

CHAPTER 482 OF THE ACTS OF 2014

AN ACT MODERNIZING THE BANKING LAWS AND ENHANCING THE
COMPETITIVENESS OF STATE-CHARTERED BANKS

OVERVIEW AND SECTION-BY-SECTION SUMMARY

PREPARED BY:

NUTTER McCLENNEN & FISH LLP
BANKING AND FINANCIAL SERVICES GROUP

FEBRUARY 25, 2015



Nutter McClennen & Fish LLP
Seaport West
155 Seaport Boulevard
Boston, Massachusetts 02210
Telephone 617.439.2000
www.nutter.com

I. BACKGROUND

Chapter 482 of the Acts of 2014, An Act Modernizing the Banking Laws and Enhancing the Competitiveness of State-Chartered Banks, was approved by the General Court on December 31, 2014, and signed into law by the Governor on January 7, 2015.

As non-emergency legislation, the law becomes effective on April 7, 2015.

II. OVERVIEW AND EXECUTIVE SUMMARY

The law (1) provides a range of regulatory relief, (2) expands the powers of Massachusetts banks to make investments and engage in new activities, (3) expands the authority of Massachusetts banks in connection with corporate transactions, (4) provides new flexibility to banks in governance matters, and (5) makes a number of technical and conforming changes.

Regulatory Relief

The law, among other changes:

- permits the Commissioner of Banks to establish a “tiered” approach to supervision and examination;
- permits the Commissioner to establish examination cycles longer than 18 months;
- eliminates certain requirements of Massachusetts law that duplicate federal law;
- caps bank ATM assessment rates at no more than 50% of non-bank providers;
- eases requirements on activities that must be conducted at bank main office locations;
- eases requirements for moving a bank main office to another city or town;
- eliminates specific restrictions applicable to various types of deposits;
- eases rules on bank inspections of real estate collateral;
- makes it easier to establish operating subsidiaries, OREO subsidiaries and REITs;
- permits roll-up of bank subsidiaries without notice to or approval of Commissioner;
- eases bank set-off requirements; and
- eases restrictions on investments in insurance company and utility company stocks.

Expanded Powers

The law, among other changes:

- permits banks to engage in activities “related or incidental to banking” after prior notice to the Commissioner;
- permits banks to invest in products or services “related or incidental to banking” after prior notice to the Commissioner;
- expands the range, and eases restrictions on the use, of so-called parity powers;
- eases restrictions on the use of authority to engage in financial activities, activities that are incidental to financial activities and activities that are complementary to financial activities; and
- authorizes banks to collaborate with one another in various activities and investments.

Expanded Authority in Corporate Transactions

The law, among other changes:

- allows banks broader authority in merger and acquisition transactions;
- allows Massachusetts mutual banks greater flexibility in reorganizing into the mutual holding company form;
- permits Massachusetts mutual holding companies significantly broader authority in merger and acquisition transactions including authority to merge with out-of-state mutual holding companies and federally chartered mutual holding companies;
- permits Massachusetts mutual holding companies to be unwound;
- allows broader authority to convert bank charters from one type to another and simplifies the process;
- permits the Commissioner to charter “interim” banks to facilitate multi-step corporate transactions;
- eliminates Board of Bank Incorporation (“BBI”) approval requirements in connection with certain corporate transactions; and
- expressly permits requests for confidential treatment in connection with regulatory applications.

Governance Flexibility

The law, among other changes:

- permit a bank to incorporate into its by-laws governance “procedures” from other Massachusetts laws – such as laws governing business corporations – or the laws of the state in which the holding company, if any, is organized;
- permits mutual holding companies to incorporate into their by-laws corporate governance “procedures” from other Massachusetts laws – such as the laws governing business corporations;
- eliminates specific Massachusetts insider lending rules;
- eliminates specific requirements as to the contents of management’s quarterly reports to the board;
- reduces the percentage of Corporators of a mutual savings bank who must be Massachusetts residents;
- eliminates the requirement that Corporators of a mutual savings bank must elect the president;
- permits up to two trustees of a mutual savings bank to be elected by the board without Corporator approval;
- permits up to two directors of a mutual cooperative bank to be elected by the board without depositor approval (and retains similar authority for all other Massachusetts banks); and
- permits board action by unanimous written consent.

III. SECTION-BY-SECTION SUMMARY

This Part provides a section-by-section summary, with primary headings indicating whether the provision falls into one or more of the following five categories – (1) regulatory relief, (2) expanded powers, (3) expanded authority in corporate transactions, (4) governance flexibility or (5) technical amendments – followed by secondary headings in italics providing more precise or specific indications as to the nature of the legislative changes. (Section 47 of the new law expands disclosure requirements by bank trust departments under certain specified circumstances, and the corresponding heading is “Expanded Regulation”.)

Sections 1-2: Technical Amendments

Obsolete rules deleted.

Sections 3-10: Regulatory Relief

Truth in Lending

These sections amend the Massachusetts Truth in Lending (“TIL”) law. References to the Federal Reserve Board (“FRB”) are replaced by references to the Bureau of Consumer Financial Protection (“CFPB”).

- The Commissioner may waive Massachusetts TIL rules and allow creditors to comply with similar requirements under the federal Truth in Lending Act (“TILA”) as long as the federal requirements are not substantially less protective of consumers, as determined by the Commissioner.
- Creditors must comply with the federal TILA and CFPB rules unless and until the Commissioner issues rules that are substantially similar to or more protective of consumers than CFPB rules.
- The Commissioner may seek a determination from the CFPB that, under Massachusetts law, a class of credit transactions is subject to requirements substantially similar to the federal requirements and there are adequate provisions for enforcement.
- Monthly statements must be mailed at least 14 days before the end of the next billing cycle (the current requirement is 15 days), or the next payment due date, whichever is earlier.
- Disclosure is required to consumers of credit balances in excess of one dollar (the current requirement is equal to or in excess of one dollar).

Note: The Division of Banks (“Division”) recently amended its rules to provide that compliance with certain provisions of the CFPB’s Truth in Lending regulations constitutes compliance with Massachusetts requirements, including the CFPB’s Ability to Re-pay and Qualified Mortgage standards. The Division’s amendments also preserve certain Massachusetts rules that are more consumer protective than corresponding federal rules. *See* 209 Code Mass. Regs. Part 32.

Section 11: Regulatory Relief

Truth in Savings

Repeals the Massachusetts Truth in Savings law. Note: a bank's compliance with federal Truth in Savings Act requirements has constituted, under long-standing rules of the Division, compliance with Massachusetts Truth in Savings requirements.

Section 12: Regulatory Relief

Minimum Security Standards

Eliminates a rule requiring the Commissioner to issue minimum standards for the security and protection of banks – while continuing to require the Commissioner to issue minimum standards for the security and protection of credit unions.

- See Section 17 below, requiring banks to comply with similar requirements of federal law.

Section 13: Technical Amendments

Deletes obsolete rules.

Sections 14-16: Regulatory Relief

Supervision and Examination

Permits the Commissioner to establish a “tiered regulatory structure” for the supervision and examination of banks using a variety of criteria including banks' asset size; balance sheet composition; capital levels; UFIRS, CAMELS and CRA ratings; compliance records; and other factors determined to be relevant.

- The Commissioner is permitted to examine banks every 12 or 18 months or on longer cycles consistent with any tiered regulatory structure that may be developed.

Section 17: Expanded Powers; Regulatory Relief

Broader Powers

Permits Massachusetts banks to engage in any activity or invest in any product or service, after prior notice to the Commissioner, that is related to or incidental to banking, is not prohibited by law and does not present a substantial safety and soundness threat.

- The Commissioner may permit the activity, product or service, impose conditions, or prohibit the bank from proceeding.
- See Section 40 for a summary of expanded authority under the so-called parity statute and under other laws permitting banks to engage in financial activities.

Compliance with Federal Law

Makes compliance with specified federal laws a requirement of Massachusetts law, while also providing that the Commissioner retains authority to supervise, examine, and take enforcement action. Federal requirements include expedited funds availability, fair credit billing, electronic funds transfers, safeguarding money and securities, minimum security devices and procedures, bank secrecy and insider lending.

- These requirements go hand-in-hand with other provisions of the new law that repeal duplicative requirements of Massachusetts law. *See Sections 3-12, 18, 25 and 53 – New Chapter 167J – Corporate Governance.*
- Limits the maximum liability of a consumer under the federal Electronic Fund Transfer Act to \$50.

Confidential Treatment

Permits banks and certain other entities, in connection with any application to the Commissioner, to request confidential treatment of specific information including:

- personal information the release of which would constitute a clearly unwarranted invasion of privacy;
- commercial and financial information the disclosure of which could result in substantial competitive harm, and
- other information the disclosure of which could seriously affect the financial condition of any bank.

The Commissioner is given discretion to withhold or not withhold the information from the public file provided that, in the latter case, the requestor has been notified.

Section 18: Regulatory Relief

Compliance with Federal Law

Eliminates the Commissioner's authority to issue rules to banks on safeguarding money and securities, while continuing to permit the Commissioner to issue rules allowing credit unions to deposit securities for safekeeping with Massachusetts banks.

- *See Section 17 - Compliance with Federal Law.*
- Retains the Commissioner's authority to issue accounting and audit requirements.

Section 19: Technical Amendments

Corrects obsolete reference.

Section 20: Technical Amendments

Out-of-State and Foreign Banks

Repeals regulatory approval and other requirements applicable to out-of-country and out-of-state banks (including out-of-state federally chartered banks) doing business in Massachusetts, retaining branches in Massachusetts following mergers with banks located in Massachusetts, and establishing de novo branches in Massachusetts.

- Inserts substantially similar provisions in Mass. Gen. Laws Ch. 167C. *See* Section 34 below.

Section 21: Technical Amendments

Corrects obsolete reference.

Section 22: Technical Amendments

Out-of-State and Foreign Banks

Repeals approval and other requirements applicable to out-of-country and out-of-state banks (including out-of-state federally chartered banks) conducting fiduciary activities in Massachusetts.

- Inserts substantially similar provisions in Mass. Gen. Laws Ch. 167C. *See* Section 34 below.

Section 23: Expanded Authority in Corporate Transactions

Interim Steps Facilitating Corporate Transactions

Provides that Board of Bank Incorporation (BBI) approval is not required under the Massachusetts bank holding company law (Mass. Gen. Laws Ch. 167A, Section 2) solely because, in connection with a merger, acquisition or other transaction subject to the law, a target institution is controlled for a moment in time or an entity is established on an interim basis to facilitate the transaction provided that the target institution or interim entity does not continue to exist as a separate entity after the transaction (unless it is the survivor of the transaction), and provided further that the transaction requires the Commissioner's approval.

- The Massachusetts Housing Partnership Fund commitment-to-fund requirements (Mass. Gen. Laws Ch. 167A, Section 4) will continue to apply to a transaction which, but for the exemption, would have been subject to the requirements.
- *See* definition of "Interim Bank" in Section 49 below.
- *See* Commissioner's authority to charter Interim Banks in Section 53 – *Interim Banks*.

Section 24: Regulatory Relief

Confidential Treatment

Permits bank holding companies, banks and other institutions subject to the Massachusetts bank holding company law (Mass. Gen. Laws Ch. 167A, Section 2), in connection with any application to the BBI, to request confidential treatment of specific information including:

- personal information the release of which would constitute a clearly unwarranted invasion of privacy;
- commercial and financial information the disclosure of which could result in substantial competitive harm, and
- other information the disclosure of which could seriously affect the financial condition of any bank holding company, bank or other institution subject to the Massachusetts bank holding company law.

The BBI is given discretion to withhold or not withhold the information from the public file provided that, in the latter case, the requestor has been notified.

Section 25: Regulatory Relief

Electronic Funds Transfers

Amends definitions in the Massachusetts electronic funds transfer law, Mass. Gen. Laws Ch. 167B, to clarify that Chapter 167B (with the exception of annual assessments for ATMs) no longer applies to banks or credit unions, consistent with the new requirement that Massachusetts banks and credit unions must comply with the federal Electronic Fund Transfer Act.

- *See* Section 17 above.
- Chapter 167B will remain applicable to all entities other than banks and credit unions providing electronic fund transfer services.

Sections 26-28: Technical Amendments

Corrects obsolete reference.

Section 29: Regulatory Relief

ATM Assessments

Amends the annual ATM assessment law to establish a dual fee structure.

- Banks and credit unions will be assessed at a rate not to exceed 50% of the amount assessed on non-bank ATM providers.

- The Commissioner is required to consider other fees and assessments banks and credit unions pay to state and federal depository institution regulatory agencies.
- The amendments also require that the total annual assessment by the Commissioner must not be less than the average of the annual assessments over the last three fiscal years.

Section 30: Technical Amendments

Electronic Branches

Amends definitions in the Massachusetts laws on bank branching (Mass. Gen. Laws Ch. 167C) to reflect the transfer of the Commissioner’s authority over bank ATMs (i.e., “electronic branches”) from Mass. Gen. Laws Ch. 167B to Mass. Gen. Laws Ch. 167C.

- See Section 17 above, requiring Massachusetts banks to comply with the federal Electronic Fund Transfer Act.
- See Section 25 above, providing regulatory relief from the Massachusetts electronic funds transfer law.

Sections 31-32: Regulatory Relief

Bank Main Office

Eliminates the requirement that the main office of a Massachusetts bank must accept deposits, and replaces it with a requirement that the main office of a Massachusetts bank must perform at least one of the following functions:

- accept deposits,
- pay withdrawals,
- or make loans.

Moving Bank Main Office to a Different City or Town

In connection with a change of location of a bank main office from one Massachusetts city or town to another, only the approval of the Commissioner will be required. This is a change from current law, which requires both BBI approval and approval of two-thirds of the Corporators (in the case of mutual savings banks) or two-thirds of the depositors (in the case of mutual cooperative banks).

Section 33: Technical Amendments

Branching

Amends the Massachusetts branching law to reflect the transfer of some of the rules governing the retention of bank branches following mergers and similar transactions with out-of-country

banks and out-of-state banks (including federally chartered out-of-state banks) to the new bank transaction statute, Mass. Gen. Laws Ch. 167I, added by Section 53 below.

- Continues to provide that a Massachusetts bank may establish branches through a merger with or by the purchase of assets from an out-of-country bank or out-of-state bank (including a federally chartered out-of-state bank) with the approval of the Commissioner.

Section 34: Technical Amendments

ATMs

Amends the Massachusetts branching law (Mass. Gen. Laws Ch. 167C) to include authority for Massachusetts banks to establish and operate ATMs and other electronic branches with the approval of the Commissioner. This authority is transferred from Mass. Gen. Laws Ch. 167B.

- The amendments do not include a prohibition against locating an ATM on the premises of a legalized gambling operation, which locations are still prohibited for nonbank ATMs under the Massachusetts electronic funds transfer law.
- The amendments make Mass. Gen. Laws Ch. 167C the governing law for all banking offices in the Commonwealth, including provisions covering the establishment and operation of branches by out-of-state banks and banks from foreign countries.
- *See* Sections 20 and 22 above which repeal corresponding provisions of existing law.

Section 35: Regulatory Relief

Deposits

Strikes Mass. Gen. Laws Ch. 167D governing deposits in banks, and inserts a new Ch. 167D in its place governing deposits in banks, while omitting the following requirements of the current law:

- Section 4 (serial shares and paid-up shares as well as related requirements);
- Section 8 (time deposits);
- Section 9 (club deposits);
- Section 11 (special trust fund deposits for parks and playgrounds);
- Section 12 (deposits to fund student loans guaranteed by the Mass. Higher Education Assistance Corp.);
- Section 13 (rules on returning depositors' vouchers);

- Section 14 (restrictions on advertising interest on deposits more than four months in advance of payment);
- Section 15 (advertisement and payment of interest on deposits);
- Section 16 - first unnumbered paragraph (withdrawals of deposits);
- Section 22 (deposits from federal agencies);
- Section 23 (registration of securities by nominee);
- Section 26 (mandatory reductions in deposits ordered by the Supreme Judicial Court);
- Section 28 (bilingual advertising);
- Section 29 (direct deposit of public pension benefits);
- Section 34 (telephone information services for customers), and
- Section 35 (Massachusetts funds availability requirements).

The new law also makes a small number of changes to the re-enacted provisions. Specifically, the law:

- modifies set-off rules by eliminating the requirement that before a bank may set off a bank deposit to satisfy a consumer debt, the bank must first have informed the consumer at the opening of the credit account that a future set-off would be possible;
- modifies set-off rules by permitting written notice of set-off to be sent by first class mail (currently, notice must be sent by certified mail); and
- clarifies that beneficiaries of bank trust accounts may themselves be natural persons, trusts, charities or other non-profit organizations recognized by the IRS.

Section 36: Technical Amendment

Reverse Mortgages

Makes a technical correction to Mass. Gen. Laws Ch. 167E, Section 3(f).

Section 37: Regulatory Relief

Real Estate Lending

Deletes a requirement in Mass. Gen. Laws Ch. 167E, Section 5 that a bank must inspect real estate securing a loan following a default by the borrower within 91 days from the date of default in the payment of principal or interest and within 181 days from the date of default in the payment of property taxes.

- Replaces the deleted language with a requirement that inspection must be made within the time periods set forth in the bank's policy.

Section 38: Regulatory Relief; Expanded Powers

Operating Subsidiaries

Deletes a requirement in Mass. Gen. Laws Ch. 167F, Section 2, Paragraph 7 that a Massachusetts bank must obtain prior approval of the Commissioner before investing in a wholly owned operating subsidiary.

- An operating subsidiary is a company organized and operated solely for the purpose of performing functions that a bank itself is empowered to perform directly.
- Replaces the deleted provision with a requirement that, in general, a bank must provide 10 days' advance notice to the Commissioner before acquiring or investing in an operating subsidiary.
- However, if the total amount invested in any one operating subsidiary will exceed 50% of the bank's Tier 1 capital, prior approval of the Commissioner is still required for the amount of the investment in excess of 50% of the bank's Tier 1 capital.
- The Commissioner may waive the 10 day notice period upon request of the bank.

OREO Subsidiaries

A Massachusetts bank is expressly permitted, subject to the approval of the Commissioner, to invest in a wholly owned subsidiary organized and operated solely for the purpose of holding other real estate owned.

- The subsidiary may be a corporation, trust, limited liability company or other form of organization permitted by the Commissioner.

REITs

Deletes a requirement that a Massachusetts bank must obtain the prior approval of the Commissioner before investing in some or all of the shares of a company that is treated as a real estate mortgage investment conduit under 26 U.S.C. Section 860D.

- Replaces the deleted language with a requirement that a bank must provide 10 days' advance notice to the Commissioner before acquiring or investing in all of the shares of the company.
- However, if the total amount invested will exceed 50% of the bank's Tier 1 capital, prior approval of the Commissioner is still required for the amount of the investment in excess of 50% of the bank's Tier 1 capital.
- The Commissioner may waive the 10 day notice period upon request of the bank.

Roll-Ups of Bank Subsidiaries

Expressly permits a bank to merge with one or more non-bank subsidiaries provided that the bank survives the merger. No approval of, or notice to, the Commissioner is required. Similar authority is currently contained in the Commissioner's so-called parity regulations; however, an application to the Commissioner is required. *See* 209 Code Mass. Regs. 47.06(3)(e).

Section 39: Regulatory Relief

Letters of Credit

Removes the Commissioner's authority to impose restrictions on a bank's ability engage in the acceptance of future drafts and bills of exchange and related letters of credit.

Section 40: Regulatory Relief

Parity Powers

Relaxes restrictions on the exercise of so-called "parity" power – i.e., power as a Massachusetts bank to make investments and engage in activities permitted to certain competitors.

- Massachusetts banks may exercise powers and engage in activities permitted for federally chartered banks or out-of-state banks on 30 days' prior notice to the Commissioner.
- The Commissioner need not have identified those powers or activities as permissible in regulations.
- Commissioner may waive the 30-day notice period on request of the bank.
- As under current law, powers and activities may not be prohibited under any Massachusetts law.
- Powers and activities must be carried on under the same limitations and restrictions as are applicable to their exercise by federally chartered banks or out-of-state banks, as applicable.
- Additional conditions under current law are also incorporated in the new law and will continue to apply to the exercise of parity powers.
- *See* Section 17 – *Broader Powers*.

Financial and Related Activities

Relaxes restrictions on activities that are financial in nature, activities that are incidental to financial activities, and activities that are complementary to financial activities.

- Massachusetts banks may engage in those activities on 30 days' prior notice to the Commissioner.
- Under current law, a Massachusetts bank may engage in those activities only with the Commissioner's approval and under such limitations or conditions as he may impose.
- The activities may not pose substantial safety and soundness risk to a bank proposing to engage in the activities.
- The Commissioner may waive the 30-day notice period upon request of the bank.
- *See Section 17 – Broader Powers.*

Section 41: Regulatory Relief

Insurance Company Stocks

Eliminates numerous restrictions and limitations on the investment by a Massachusetts bank in insurance company stocks.

- Under the new law, the only remaining condition is that no insurance company stock may be purchased if the cost when aggregated with the cost of all other bank stocks and insurance company stocks already owned by the bank exceeds two-thirds of the investing bank's capital and surplus (if the investing bank is a stock bank) or two-thirds of the investing bank's surplus account (if the investing bank is a mutual bank).

Section 42: Regulatory Relief

Utility Company Stocks

Eliminates numerous restrictions and limitations on the investment by a Massachusetts bank in utility company stocks. Under the new law, the only remaining conditions are:

- No utility company stock may be purchased if the cost when aggregated with the cost of all other utility company stocks already owned by the bank exceeds 35% of the investing bank's capital and surplus (if the investing bank is a stock bank) or two-thirds of the investing bank's surplus account (if the investing bank is a mutual bank), and
- No more than one-half of 1% of the deposits of a bank may be invested in any one utility company stock.

Section 43: Technical Amendment

Obsolete reference deleted.

Section 44: Expanded Powers

Collaboration

The law promotes collaboration among banks in the procurement of technology, trust services, financial planning, compliance, internal audit, human resource and other operation functions by expressly permitting banks to enter into a wide range of transactions with one another for these purposes, and to establish, invest in, operate and subscribe for services from companies that provide those services.

Section 45: Technical Amendments

Fiduciary Activities

Amends certain terms used in Mass. Gen. Laws Ch. 167G, Section 3 to reflect the current terminology used in the Massachusetts Uniform Probate Code that became effective in 2012.

Section 46: Regulatory Relief

Fiduciary Reporting Requirements

Removes the requirement that accounting and audit reports must be filed with the Public Charity Division of the Office of the Attorney General for fiduciary assets held for charitable purposes that are invested in a collective investment fund.

Section 47: Expanded Regulation

Fiduciary Disclosure Obligations: Investment Trusts

Extends the disclosure requirements applicable under current law when a bank invests fiduciary assets in securities of an investment company with which the bank has certain relationships to apply also to investments of fiduciary assets in securities of an investment trust with which the bank has similar relationships.

Section 48: Regulatory Relief

Fiduciary Funds Awaiting Investment

Expands the types of state bonds that may be used as security for the temporary deposit of fiduciary assets awaiting investment by a bank's trust department with its banking department from bonds of certain specified states to bonds issued by any state.

Section 49: Expanded Authority in Corporate Transactions

MHCs: Interim Banks as Merger Subsidiaries

Adds the term "interim bank" to the list of defined terms in the Massachusetts law governing mutual holding companies – Mass. Gen. Laws Ch. 167H, Section 1. The term "interim bank" is defined to mean a Massachusetts bank, a federally chartered bank in Massachusetts, an out-of-

state state chartered bank, and a federally chartered bank located outside Massachusetts “organized solely to participate in and facilitate an acquisition, reorganization, or other corporate transaction.”

- An interim bank may be organized as a subsidiary of a mutual holding company and then used to facilitate a merger with a standalone mutual savings bank or mutual cooperative bank (“standalone” meaning not controlled by its own mutual holding company) in circumstances where the mutual holding company desires to keep the target bank as a separate institution after the merger under the control of the mutual holding company.
- Under current law, if a mutual holding company desires to acquire a standalone mutual savings bank or mutual cooperative bank, the holding company must merge the target into the holding company’s bank subsidiary causing the separate existence of the target to end.
- Under current law, if a mutual bank desires to remain a separate institution following a combination with an independent mutual holding company, the bank first must reorganize into its own mutual holding company and then merge that newly organized mutual holding company with the independent mutual holding company.
- The Commissioner’s authority to charter a Massachusetts bank as an interim bank is codified at Mass. Gen. Laws Ch. 167I, Section 18. *See* Section 53 - *Interim Banks* below.

Section 50: Expanded Authority in Corporate Transactions; Regulatory Relief

MHCs: Flexibility in Structuring Reorganizations

Permits more flexibility to mutual institutions in reorganizing into the mutual holding company form by including authority to structure the reorganization “under any procedures acceptable to the Commissioner.”

- In order to “facilitate a multi-step reorganization,” the law gives the Commissioner – as opposed to the BBI – the authority to “grant any and all certificates and approvals to establish and control a new mutual . . . [savings or cooperative] bank.”
- In contrast, under current law, the BBI must approve the organization of any new bank – including new banks organized to facilitate mutual holding company reorganizations.

Sections 51: Governance Flexibility; Expanded Authority in Corporate Transactions

MHCs: Governance

This section permits a mutual holding company to elect to follow the corporate governance “procedures” that are contained elsewhere in Massachusetts law and that apply to other types of corporations including, for example, the corporate governance rules contained in the general business corporation laws (Mass. Gen. Laws Ch. 156D). A mutual holding company must specify in its by-laws which corporate governance rules it intends to follow.

- See similar rules for banks in Section 53 – *New Chapter 167J – Corporate Governance*.

MHCs: Mergers and Acquisitions

This section permits a mutual holding company much broader authority to merge with other mutual holding companies. Specifically,

- A mutual holding company can merge with or acquire a mutual holding company organized under the laws of another state.
- A mutual holding company can merge with or acquire a mutual holding company organized under federal law, whether or not located in Massachusetts.

This section permits a bank subsidiary of a mutual holding company much broader authority to acquire or merge with other mutual depository institutions. Specifically,

- An interim bank organized by a Massachusetts mutual holding company can acquire or merge with another mutual bank, even if the other bank is not in mutual holding company form. *See* Section 49 above and Section 53 below.
- A bank controlled by a Massachusetts mutual holding company can acquire or merge with a federal mutual bank, whether or not located in Massachusetts.
- A bank controlled by a Massachusetts mutual holding company can acquire or merge with a Massachusetts credit union or federal credit union, whether or not located in Massachusetts.

A bank subsidiary of a mutual holding company can acquire by merger:

- A Massachusetts bank in stock form;
- An out-of-state, state-chartered bank in stock form; and
- A federally chartered bank in stock form whether or not located in Massachusetts.
- *See* Section 53 – *Mergers and Acquisitions*.

The law removes other limitations imposed on mutual holding companies under current law. Among other powers,

- A mutual holding company may now merge with a stock holding company, as long as the mutual holding company survives the merger
- A mutual holding company may invest in the stock of a bank organized under the laws of any state or of the United States, as well as a limited purpose trust company, whether or not chartered or located in Massachusetts

Section 52: Expanded Authority in Corporate Transactions

MHCs: Authority to Unwind

A mutual holding company can be unwound following these procedures.

- The plan of conversion must be approved by two-thirds of the Corporators of the mutual holding company.
- The approval of the Commissioner, but not the BBI, is required.

Section 53: Expanded Authority in Corporate Transactions; Regulatory Relief

New Chapter 167I: Corporate Transactions

The law creates a new chapter 167I in the Mass. Gen. Laws, governing corporate transactions including mergers, consolidations, asset purchases and conversions.

Mergers and Acquisitions

The law permits a Massachusetts bank broader authority to acquire or merge with other depository institutions. Specifically,

- A Massachusetts mutual bank may acquire or merge with a mutual bank chartered under Massachusetts law, the laws of another state or federal law
- A Massachusetts stock bank may acquire or merge with a stock bank chartered under Massachusetts law, the laws of another state or federal law
- A Massachusetts mutual bank may acquire a credit union chartered under Massachusetts law, the laws of another state or federal law
- A Massachusetts bank may acquire all or part of the assets or stock of a Massachusetts bank, a federally chartered bank, an out-of-state state-chartered bank, credit union or limited purpose trust company.

Charter Conversions

The law continues to permit charter conversions of Massachusetts credit unions to Massachusetts mutual banks.

- In addition, the law now expressly permits a one-step conversion of a federally chartered credit union to a Massachusetts mutual bank.

The law continues to permit charter conversions of Massachusetts banks – whether in mutual or stock form – to federally chartered banks.

- However, the law provides that no approval of the Commissioner is necessary, and simply requires that such a conversion be undertaken in accordance with the requirements of federal law.

The law continues to permit charter conversions of federally chartered banks – whether in mutual or stock form – to Massachusetts chartered banks, subject to the Commissioner’s approval and under such rules and regulations as he may prescribe.

- Federally chartered banks can now convert to any of the three types of Massachusetts banks.

Interim Banks

The law permits the Commissioner to charter a so-called “interim bank” as a Massachusetts savings bank, cooperative bank or trust company, owned by a bank holding company (including a mutual holding company) or a bank, for the sole purpose of facilitating a multi-step corporate transaction involving a Massachusetts savings bank, cooperative bank or trust company. The new authority is codified at Mass. Gen. Laws Ch. 167I, Section 18. *See* Sections 23, 49, 50 and 51 above.

Mutual to Stock Conversions

The law continues to allow a Massachusetts mutual to convert to a stock bank. All statutory requirements in connection with a conversion are eliminated. The law simply requires the Commissioner to issue such rules and regulations as may be necessary or proper to carry out the law.

New Chapter 167J: Corporate Governance

The new law permits a bank to follow the “corporate governance procedures” contained in the Massachusetts Business Corporation Act (Mass. Gen. Laws. Ch. 156D) or contained in the law of the state in which the bank’s holding company, if any, is organized. The bank’s by-laws must specify which corporate governance procedures the bank has decided to follow.

Regulatory Relief

- The law continues to require quarterly reports by an officer or committee designated by the board to the full board or to a committee designated by the board, but eliminates existing requirements as to the specific contents of the reports. The new law leaves the contents of the reports up to the board. The reports must cover a period from the closing date of the last report to a date eighteen days before the meeting of the board or committee at which the report will be presented, and must be retained for a period of six years.
- All Massachusetts insider lending rules are repealed by the new law. The new law provides that insider loans – defined to mean loans to officers, directors and trustees – must be made in compliance with federal insider lending rules contained in Federal Reserve Board Reg. O, 12 C.F.R. Part 215. *See* Section 17 above.

- Specific Massachusetts minimum capital and surplus requirements are eliminated. The law requires only that a bank be at least adequately capitalized under applicable federal rules.

Section 54: Regulatory Relief

Savings Bank Laws

Mass. Gen. Laws Ch. 168 is repealed in its entirety and replaced with a new Ch. 168.

- The new law reduces the percentage of Corporators who must be citizens and residents of Massachusetts – from 75% under current law to a majority under the new law. This provision is codified at Mass. Gen. Laws Ch. 168, Section 12. Note: This provision will benefit banks that have expanded their markets into other states and have sought to elect additional individuals residing in those other states as Corporators but have been restricted by the 75% limit.
- The new law permits up to two trustees of a mutual savings bank to be elected by a majority of the trustees without approval of the Corporators, if the by-laws permit. This provision is codified at Mass. Gen. Laws Ch. 168, Section 14(3).
- The new law requires that all officers – including the president – be elected by the trustees. Existing law requires that all officers including the president be elected by the Corporators at the annual meeting. This provision is codified at Mass. Gen. Laws Ch. 168, Section 18.
- Unless the charter or by-laws provide otherwise, a bank board or committee may take action by unanimous written consent, which can be delivered in writing or electronically. This provision is codified at Mass. Gen. Laws Ch. 168, Section 21A(a).
- The new law continues to permit up to two directors of a stock savings bank to be elected by a majority of the directors without approval of the stockholders, if the by-laws permit. This provision is codified at Mass. Gen. Laws Ch. 168, Section 24.

Section 55: Regulatory Relief

Cooperative Bank Laws

This Section repeals Mass. Gen. Laws Ch. 170 in its entirety and replaces it with a new Ch. 170.

- The law eliminates the requirement that the Commissioner approve a cooperative bank's change of its legal name. Under the new law, a cooperative bank may change its name on a vote of two-thirds of its shareholders and the filing of amended articles of organization with the secretary of state. This provision is codified at Mass. Gen. Laws Ch. 170, Section 3.

- The new law permits up to two directors of a mutual cooperative bank to be elected by a majority of the directors without approval of the shareholders, if the by-laws permit. This provision is codified at Mass. Gen. Laws Ch. 170, Section 13.
- The new law continues to permit up to two directors of a stock-form cooperative bank to be elected by a majority of the directors without approval of the stockholders, if the by-laws permit. This provision is codified at Mass. Gen. Laws Ch. 170, Section 18.
- Unless the charter or by-laws provide otherwise, a bank board or committee may take action by unanimous written consent, which can be delivered in writing or electronically. This provision is codified at Mass. Gen. Laws Ch. 170, Section 20(a).

Sections 56-57: Expanded Authority in Corporate Transactions

Credit Unions

The credit union laws are amended to permit credit union mergers with and into bank subsidiaries of mutual holding companies. Credit union laws will continue to permit credit union mergers with and into Massachusetts mutual banks.

Credit unions will continue to be required to obtain the Commissioner's approval for standalone ATMs and other electronic branches.

Section 58: Regulatory Relief

Trust Company Laws

This Section repeals Mass. Gen. Laws Ch. 172 in its entirety and replaces it with a new Ch. 172.

- The new law continues to permit up to two directors of a trust company to be elected by a majority of the directors without approval of the stockholders, if the by-laws permit. This provision is codified at Mass. Gen. Laws Ch. 172, Section 12.
- Unless the charter or by-laws provide otherwise, a bank board or committee may take action by unanimous written consent, which can be delivered in writing or electronically. This provision is codified at Mass. Gen. Laws Ch. 172, Section 14.

Sections 59-64: Technical Amendments

These sections delete references to obsolete agencies and make other technical and conforming changes.