary. If he finds that the articles conform to the 4 preceding sections relative to the organization of the corporation and that section 6 has been complied with, he shall so certify and endorse his approval thereon. The articles shall be filed within 30 days thereafter in the office of the state secretary, who, upon receipt of a fee, the amount of which shall be determined annually by the commissioner of administration under the provision of section 3 B of chapter 7, said state secretary shall issue a certificate of incorporation in the following form:

COMMONWEALTH OF MASSACHUSETTS

Be it known that whereas (the names of the subscribers to the agreement of association) have associated themselves with the intention of forming a corporation under the name of (the name of the corporation), for the purpose (the purpose declared in the agreement of association), with a capital stock of (the amount fixed in the agreement of association), and have complied with the statutes of the commonwealth in such case made and provided, as appears from the articles of organization of said corporation, duly approved by the state secretary and recorded in this office: Now, therefore, I (the name of the state secretary), secretary of the commonwealth of Massachusetts, do hereby certify that said (the names of the subscribers to the agreement of association), their associates and successors, are legally organized and established as, and are hereby made, an existing corporation under the name of (name of the corporation), with the powers, rights and privileges, and subject to the limitations, duties and restrictions, which by the law appertain thereto.

Witness my official signature hereunto subscribed and the great seal of the commonwealth of Massachusetts hereunto affixed, this day of in the year (the date of the filing of the articles of organization).

The state secretary shall sign the certificate of incorporation and cause the great seal of the commonwealth to be thereto affixed, and such certificate shall have the force and effect of a special charter. The existence of every such corporation shall begin upon the filing of the articles

of organization in the office of the state secretary. He shall also cause a record of the certificate of incorporation to be made, and such certificate, or such record, or a certified copy thereof, shall be conclusive evidence of the existence of such corporation.

A bank may amend its articles of organization if approved by its board and submitted to and approved by the bank's governing body except as provided in sections 10.05, 10.07 and 14.34 of chapter 156D. After approval by the board and governing body, the amendment shall be submitted to the commissioner for his endorsement thereon before delivering the amendment to the secretary of state for filing.

Section 9. When all the capital stock has been issued, a list of the stockholders, with the name, residence and post office address of each, and the number of shares in each class held by each stockholder, shall be filed with the board of bank incorporation, which list shall be verified by the clerk of the corporation. Upon receipt of such list the board shall cause an examination to be made of the method of payment of the capital stock, of the personnel of the corporation, including the officers and directors thereof, and if, after such examination, it appears that the whole capital stock, surplus account and undivided profits account have been paid in cash, that all requirements of law have been complied with, that the bank is a member of the Federal Deposit Insurance Corporation, and that the qualifications of the personnel are satisfactory, the board shall, if satisfied that the public convenience and advantage will be promoted thereby, issue a certificate authorizing such corporation to begin the transaction of business. No such corporation shall begin the transaction of business until such a certificate has been granted.

Section 9A. After notice of intent, application and hearing as the commissioner may require and with his written permission and under conditions he may impose, the commissioner may, if he is satisfied that public convenience and advantage will be promoted and that competition among banking institutions will not be unreasonably affected, grant a certificate to establish a limited purpose trust company for the purpose of conducting trust and fiduciary business authorized under chapter 167G and other law applicable to a state-chartered bank; provided, however, that it will have sufficient capital to support its business operations; provided further that any such limited purpose trust company shall not accept deposits, make loans or otherwise carry on a banking business in the commonwealth; and provided, further, that this section shall not apply to an attorney licensed to practice law in the commonwealth or to a person exercising trust or fiduciary powers in the commonwealth under lawful authority.

A person seeking authority to establish a limited purpose trust company under this section shall file a notice and an application for a certificate with the commissioner, together with a fee, the amount of which shall be determined by the commissioner of administration under the provisions of section 3B of chapter 7. The application shall include the following:—

(a) the name under which the corporation will conduct business;

(b) the name, residence and post office address of each officer of the corporation;

(c) the location of the principal office thereof which shall be within the commonwealth;

(d) the purpose for which the corporation is formed and the nature of the business to be transacted;

(e) the amount and classes of its capital stock, and the number of shares into which any class is to be divided; and

(f) such other information as the commissioner considers necessary.

Upon receipt of the certificate from the commissioner, the corporation shall file its articles of organization with the state secretary and shall thereupon become eligible to conduct business; but, the certificate shall be considered to be revoked if the corporation does not commence business within 1 year after the date of issuance thereof by the commissioner.

In the transaction of business, a limited purpose trust company shall be subject to sections 10 to 13, inclusive, and other applicable sections of this chapter, section 36A of chapter 167, sections 13 and 14 of chapter 167I, and sections 2 to 6, inclusive, 8 to 11, inclusive and 14 to 20, inclusive of chapter 167J.

A limited purpose trust company may establish and maintain a trust office or a representative trust office in any state other than the commonwealth. A company intending to establish a trust office or representative trust office in the other state shall file a notice with the commissioner. The notice shall be in a form prescribed by the commissioner and shall contain the name and address of the limited purpose trust company, the location of the proposed office, and be accompanied by a copy of the resolution of its board of directors authorizing the establishment of the out-of-state office.

The company may commence business at the out-of-state trust office or representative trust office upon the expiration of 30 days from the date the required notice is received by the commissioner; but, the 30 day period may be extended by the commissioner upon notice in writing to the company that additional information is required to be submitted to him. For the purposes of this section, a trust office shall mean the business office of the limited purpose trust company at which its licensed business activities are transacted; and a representative trust office shall mean an office established by the company in order to market and solicit business and provide administrative support but at which, licensed business activities of the company could not be conducted.

A limited purpose trust company, or any similar institution as determined by the commissioner, established under the laws of any other state or the United States may, with the approval of the commissioner, establish and maintain an office in the commonwealth; if the laws of the state in which such company or similar institution was established expressly authorize, under conditions no more restrictive than those imposed by the laws of the commonwealth, as

determined by the commissioner, the establishment of an office in said state by a limited purpose trust company chartered in the commonwealth.

The commissioner may establish rules and regulations necessary to carry out this section and to govern the affairs of the company, including an examination thereof by him. The regulations may specify which provisions of chapters 167 through 167G, chapters 183 and 184, and other laws of the commonwealth shall be applicable to any such limited purpose trust company.

A limited purpose trust company may be merged, consolidated, converted, liquidated, dissolved or its charter cease to exist in such manner as the commissioner may prescribe and subject to such terms and conditions he may impose.

Section 4 of chapter 167A relative to the Massachusetts Housing Partnership Fund shall apply to any subsequent transaction involving an unaffiliated entity and a limited purpose trust company that had converted from a trust company to a limited purpose trust company and that, but for such conversion, would have been subject to said section 4. The commissioner shall not approve any transaction subject to this paragraph until the commissioner has received notice from the Massachusetts Housing Partnership Fund that satisfactory arrangements have been made.

Section 10. Such corporation may adopt by-laws for the proper management of its affairs and as appropriate to exercise all powers necessary, convenient or incidental to the purposes for which the corporation was formed. It may also establish regulations controlling the assignment and transfer of its shares. A majority in interest of the stockholders entitled to vote shall constitute a quorum at any meeting unless the by-laws require more than a majority.

Section 11. Stockholders entitled to vote may vote in person or by proxy. No proxy dated more than 6 months before the date of the meeting named therein shall be valid, and no proxy shall be valid after the final adjournment of such meeting. A proxy with respect to stock held in the name of 2 or more persons shall be valid if executed by any one of them unless at or prior to the exercise of the proxy such corporation receives a specific written notice to the contrary from any one of them. A proxy purporting to be executed by or on behalf of a stockholder shall be deemed valid unless challenged at or prior to its exercise and the burden of proving invalidity shall rest on the challenger. Except as otherwise provided in the articles of organization or by-laws of the corporation, special meetings of the stockholders may be called pursuant to the provisions of section 7.02 of chapter 156D.

Section 12. The business of such corporation shall be managed by a board of not less than 7 nor more than 25 directors. A majority of the directors shall be citizens of the commonwealth and resident therein. The directors shall be elected, in such manner as is provided in the by-laws, by the stockholders at their annual meeting or at a special meeting called for the purpose; provided, however, that if the by-laws so prescribe, a number of directors, not exceeding 2, may

be elected by vote of a majority of the directors then in office. The directors shall hold office for such term, not exceeding 3years, as is provided in the by-laws and until their successors are selected and have qualified. A director shall be eligible for reelection. Any vacancy in the board may be filled by appointment by the remaining directors and any director so appointed shall hold his office until the next election.

Each director shall own, in his own right and free of any lien or encumbrance, common stock, either of such corporation or of a company owning 75 per cent or more of the stock of such corporation, having a par value, or a fair market value on the date the person became a director, of not less than $1,000. Any director who ceases to be the owner of the required number of shares of stock, or who becomes in any other manner disqualified, shall vacate his office forthwith. Each director, when appointed or elected, shall take an oath that he will faithfully perform the duties of his office and that he is the owner, in his own right and free of any lien or encumbrance, of the amount of stock required by this section. The oath shall be taken before a notary public or justice of the peace, and a record of the oath shall be made a part of the records of such corporation.

The office of any director who seeks, or against whom, an order of relief is entered in a personal capacity, pursuant to Title 11 of the United States Code, or who, on examination in a supplementary process proceeding, has been found unable to pay a judgment, shall thereby be vacated. A record of any such vacancy shall be entered upon the books of the corporation. Any director whose office is so vacated shall again be eligible to serve as or director upon the receipt of a discharge in bankruptcy under Chapter 7 of said Title 11; the completion of all payments required pursuant to a plan of reorganization under Chapter 11 thereof; the completion of all payments under a plan of debt adjustment under Chapter 13 thereof; or the payment of said judgment.

In determining what he or she reasonably believes to be in the best interests of such corporation, in considering proposed business combinations, as defined in paragraph (c) of section 3 of chapter 110F, a director may consider the interests of the corporation’s employees, suppliers, creditors and customers; the economy of the state, region and nation, community and societal considerations, and the long-term and short-term interests of the corporation and its stockholders, including the possibility that these interests may be best served by the continued independence of the corporation.

Each such corporation shall have an executive committee of not less than 3 members, who shall be elected by and from the directors and shall hold office during their pleasure. An executive committee may take any action that could be taken by the board of directors except that an executive committee may not: (1) authorize dividends or other distributions to shareholders; (2) approve or propose to the corporation’s shareholders actions that require the approval of the corporation’s shareholders; (3) change the number of members of the board of directors, remove directors from office or fill vacancies on the board of directors; (4) amend the

corporation's articles of organization; (5) adopt, amend or repeal the corporation's by-laws; (6) authorize or approve reacquisition of shares of capital stock, except according to a formula or method prescribed by the board of directors; (7) take any action specifically required by law or regulation to be taken by the entire board of directors, or (8) approve a transaction described in section 8 of chapter 167I.

Section 13. The clerk or secretary shall be elected by the stockholders at their annual meeting or at a special meeting duly called for the purpose.

The president shall be elected by and from the board of directors and shall be chairman thereof unless the board designates a director in lieu of the president to be chairman. The directors shall elect the treasurer and any other officers including an executive vice president. The president as may be required or permitted by law or by-law may select other officers. The officers elected by the board shall hold their respective offices during the pleasure of the directors. The directors may fill a vacancy in the office of clerk or secretary until the next meeting of the stockholders.

Section 14. The following provisions shall apply to meetings of the board and its committees.

(a) The board of directors shall meet at intervals, that shall not be less frequent than quarterly, but, upon application in writing by the corporation, the commissioner may waive or modify this requirement. Unless the articles of organization, the by-laws, or a resolution by the board otherwise provide, members of the board of directors or a committee designated thereby may participate in a meeting of the board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting may simultaneously hear each other, and participation by those means shall constitute presence in person at a meeting. Members may transmit written authorizations that may be required during the meeting by electronic facsimile or other commercially acceptable transmission.

(b) Unless the articles of organization or bylaws provide that action required or permitted by this chapter or other provisions of the General Laws to be taken by the directors may be taken only at a meeting, the action may be taken without a meeting if the action is taken by the unanimous consent of the members of the board of directors. The action must be evidenced by 1 or more consents describing the action taken, in writing, signed by each director, or delivered to the corporation by electronic transmission, to the address specified by the corporation for the purpose or, if no address has been specified, to the principal office of the corporation, addressed to the secretary or other officer or agent having custody of the records of proceedings of directors, and included in the minutes or filed with the corporate records reflecting the action taken.

(c) Action taken under this section is effective when the last director signs or delivers the consent, unless the consent specifies a different effective date.

(d) A consent signed or delivered under this section has the effect of a meeting vote and may be described as such in any document.

(e) The provisions of this section shall also apply to committees and their members.

SECTION 52. Section 2 of chapter 183C of the General Laws, as so appearing, is hereby amended by striking out, in lines 5 to 6, the words “Federal Reserve Board” and inserting in place thereof the words:— bureau of consumer financial protection.

SECTION 53. Said section 2 of said chapter 183C, as so appearing, is further amended by striking out, in line 31, the citation “12 C.F.R. 226.32(a)(1)(i)” and inserting in place thereof the citation:— 12 C.F.R. 1026.226.32(a)(1)(i).

SECTION 54. Said section 2 of said chapter 183C is further amended by striking out, in lines 67 to 68, the citations “226.4(a) and 226.4(b)” and inserting in place thereof the citation:— 1026.4(a) and 1026.4(b).

SECTION 55. Said section 2 of said chapter 183C is further amended by striking out, in line 72, the citation “226.4(c)(7)” and inserting in place thereof the citation:— 1026.4(c)(7).

SECTION 56. Said section 2 of said chapter 183C is further amended by striking out, in line 100, the citation “226.4(d)(2)” and inserting in place thereof the citation:— 1026.4(d)(2)

SECTION 57. Section 3 of Chapter 203A of the General Laws as appearing in the 2010 Official Edition is hereby amended by striking out the first sentence and replacing it with the following:—

An account of the administration of each common trust fund shall be prepared annually, shall be audited by an independent certified public accountant and a copy of such account and of the audit report thereon shall be made available to any interested party upon written request.

SECTION 58. Section 1 of chapter 255F of the General Laws, as so appearing, is hereby amended by striking out, in lines 17 to 18, the words:— the Director of the Office of Thrift Supervision,.