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

SECTION-by-SECTION SUMMARY OF CHAPTER 482 OF THE ACTS OF 2014

ENACTED BY THE HOUSE AND SENATE ON DECEMBER 31, 2014
SIGNED BY GOVERNOR DEVAL PATRICK ON JANUARY 7, 2015

PREPARED BY THE

MASSACHUSETTS BANKERS ASSOCIATION
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The Massachusetts Bankers Association's legislation to modernize the Commonwealth's banking laws and enhance the competitiveness of state-chartered banks originally consisted of 58 SECTIONS and 108 pages. It made numerous substantive changes to the statutes including substituting compliance with federal provisions for existing state laws and on certain matters, changing the framework in which the laws are set out. Savings banks, co-operative banks and trust companies were positively impacted by the legislation, which also favorably affected federally chartered banks, out of state banks and foreign banks. Laws applicable to the Division of Banks and other entities were amended as well. Representative Michael A. Costello, the House Chairman of the Joint Committee on Financial Services, filed the legislation, House 893 in January, 2013.

SUMMARY OF LEGISLATIVE HISTORY

The Financial Services Committee's redraft of the legislation, House 3881, retained the core structure of House 893 while making upwards of 18 substantive changes to the bill. Some of the changes were significant, several were procedural and some were repeated for consistency within the legislation. The Committee's redraft also made technical corrections, updated statutory cross–references and addressed other drafting issues. The Division of Banks had input to the Committee's action. Many of the improvements in the Committee's legislation were offered by the Association. During the House's consideration of the measure, the House Ways & Means Committee made numerous, minor stylistic wording changes and technical drafting corrections as well as two substantive changes. One change allows for a majority of corporators of a mutual savings bank to be residents of the Commonwealth instead of three-fourths. The other change amended municipal finance law and became law under a separate bill. The House Ways and Means Committee favorably reported the bill as House 4110 and the House of Representatives passed that bill and sent it to the Senate.

The Massachusetts Senate eliminated four SECTIONS of the House passed legislation, three of which had just become law under another bill on the Legal List Of Investments that also up dated two provisions of Municipal Finance Law. The other SECTION deleted was the provision, in law since1981, that would have removed the ban of ATMs on the premises

where gaming is conducted now that there is an applicable statute under the jurisdiction of the Massachusetts Gaming Commission. The Senate also made wording changes to update statutory language and continue the effort to make references gender neutral, particularly in the many, many references to the Commissioner of Banks. The Senate version was passed as the text of Senate Document 2378. Subsequent Senate amendments were primarily to finalize the scope and wording of the ATM ban at gaming establishments but also made separate and distinct, minor technical changes to a few other provisions. In the end, the subsequent ATM amendments were deleted and the minor corrections passed by both Branches.

The legislation was enacted by the House and Senate on December 31, 2014 and was signed into law by Governor Deval Patrick on January 7, 2015 as Chapter 482 of the Acts of 2014.

SECTION-BY SECTION SUMMARY
OF CHAPTER 482 OF THE ACTS OF 2014

The core banking statutes in the General Laws from chapter 167 through 167H, inclusive, as well as chapters 168, 170 and 172 governing savings banks, co-operative banks and trust companies, respectively, are significantly amended. Two new chapters are added to the banking laws, one to cover corporate bank transactions such as mergers and acquisitions, and the other to contain consistent, existing corporate governance matters. The law also makes technical updates and deletions to, among other things, reflect changes from the federal Dodd-Frank Act such as the elimination of the Office of Thrift Supervision and the existence of the Consumer Financial Protection Bureau. These changes are made in various chapters of the General Laws.

This SECTION-by-SECTION summary explains the law as it is properly drafted to amend the General laws in numerical order. Where appropriate it adds commentary to provide insight into how one SECTION co-ordinates with a later amended statute. Other documents by the Massachusetts Bankers Association separate out and highlight in detail the major substantive pieces of the law in various subject matter categories.

This document, although detailing substantive amendments, is a summary of statutory provisions. It does not identify every wording change. The specific wording of a law must be reviewed in conjunction with any action to be taken under these new statutes.

SECTION 1
ADMINISTRATIVE PROVISIONS ON STATE TAXATION
CHAPTER 62C

SECTION 1 is a technical amendment which deletes a reference in the tax code to a filing with the Secretary of State by a bank on its net interest income as reported to the Office of Thrift Supervision (OTS) since the OTS is no longer a separate entity after Dodd –Frank. The reference to such filings with the Federal Financial Institutions Examination Council

(FFIEC) remain and cover the deletion of the OTS whose duties were assumed by the Office of the Comptroller of the Currency (OCC).

SECTION 2
POWERS AND DUTIES OF THE COMMISSIONER OF BANKS RELATIVE TO SAVINGS AND LOAN ASSOCIATIONS
CHAPTER 93

SECTION 2 is a technical amendment deleting the Commissioner's authority to supervise and examine a type of institution no longer existing or which can no longer be chartered by the Commonwealth. The last savings and loan association, Hebron Building and Improvement Association, located in Seekonk, voluntarily liquidated in 2011.

SECTION 3 THROUGH SECTION 10
CONSUMER CREDIT COST DISCLOSURE
(TRUTH-IN-LENDING)
CHAPTER 140D

One of the most significant changes from the original bill filed is the compliance by banks with the Truth- in -Lending law (TIL). Under the original bill, banks were eliminated from the coverage of the Commonwealth's TIL statute and were subjected to compliance with the Federal TIL Act. As discussed at the public hearing and in numerous subsequent discussions, although there are only several specific differences between the two laws and some are minimal, there is a practical impact for state banks to comply with different federal and state statutes on consumer credit disclosures. The Massachusetts provisions must always "catch up" to federal changes resulting in, among other things, delays and different documents for use in Massachusetts.

Under this law banks will remain subject to the Massachusetts TIL law that is amended in several substantive ways to address the concerns raised and discussed. Two of the differences between the state and federal provisions are minor inconsistencies and are eliminated from chapter140D. **SECTION 8** negates the difference of a penny in the trigger for refunding a credit balance. **SECTION 7** eliminates the difference of one day in the minimum time period for mailing a billing cycle statement. Other differences in the state law are retained and support the Commonwealth's existing exemption from the Federal Act.

The law includes three substantive provisions to resolve the issues with the complications of compliance with the two similar Acts and enhances the authority of the Division to keep the Massachusetts TIL law better synchronized with the Federal Act in order to retain the Commonwealth's existing exemption. **SECTION 5** includes a provision that states creditors in the Commonwealth shall comply with future federal changes in TIL until the Division takes further action, if any, to update Massachusetts provisions. SECTION 5 also sets out a process for the Commissioner to waive a provision of chapter 140D which conflicts with a similar consumer protection provision of the Federal TIL Act. **SECTION 10** adds a new authority for the Commissioner to take any action to retain the Commonwealth's

exemption from the Federal Act as long as the state provisions provide more or equal protection to consumers and the Division has adequate ability to enforce the state requirements.

The law retains four SECTIONS, as follow, amending chapter 140D to make a technical correction based on federal amendments on the jurisdiction of federal agencies.

SECTION 3 strikes out the definition of "Board" in reference to the Board of Governors of the Federal Reserve System and adds the definition "Bureau" as the bureau of consumer financial protection. The change recognizes the Dodd-Frank Act's switch in jurisdiction for the federal TIL from the Federal Reserve to the Consumer Financial Protection Bureau (CFPB). **SECTION 4** in 4 places, in **SECTION 6** in 2 places and in **SECTION 9** one time replace references to the "board" with the "bureau".

NOTE; The retention of banks under the coverage of chapter 140D results in the elimination of the Federal TIL Act being included in the list of federal laws for state banks to comply with that is added to chapter 167.
NOTE: The major change to the coverage of the Commonwealth's TIL law came after numerous drafts and discussions with the Committee, the Division and the Association as the Committee looked to the Division on this significant issue.
NOTE: The authority for the Commissioner to follow a process to waive a statute conflicting with a similar federal law is based on Massachusetts Acts authorizing banks and then credit unions to sell insurance. SEE for banks SECTION 7 of Chapter 129 of the Acts of 1998 and for credit unions subsection (g) of section 75B of chapter 171 of the General Laws, added in 2008.

SECTION 11
TRUTH-IN-SAVINGS
CHAPTER 140E

The Commonwealth's Truth-In- Savings law, chapter 140E of the General Laws, which was passed in 1984, is repealed by **SECTION 11**. Therefore, banks and credit unions will be subject to the federal Truth-In- Savings law.

COMMENT: Although the repeal of the statute appears significant, it does not change current compliance requirements. The Division's regulation, 209 CMR 4.04, currently directs banks and credit unions to comply with the federal law and regulations on savings accounts.

SECTION 12 THROUGH SECTION 22
DIVISION OF BANKS
CHAPTER 167

Chapter 167 of the General Laws contains many of the most substantial authorities granted to the Division of Banks in statute. Among other things, this law authorizes the Commissioner of Banks to conduct examinations, to issue Orders and Directions to a Board

of a bank, to remove officials and to take possession of and to close a troubled institution. It also contains various other provisions and authorities. The next 11 SECTIONS contain some of the most significant provisions of the law while others are more technical.

SECTION 16 adds specific authority for the Commissioner to establish a tiered regulatory structure for the supervision and examination of savings banks, co-operative banks and trust companies. Although complete discretion for such a tiered regulatory structure is placed with the Commissioner, the law states that it could, among other things, be based on asset size; capital; balance sheet composition; CAMELS rating; CRA rating; and compliance matters. This power for the Commissioner is added to the law setting out his examination authority and states that in establishing such a tiered structure the Commissioner is to seek to achieve costs reductions and reduce regulatory burden on the cited state-chartered banks. The law grants the Commissioner the discretion to promulgate regulations for the tiered regulatory structure.

The law adds language to the law governing the examination-cycle. In conjunction with the authority in SECTION 16 for the Commissioner to establish a tiered regulatory structure for supervision and examination, an amendment is made to the current law which sets the examination cycle at twelve or eighteen months depending on the capitalization of the bank. **SECTION 14** establishes that the Commissioner has the discretion to set alternative examination schedules, other than the twelve or eighteen month cycles now in law, under the tiered regulatory structure.

SECTION 17 is also a major component of the new law. It adds three new authorities to chapter 167 as sections 2H, 2I and 2J of that chapter. *Section 2H* grants powers to the Commissioner and savings banks, co-operative banks and trust companies. It allows such a bank with thirty-days' notice to the Commissioner, which can be expedited, to engage in an activity or invest in any product or service which are related to or incidental to banking; not prohibited by law; and do not pose a substantial risk to the safety and soundness of the institution. The Commissioner may extend the review period for an additional thirty days, may add terms and conditions after the additional review or can deny the proposal. This authority is inserted into law to address the rapid and ongoing developments in technology which have and continue to enhance the options and speed for moving money, creating payment systems and conducting banking business for consumers and commercial entities.

Section 2I addresses a long standing issue of compliance with laws and regulations affecting savings banks, co-operative banks and trust companies when such laws of the Commonwealth have a counterpart, and at times and in part conflicting, body of law in federal provisions. This new statute adds a list of those federal provisions a state-chartered bank is mandated to comply with regardless of a related Massachusetts provision with certain limited exceptions as noted. The new statute would retain all existing authority for the Commissioner to examine the state-chartered banks and enforce the federal provisions. There are 6 cited federal laws and/or regulations set out in the following subsections with general descriptions

(1) Expedited Funds Availability
(2) Fair Credit Billing.
(3) Electronic Fund Transfers but with a maximum liability of $50.00 which is a consumer protection now in the General law**s**.
(4) Safekeeping of Securities.
(5) Banking Office and Operations Security and Bank Secrecy.
(6) Insider Loans.

This section mandates that a federal bank, a foreign bank and an out of state bank comply with subsection (3) due to the consumer protection exception contained therein.

A provision of the section states that nothing in the law affects the Commissioner's jurisdiction relative to other federal laws and regulations.

COMMENT: In conjunction with this listing of federal provisions amendments are made to the counterpart provisions in the General Laws. In SECTION 25, banks are deleted from key definitions in EFTS, chapter 167B. The Expedited Funds Availability law, existing in current section 35 of chapter 167D, is eliminated in the rewrite of that chapter by SECTION 35 of the law. Banks are also deleted from the coverage of the retained laws on banking office security and safekeeping of investment securities in SECTION 12 and SECTION 18 respectively. Additionally, the restrictions on insider loans are cross -referenced back to this provision in section 10 of the new chapter 167J.

NOTE: Compliance with the federal provisions governing subsection (4) on Safekeeping of Securities and (5) on Banking Office Security measures are currently mandated by the Division of Banks' regulations at 209 CMR 4.02 and 4.03, respectively.

The new *section 2J* adds authority for the Commissioner to deem certain information in an application submitted by a savings bank, co-operative bank, a trust company, federal bank, foreign bank or an out of state bank confidential if requested by the applicant. The discretion is vested in the Commissioner to exclude or include the information but reasons for exclusion set in the law are (i) personal information; (ii) disclosure could result in substantial competitive harm, or (iii) disclosure could seriously affect the financial condition of the bank.

COMMENT: A new section is added to chapter 167A by SECTION 24 granting this same authority to the Board of Bank Incorporation for applications before the Board. This provision is modeled after discretion afforded the federal bank regulatory agencies. See for example 12 CFR 303.8(b).

The remaining eight SECTIONS amending chapter 167 are primarily technical.

SECTION 12 rewrites section 1A, which authorizes the Commissioner to establish by regulation the minimum standards state-chartered banks and credit unions, must meet for the security and protection of the general public, their employees and banking offices. The installation, maintenance and operation of the security devices are also to assist in the

identification and apprehension of criminals. In conjunction with subsection (f) of the new section 2I on federal provisions to be complied with by savings banks, co-operative banks and trust companies, this statute is rewritten to eliminate its coverage of those banks.

COMMENT: The Division's regulation at 209 CMR 4.03, currently directs banks to follow the federal regulations on security and protection matters.

The change made by **SECTION 13** is to delete a law that is no longer necessary. The statute, section 1B of chapter 167, authorizes the Commissioner to supervise an entity doing the business of a banking company or loaning money under the Morris Plan, so called, as described and regulated by chapter 172A of the General Laws. There are no longer any such banking companies in the Commonwealth and chapter 172A was repealed in March of 2005.

COMMENT: This statute could also have been eliminated in 2005 since there have been no banking companies since 1982.

SECTION 15 makes two changes necessitated by the Dodd-Frank Act in the law governing Reports of Examinations produced by the Division. Although such Reports are confidential, the law allows the Commissioner to share them with named entities including federal banking agencies, excess insurers, as well as banking departments in other states and law enforcement agencies. Based on Dodd-Frank, this SECTION deletes the reference in the statute to the Office of Thrift Supervision whose duties were assumed by the Office of the Comptroller of the Currency already referred to in the law. The other change adds the Bureau of Consumer Financial Protection to the statute for sharing Reports since that Bureau was established by Dodd-Frank.

Among other things, the Commissioner is authorized to direct a bank on how to safe-keep its securities. The Division does so in regulation at 209 CMR 4.02 by stating that a bank following the federal provisions on safekeeping will be in compliance with Massachusetts law. Subsection (5) of the new section 2I codifies that compliance in statute. **SECTION 18** rewrites the current law on safekeeping of securities to eliminate its coverage of savings banks, co-operative banks and trust companies while retaining the other authorities of the Commissioner in the existing law on audits and the keeping of the books and accounts in such banks.

SECTION 19 makes changes to a listing of federal agencies in current law. The Commissioner is required to annually send to the State Treasurer a list from specified federal agencies of those federal banks that have complied with the federal Community Reinvestment Act. Consistent with now existing regulatory oversight for CRA, SECTION 21 deletes the existing reference to the Federal Home Loan Bank Board while adding a reference to the Board of Governors of the Federal Reserve System. References to other appropriate federal agencies are retained.

COMMENT: A 1989 Federal Act abolished the Federal Home Loan Bank Board. The reference to the Federal Reserve could have been included in the original addition of this statute.

SECTION 20 repeals four sections of existing law for the sole purpose of placing them in an expanded chapter on banking offices, chapter 167C. Other changes are made to those statutes as discussed in the summary of chapter 167C. The provisions affected govern branching into or within the Commonwealth by a bank from a foreign country, an out of state federal bank or a bank chartered by another state. The current sections 38 and section 39 of chapter 167 specify the process for a foreign country bank to establish a branch office in Massachusetts and to retain other banking offices after a merger or acquisition here, respectively. Section 39B specifies the process and requirements for an out of state federal bank or an out of state bank to retain banking offices after a merger or acquisition while section 39C does the same for a de novo branch office. NOTE: There is no section 39A since it was repealed in 1982.

COMMENT: Since chapter 167 is primarily the statute granting powers and authorities to the Commissioner of Banks, the existing laws on the Commissioner's jurisdiction over foreign banks, out of state banks and out of state federal banks are retained as is in sections 40 to 42, inclusive.

For the reasons discussed in SECTION 15, the statute governing the Commissioner's sharing of Reports of Examination, section 40 of chapter 167, on out of state or foreign banks is amended to reflect the Dodd-Frank Act by **SECTION 21.** It deletes the reference to the no longer existing Office of Thrift Supervision and adds the newly established Bureau of Consumer Financial Protection.

SECTION 22 makes the final two changes to chapter 167 by repealing the two statutes governing entry into the Commonwealth to act as a foreign fiduciary for the purpose of placing them in the extended chapter 167C. In summary, those laws allow a bank to come into the Commonwealth, with applicable approvals and conditions, such as reciprocity, to act as trustee, executor, administrator or fiduciary and to represent deceased and estates in Probate Court or in other proceedings in Massachusetts. Section 43 applies to a foreign bank seeking to act as a foreign fiduciary and section 43A applies to any out of state federal bank or state bank.

COMMENT: These two sections are combined when placed in chapter 167C, among other changes made.

<u>SECTIONS 23 and 24</u>
BANK HOLDING COMPANIES
CHAPTER 167A

These two SECTIONS of Chapter 482 make separate changes to the bank holding company statute, chapter 167A. **SECTION 23** adds an exemption to the law eliminating the three member Board of Bank Incorporation's involvement in a multi-step transaction where the

substantive step will be decided by the Commissioner of Banks. Such transactions would include the formation of an interim bank to facilitate a transaction also triggering, for a moment in time, a resulting bank holding company. Both of those interim and moment in time steps are within the jurisdiction of the Board. In such cases, the exemption would only apply if the final step in the transaction had to be approved by the Commissioner on behalf of the Commonwealth. A multi-step transaction covered by the exemption would still be required to comply with the provision of law on making funds available to the Massachusetts Housing Partnership Fund for its loan programs.

COMMENT: The authority to form the interim bank is granted to the Commissioner alone in conjunction with this exemption. It is added as section 18 on the new chapter 167I on Corporate Bank Transactions.

SECTION 24 adds a statute authorizing the Board to determine certain information in an application submitted to it can be confidential.

COMMENT: The same authority with the same criteria for determining confidentiality is granted to the Commissioner in section 2J added by SECTION 17 of this law. See the additional discussion under that SECTION.

SECTION 25 THROUGH SECTION 29
ELECTRONIC FUNDS TRANSFER SYSTEMS
CHAPTER 167B

Five SECTIONS of the law amend this Chapter of the General Laws. Two make major substantive change**s** and the other three make technical updates to reflect changes on the federal level. All of the amendments are consistent with other changes made in prior SECTIONS of the law and explained in summaries of those SECTIONS.

SECTION 25 strikes out and reinserts the definitions in the electronic banking statute to eliminate the coverage of that law to savings banks, co-operative banks, trust companies, federal banks and out of state-chartered banks. The changes are made in the definitions of "Bank", "Electronic branch" and "Financial institution" as well as the deletion of the definitions of "Federal bank", "Foreign bank", "Out-of-state bank" and "Out–of-state federal bank.

COMMENT: These amendments are consistent with the addition of the list of federal provisions to be complied with by banks in the Commonwealth by SECTION 17 of the law. Subsection (3) of section 2I added by that SECTION directs banks to comply with the federal Electronic Fund Transfer Act while mandating that the maximum liability to a consumer for an unauthorized electronic transfer shall be the current Massachusetts limit of $50.00 and not the three-tiered federal liability structure.

The law now treats credit unions the same as banks for EFTS purposes and accordingly adjusts definitions in chapter 167B to reflect this change. References to credit unions or credit union law are deleted from the definition of "Electronic Branch", "Financial

Institution" and the definitions of "Bank" and "Office" are now eliminated. In conjunction with changes made to the ATM assessment law, SEE SECTION 29 below, definitions of "Non-bank ATM provider" and "Non-bank electronic branch" are added to section 1 of chapter 167B.

NOTE: SECTION 56 is included in the law to subject credit unions to the Federal EFT Act and to transfer other existing EFT authorities into credit union law, chapter 171.

SECTION 29 of the law makes significant changes to the annual ATM assessment law and rewrites it to establish a tiered fee structure. The current law requires the Division to assess each ATM equally. In recognition of the other fees and assessments banks and credit unions pay to the Division and federal bank regulatory agencies, the law requires a bifurcated rate. Banks and credit union ATMs will be assessed at a rate not to exceed 50% of the amount assessed for non-bank ATMs. To address the amendments impact on the Division's fee collections, the law requires the total amount of ATM assessments shall not be less than the average of the last three fiscal years. Since banks and credit unions are deleted from definitions for Chapter 167B, a singular definition is added to the assessment law to specifically subject those institutions to it. Other provisions of the section are retained.

The next three SECTIONS make the appropriate switch from the Board of Governors of the Federal Reserve System to the Bureau of Consumer Financial Protection to reflect that change in jurisdiction under the Dodd-Frank Act. **SECTION 26** makes that change in section 2 of chapter 167B relative to federal rulings under the federal EFTS law from the "Board" to the "Bureau" 11 times. **SECTION 27** amends the same section to make a similar change only this time from references to the "board's" to references to the "bureau's" in 4 places. Additionally**, SECTION 28** rewrites two paragraphs of subsection (d) of section 20 of chapter 167B relative to an entity not being liable for following a federal regulation or ruling to change the reference to the "board" or the "Federal Reserve System" to the "bureau' in five places.

NOTE: Chapter 167B will remain applicable to all entities other than banks and credit unions providing electronic fund transfer systems including nonbank ATMs. Based on information currently available from the Division of Banks, as of December 2014 there are approximately 8,104 non-bank ATMs in the Commonwealth and as of 2013, there were 4,770 bank and credit union ATMs.

<u>SECTION 30 THROUGH SECTION 34</u>
BANK LOCATIONS
CHAPTER 167C

These five SECTIONS consolidate into the current chapter on banking offices or locations provisions on ATMs, branch offices by out-of state financial institutions and foreign fiduciary authorities from other amended laws in the law. Although substantive changes are made, they primarily relocate existing statutes into this chapter. These amendments are also recognized in discussions of other prior provisions of Chapter 482. Substantive

changes are also made to the statute governing the relocation of a state-chartered bank's main office and the transactions that must occur at the main office.

SECTION 30 rewrites section one of chapter 167C to add four definitions to the existing seven definitions. The additions primarily reflect the transfer of ATM authority for banks from chapter 167B on EFTS to this chapter consistent with the other change switching banks to compliance with the federal EFTS laws and regulations. The definitions of "Electronic branch", "Financial institution", "Organization" and "Point-of-sale terminal" are added consistent with the transfer and are generally based on those terms as they exist and continue to exist in chapter 167B.

Current law bifurcates the process for a savings bank, co-operative bank or trust company to relocate its main office. If the relocation is within the same city or town the approval of the Commissioner of Banks is required but if the relocation is to a different municipality the Board of Bank Incorporation must approve the transaction. **SECTION 31** rewrites the law to give authority for any main office relocation by such a bank to the Commissioner. The law also deletes the provision setting out and specifying the required votes and internal approvals of corporators, members and boards, as applicable, for a relocation to another city or town. SECTION 31 also deletes the direction on filing proper amendments with the Office of the State Secretary. The latter deletions are part of the law's update to eliminate specified votes in various distinct laws and leaving those requirements and thresholds to a bank's internal governing documents and following up any such change with any required filings with appropriate government offices.

COMMENT: The law's delegation to the Board of Bank Incorporation on relocation to a new municipality is a carryover from decades ago when establishing a branch office was greatly restricted. Existing laws now allow for global branching and interstate mergers and movement of banking offices without any involvement of the Board. This change could have been made as part of those substantial geographic expansion authorities.

SECTION 31 now includes a substantive provision on activities at a main office and a related amendment is made in **SECTION 32**. The substantive authority added is for a bank to designate as its main office a location at which customers need only to be able conduct one of the three specified transactions, which are receiving deposits; paying withdrawals; or making loans. The result is a bank's Corporate Headquarters could also be its main office even though it does not take deposits there.

In conjunction with the above new authority, a technical change is made within section 3 of Chapter 167C, by SECTION 32, to delete the sentence that states that a branch office may transact the business conducted at its main office.

NOTE: The language on conducting only one of three specified transactions at a main office was based on authority granted national banks.

The Commonwealth's existing laws allows a state-chartered bank to merge with an out of state bank, an out of state federal bank, and a foreign bank with the savings bank, co-

operative bank or trust company as the continuing institution as well as authorizing the purchase in whole or in part of the assets or stock of such an out of state /federal or foreign bank. Section 6 of chapter 167C authorizes such transactions. It additionally allows the Massachusetts bank to retain any banking offices of the acquired bank while specifying that those banking offices acquired would have the authorities of the other state but still be subject to supervision of the Commissioner. **SECTION 33** retains the described authorities while deleting two other provisions of the current law covered by other sections of the new transaction statute, chapter 167I. The provisions deleted here are the application type requirements for the submission of the agreement and the vote of the governing boards of the banks. It also deletes the four specifications of the result of a merger such as the continuing banks succession to all the rights and liabilities of the bank merged out of existence. As noted above those provisions are included in the new chapter 167I

SECTION 34 adds six sections to chapter 167C which are currently set out in chapter 167 or chapter 167B, as previously noted herein, to make chapter 167C the governing law for banking offices in the Commonwealth, including ATMs for state-chartered banks.

Section 12 is added to carry over the three paragraphs in section 3 of chapter 167B authorizing a savings bank, co-operative bank or trust company to establish, install, operate lease, use, purchase or share electronic branches as defined.
COMMENT: Chapter 482 did not carry over the existing provisions on authorizing the Commissioner to require mandatory sharing of ATMS since such systems are now well established and the provision has never been invoked since the law was passed in 1982.

Section 13 is added to carry over the authorities in section 39B of chapter 167 on retaining branch offices after a merger with a bank in the Commonwealth. The current law requires an out -of -state bank to operate the branch as if it were a state-chartered bank while the provision on an out-of-state federal bank is updated to refer to compliance with the Commonwealths laws as amended by this law.

Section 14 replicates section 39C of chapter 167 on establishing a de novo branch in the Commonwealth. It makes the same change as noted above on compliance matters.

Section 15 now governs the entrance of a bank from a foreign country into the Commonwealth. It tracks the existing law, section 38 of chapter 167, with the major change of substituting the Commissioner of Banks for the Board of Bank Incorporation in the approval process. Other than technical updates the current law is carried over to this section.

Section 16 similarly carries over the authorities for a foreign bank to establish additional branch offices or merge with banks in the Commonwealth with the approval of the Commissioner. NOTE: The current law recognizes that, once allowed in the Commonwealth by the Board of Bank Incorporation, jurisdiction was turned over to the Commissioner.

Section 17 combines two provisions of law into one to govern a bank coming into Massachusetts to act as a foreign fiduciary for probate, trust or other such relationships. In

combining the sections the approval authority is given solely to the Commissioner. The existing law for a foreign bank seeking to act as a foreign fiduciary requires approval of the Board of Bank Incorporation in section 43 of chapter 167 while all other banks were subject to approval of the Commissioner under section 43A. Section 17 retains the same process while consolidating the approval process with the Commissioner.

SECTION 35
DEPOSITS AND ACCOUNTS
CHAPTER 167D

This Chapter is rewritten in its entirety. The revised law will make substantive deletions and consolidations. The 36 existing sections generally fall into three categories: (1) classes of accounts; (2) a bank's legal responsibilities and protections; as well as (3) certain consumer protections. The revised law will arrange the retained sections in those categories. Since no new provisions are being added and the existing sections have been in place for years, this summary is brief and will refer to the current section cite and subject matter. Unless noted, the laws are retained as they currently exist. Upwards of 13 sections are deleted in their entirety while others are eliminated through consolidation.

Section 1. Definitions

This section is retained.

Section 2. Powers

This section grants various general authorities to banks for account related matters and includes the proviso on the "18-65 law", so called. It is retained but the "18-65 law" is retained but spun out into its own section.

Section 3. Deposits Received

The current law authorizes a bank to receive demand, time and other types of deposits without limitation. This section also contains the proviso on regulating the fee for returned checks due to insufficient funds of an innocent depositor which is spun off to a separate section. The remaining authority for accounts of any type is retained and added to with provisions from other sections. Since the law is so broad it was determined that statutes on Joint Accounts (section 5), Deposits In Trust For Another (section 6), and Accounts For Minors (section 7) could be deleted with certain legal provisos on payment liability and other protections being added to this section. Separate statutes for Time Deposits (section 8), Club Deposits (section 9) and Shade Tree And Cemetery Accounts were deleted consistent with this approach.

The law retains the current law on Deposits Held In Trust For Another in subsection (b) of this section 3 of Chapter 167D but makes a few substantive changes due to expanded insurance coverage of such accounts by the FDIC that are clearly reflected in existing statute on such accounts. The rewritten subsection (b) clarifies that such trust accounts are

for a natural person while expanding the wording to now cover trusts, or a charity or nonprofit organization recognized by the Internal Revenue Service. Related changes are made throughout the subsection.

Section 4. Limited Access Deposit Accounts

The existing "Convenience Account" authority for a nonparty to the account is retained here from what is now section 5A.

Section 5. The "18-65 law" is added here as a separate section

Section 6. The returned check/insufficient funds proviso is added here as a separate section.

Section 7. Cancelled Instruments Provided At The Request Of Depositor

These provisions are retained and moved here from current section 27.

Section 8. Collateral Or Security For Deposit

The authority to collateralize deposits is only granted for government accounts and is retained from section 21 with a few words added from section 22 which covered deposits of the federal government, its agencies and instrumentalities. The remaining provisions of Section 22 are eliminated as unnecessary since they are now covered by the combined section 8.

Section 9. Deposits From Lessor Acting As Trustee For Security Deposits

The provisions of this law are retained from current section 32 and govern security deposits for rentals of residential units.

Section 10. Bank Accounts For Trust Funds

This section has a very broad title but applies only to condominium trust funds. The law is retained from current section 32A.

Section 11. Lost, Stolen or Destroyed Passbooks, etc.

The current section 18 is repeated here and retains the process for replacing a passbook or other instrument evidencing a deposit account.

Section 12. Deposits Of Decedents

The payment of an account to the next of kin of a deceased depositor in specified situations is authorized under current section 33. It is retained here.

Section 13. Withdrawal Of Savings Deposits

The current law, in section16, has three paragraphs relative to when and under what circumstances a bank can require a depositor to give written notice of intention to make a withdrawal in situations where the bank is experiencing unusual demand for withdrawals. This proposal deletes the direct authority for a bank to require a notice but retains the authority to do so with the approval of the Commissioner. Other provisions are retained in this amended section.

Section 14. Agreements To Exculpate Bank For Unlawful Payment From Deposit Account

The existing prohibition on a bank having such an exculpatory agreement with a depositor is retained from section 17.

Section 15. Designation of Beneficiary for Pension, Profit-sharing And Other Such Accounts

This law is taken as is from current section 30.

Section 16. Transfer Of Depositor Or Shareholder Funds As Consequence Of Default Of Debt Owed By Depositor Or Shareholder To Bank

This law establishes a bank's statutory right to transfer money from a depositor's account when that individual owes money to the bank. It is retained from the current section 19.

Section 17. Set Off Or Recoupment By Person Indebted To Bank

This section is carried over from current section 20.

Section 18. Multiple Claimants For Deposited Funds

This law on the process to determine the rights to deposited funds is taken directly from section 24.

Section 19. Recognition By Bank Of Adverse Claimants To Deposits

These provisions are taken from current section 31.

Section 20. Repayment By Foreign Branch Bank Of Deposits

This section is taken as is from the provisions of now section 36.

The rewritten Chapter 167D includes the deletion of the following sections from the current law which are not combined in whole or in part with another section herein. Some of the deletions are consistent with the framework of the revised law and particularly the

broad authority currently in and retained in section 3. Other deletions reflect changed times and/or regulatory changes. A few are explained as follows:

4. Share Deposits
8. Time Deposits
9. Club Deposits
11. Shade Tree And Cemetery Accounts
12. Loans Guaranteed By Massachusetts Higher Education Assistance Corporation
13. Return Of Depositor's Vouchers
14. Advance Advertisement Of Interest Or Dividend Rate
15. Advertisement and Payment of Interest, Rules and Regulations
26. Reduction of Deposit Accounts where Value of Bank Assets Less than total Deposits
28. Advertisement In A Language Other Than English

COMMENT: Due to a unique set of circumstances a law was enacted in 1980 requiring any advertisement of a deposit account or credit product in a language other than English by a financial institution to state what language the forms at the bank were in for such deposit and/or credit transaction. That one law was bifurcated in the 1982 recodification and appeared in Chapter 167D for deposits and Chapter 167E on mortgages and loans for credit products. When Chapter 167E was rewritten in 2004, the advertisement in a language other than English statute was eliminated. This rewrite of Chapter 167D similarly does not retain the provision. The wide use and availability of multi-lingual tellers and account representatives has negated this issue.

29. Employers To Forward Pension Or Retirement Payments To Bank
34. Customer Information; Telephone Service

COMMENT: As with section 28, this law requiring a dedicated telephone line to obtain additional information from a bank on an advertised deposit or credit product or the sale of a security was the result of unique circumstances at the time of the law's passage in 1984. The subsequent passage of Truth-in-Savings laws by both the Commonwealth and Congress, the advancements in technology, websites and other developments as well as changed times have negated the need for a law mandating such a dedicated telephone line.

35. Disclosure Of Funds Availability

COMMENT: This section requires a bank to disclose the time period between when an amount is deposited by check or money order will be available for use or withdrawal as of right. It is deleted in conjunction with the addition of section 2I to Chapter 167. In summary, subsection (1) of section 2I will require a bank to comply with the federal law and regulations on funds availability. As discussed previously, section 2I addresses a number of matters on which both state and federal laws exist on the same subject matter.

SECTION 36 AND SECTION 37
MORTGAGES AND LOANS
CHAPTER 167E

Chapter 167E was completely rewritten in 2004, effective March 30, 2005, to give broad discretion to a state chartered bank to make loans subject to the internal policies of its Board consistent with the safety and soundness of the institution. The rewrite eliminated the dozens and dozens of specified loans and down payment ratios with their accompanying terms and conditions that had existed in statute. Prior to the rewrite, a state chartered bank could make a variable or adjustable rate mortgage ("VRMs") if, among other things, it could be sold in the secondary market. The 2004 Act was not intended to negate that authority although it purposely sought to retain the Commissioner's authority to regulate such mortgages. However, the 2004 Act created unintentional ambiguity in its drafting by subjecting such VRMs to the Commissioner's authority alone and not the ability to make any mortgage loan it could sell in the secondary market**. SECTION 36** restores that authority in statute and eliminates the confusion resulting from the 2004 Act while retaining the separate authority for the Commissioner to regulate adjustable rate mortgages under section 8 of chapter 167E.

COMMENT: Said section 8 of chapter 167E remains mostly unchanged since that provision was added to statute in 1980. Over the years, it has been implemented by various Administrative or Regulatory Bulletins of the Division of Banks. The most recent Regulatory Bulletin 1.3-101 was repealed on May 11, 2012 which fact supports the amendment made in SECTION 36.

Consistent with other provisions of the 2004 Act rewriting this lending law, **SECTION 37** was added to eliminate the statutorily mandated time periods for the inspection of real estate securing a loan due to a default of the payment of principal, interest or taxes and would allow such inspections according to the time periods set in the policy of the bank. Existing law requires an inspection be made within 91 days from the date of default in payment of interest or principal or within 181 days from default on taxes.

SECTION 38 THROUGH SECTION 44
INVESTMENTS AND OTHER POWERS
CHAPTER 167F

These seven SECTIONS of the law make some of the most significant modernization and streamlining changes to the existing statutes. **SECTION 38** rewrites the two paragraphs governing subsidiaries of banks and inserts three paragraphs**.** Currently the law requires all subsidiaries to be approved by the Commissioner under paragraph 7 and pursuant to such terms and conditions as he may impose. Paragraph 7A sets the same frame work for a real estate investment trust ("REIT") subsidiary. The rewritten paragraph 7, in SECTION 38 allows a bank to establish or acquire any subsidiary, including a REIT with ten-days' notice, which can be expedited, to the Commissioner for up to 50% of the net worth of the bank except for a subsidiary subject to the new paragraph 7A. Any amount in excess of that 50% amount would require the prior approval of the Commissioner and be subject to such

limitations and conditions as he may impose. The only subsidiary now requiring the Commissioner's approval is, under new paragraph 7A, one to hold other real estate owned, often referred to as OREO property. Such property usually comes into a bank's possession from a foreclosure or deed in lieu of foreclosure or a similar process. As part of the approval, the Commissioner could add limitations and conditions as he chooses which is consistent with existing law for all subsidiaries. OREO property is singled out as a safety and soundness matter the Commissioner should be aware of and have supervision of the extent of the transaction and further related transactions. A new paragraph 7B is added to allow a subsidiary or affiliate to merge with and into a bank as an alternative to dissolution or liquidation of the business entity.

COMMENT: The authority for a subsidiary or affiliate to merge with and into the bank is allowed under the parity regulations at 209 CMR 47.06(3)(e). Consistent with the streamlining approach of the law, the regulations requirement for prior application and approval is not carried over.

SECTION 40 similarly makes substantial changes to existing law on the powers of state-chartered banks by deleting preconditions to the exercise of the statutory authorities. Under the extended provisions of section 2 of chapter 167F, paragraph 31 authorizes the Parity Powers, so called, while paragraph 32 authorizes the Financial in Nature powers. Each paragraph has separate and distinct requirements that this law eliminates. Currently paragraph 31 allows a state-chartered bank to engage in any power or activity authorized for a federal bank or a bank chartered by another state if such power is contained in regulations of the Commissioner and such regulations are submitted to the Legislature and referred to the appropriate Committee for review. The Legislature is given 90 days for such review after which the Division can file the regulations with the Secretary of State's Office for promulgation. The substantial change made by SECTION 40 on the Parity Powers is to eliminate both the requirement for regulations of the Commissioner and subsequent approval of the Legislature. Chapter 482 does require 30 days advance notice to the Commissioner of the intent to engage in an activity or power authorized to federal banks or out of state banks. A bank may request and the Commissioner is authorized to waive the full notice period. All other provisions of existing law are retained such as the negation of any authority subsequently eliminated by another bank regulatory agency.

The authority in existing Paragraph 32 for Financial in Nature powers neither requires regulations of the Commissioner and therefore no Legislative review but does require approval of the Commissioner prior to engaging in such a power. Consistent with the changes in the Parity Powers, the law in SECTION 40 allows a bank to engage in such powers with 30 days' notice to the Commissioner. A bank may request and the Commissioner is authorized to waive the full notice period. All other requirements of Paragraph 32 are retained.

A new major power is added by **SECTION 44** of Chapter 482. It authorizes a bank on its own or with any other bank, bank subsidiary or other business entity to establish, operate, or subscribe for services for obtaining in any way technology, trust services, financial

planning, compliance, human resource, internal audit or other operations, management or staff functions.

COMMENT: Some existing laws similarly address specific types of transactions such as joining or forming data processing centers, ATM networks, and having agency powers for other banks at a branch office for certain transactions. Some other laws are more general and authorize a bank to join supportive organizations or subscribe for services while the Leeway Law, so called, allows for any activity not prohibited or otherwise authorized. SECTION 44 adds a broad authority for various affiliations and consortiums and to encourage such actions by this separate and distinct power.

SECTION 39 deletes the requirement for advance approval of the Commissioner to engage in the acceptance of future drafts and bills of exchange and related letters of credit. This change is made consistent with other changes to allow banks to proceed in the ordinary course of business.

SECTION 43 repeals the section authorizing voluntary membership in the Federal Deposit Insurance Corporation (FDIC) and the Federal Savings and Loan Insurance Corporation (FSLIC). The chartering statutes for all state-chartered banks now require a bank's deposits to be insured by the FDIC. The FSLIC no longer exists.

Two SECTIONS were included to rewrite the existing authorities for a bank to make investments in insurance company stocks and utility company stocks. The revisions delete the out dated triggering ratios and other dated bench marks which the insurance company or utility company must have met to be eligible for investment by a bank under these specific statutes. **SECTION 41** covers insurance company stocks and **SECTION 42** rewrites the provision on utility company stocks. The existing limitations on investments are retained. The same outdated provisions were deleted in the bill rewriting the Legal List investment authority, House 891, which was enacted and signed into law as Chapter 343 of the Acts 2014.

SECTION 45 THROUGH SECTION 48
TRUST DEPARTMENTS
CHAPTER 167G

The changes made in chapter 167G governing a trust department in a bank are separate and distinct, primarily technical and result from adoption of the Massachusetts Uniform Probate Code, inserted as chapter 190B of the General laws, or update the statute for other changes made since the provisions were last amended, in some cases in the 1980s. Paragraphs 1. and 2. of section 3 of chapter 167G authorize a trust department in a bank to hold money or property in trust or on deposit from certain designees and also to be appointed and act as a specified designee, respectively. **SECTION 45** rewrites both paragraphs to delete references to executors and administrators in any capacity and substitute, in each case, the terms "personal representative" and "voluntary personal representative". These changes reflect the current terminology used in the Uniform Probate Code that was passed in 2008 and became effective in 2012. The definition of

"personal representative" includes an executor and an administrator. The deletion, in paragraph 2, of the proviso at the end on the appointment of a guardian of an estate is also made to be consistent with the Uniform Probate Code that designates a "conservator" to manage an estate.

SECTION 46 amends the law governing collective investment funds used by fiduciaries to temporarily invest cash in their care while they are waiting to make other investments with those monies. Among other things, the statute, paragraph 9 of section 3, specifies the accounting, auditing and reporting related to such collective investment funds The only change made by SECTION 46 is to delete the requirement that the accounting and audit report are to be filed with the Public Charity Division of the Office of the Attorney General if and only if any of the cash in the collective investment fund was being held for charitable purposes. All other provisions of the current law are retained.

Paragraph 11 of section 3 of chapter 167G authorizes and sets out the responsibilities where a bank, when acting in a fiduciary capacity, purchases from any source bonds or securities for which the bank or an affiliate thereof acted as underwriter or distributor; or purchases securities of an investment company for which the bank or an affiliate acted as an adviser, broker, dealer, transfer agent or in several other specified functions. If any such relationship exists it must be disclosed in any account statement related to the purchase and in the case of an investment company the relationship must be disclosed in an annual mailing. **SECTION 47** rewrites the paragraph to extend its authorization and requirements to now cover an "investment trust" in addition to an investment company in order to update the law to recognize this type of investment vehicle. It does so by inserting the term "investment trust" after the term investment company twice in the statute. This term reflects adoption of the Uniform Trust Code, now Chapter 203E of the General Laws, which became effective in 2012.

The last amendment to the trust department statute updates a provision of law added in 1966. A trust department may deposit funds awaiting investment in its bank if the bank transfers securities of equal value to the trust department to cover any amount of the deposit not insured by the FDIC. The statute specifies the securities that may be transferred and currently list securities of the states of Maine, New Hampshire, Vermont, Rhode Island and Connecticut as well as New York. **SECTION 48** deletes the listing of those named states and refers to "any of the states".

SECTION 49 THROUGH SECTION 52
MUTUAL HOLDING COMPANIES
CHAPTER 167H

Chapter 167H of the General Laws governs the formation, operation and authorities of a mutual holding company (MHC). The law was passed in 1987 to allow a savings bank or a co-operative bank in mutual form to establish an organization structure of a parent entity with a subsidiary bank that was and remains the corporate model for many stock banks and businesses. Since the first mutual holding company was formed in 1988 there have been a total of 68 applications approved. After mergers and conversions to stock there are,

as of December 16, 2014, 45 existing mutual holding companies. The law has not been substantially amended since its passage although tax rulings in the mid-1990s have impacted the formation process.

SECTIONS 49 and 50 streamline the transaction process whereby an existing mutual bank agrees to become a separate bank subsidiary of an existing mutual holding company. Currently such a transaction is accomplished by the stand -alone mutual bank reorganizing to form its own mutual holding company and then having its new parent merge with and into the previously existing MHC resulting in one mutual holding company with two separate bank subsidiaries. Such multi-step transactions require numerous corporate and regulatory approvals and extensive time to complete. Section 2 of chapter 167H governs the reorganization into a mutual holding company by either a savings bank or a co-operative bank in mutual form. SECTION 50 retains the existing law but adds a separate authority for each type of bank to reorganize. It allows the reorganization to be structured under any procedures acceptable to the Commissioner including but not limited to the merger of the mutual bank into a new bank that is formed for the sole purpose of completing the transaction. The Commissioner is authorized to grant all approvals and certificates for the formation of the new bank if it is to be state-chartered. SECTION 49 adds a definition to the law of an "Interim bank" formed solely to participate in and facilitate an acquisition, reorganization or other corporate transaction. Under the definition, the interim bank could be a federal bank or an out-of-state bank as well. The authority in SECTION 50 would allow a stand-alone mutual bank to come under an existing mutual holding company by merging with an interim bank formed for the transaction by the mutual holding company.

COMMENT: Section 18 of the Chapter 167I adds authorities for the Commissioner alone to approve the formation of an interim bank for a corporate transaction and not the Board of Bank Incorporation. The definition added to chapter 167H by SECTION 49 makes a cross reference to that chapter 167I authority.

One of the benefits of a mutual holding company is that its subsidiary banking institution that is in stock form can merge with a mutual banking institution defined in chapter 167H to be a savings bank or a co-operative bank in mutual form. The authority for such a transaction is set out in clause (2) of section 7 of the chapter. SECTION 51 expands and clarifies that authority to now cover all types of mutual institutions including a Massachusetts or federal credit union. Also now listed in the statute are federal mutual banks, out-of-state federal mutual banks and out-of-state mutual banks.

COMMENT: The expanded listing and clarification of banks which can be involved in a mutual bank related transaction are consistent with amendments to the corporate bank transaction authorities now set out in Chapter 167I.

SECTION 51 rewrites two sections of existing Mutual Holding Company law that govern corporate governance provisions, in part, in section 6 of chapter 167H and authorized corporate transactions in section 7.

The revisions to section 6 delete the current language that limits the MHC to the rights, powers and privileges, except deposit taking, of its prior mutual bank while adding authority for the MHC to elect the corporate governance procedures of chapter 156D of the General Laws. The by-laws are required to specify the body of law chosen for corporate governance provisions.

The revisions to section 7 clarify and expand the merger and acquisition options for a MHC. Changes to clause (2) on mutual banks and credit unions are described above. The law amends clause (1) to include a limited purpose trust company, as defined, as an entity that can be acquired. That change is consistent with additions in chapter 167I on limited purpose trust companies and explained further therein. Clause (3) adds authority for the MHC to acquire a federally chartered bank or a bank chartered by another state that had reorganized into a MHC. A new clause (4) is added to provide clear authority for a MHC to acquire a stock bank holding company as long as the MHC is the continuing entity.

The remaining four clauses are retained from existing law and only renumbered.

The 1987 Act authorizing the formation of a mutual holding company did not directly address the unwinding of the parent/subsidiary organization structure. **SECTION 52** adds a section to chapter 167H to establish a framework for the unwinding of a mutual holding company with its subsidiary banking institution returning to its original mutual bank charter. The Commissioner would have to approve the transaction under a plan approved by the Corporators of the MHC and the Commissioner could also promulgate regulations and add other provisions to the transaction. Other conditions for unwinding an MHC are in SECTION 52.

SECTION 53
NEW CHAPTERS 167I AND 167J

This one SECTION adds two new chapters of the General Laws to cover the subject matters in their respective titles. In summary, they place in the appropriate chapter corporate transactional authorities, Chapter 167I, and corporate governance provisions, Chapter 167J, which were applicable to and replicated in chapters 168, 170 and 172 of the General Laws governing savings bank, co-operative banks and trust companies, respectively .The elimination of the replication in each law substantially streamlines these core banking statutes. Updates and modernization of the laws are made in each new chapter.

CORPORATE BANK TRANSACTIONS: MERGERS, CONSOLIDATIONS, PURCHASE OF ASSETS AND CONVERSIONS
CHAPTER 167I

The current framework of the banking laws governing corporate transactions, as on other matters, generally replicates each type of transaction in each of the Chartering Chapters for savings banks, co-operative banks and trust companies. As a result, there are upwards of 36 statutes covering about 12 types of transactions. Chapter 167I sets out in one law those transactions which were repeated in each Chartering Chapter or were applicable to all

mutual banks or all stock banks. Substantive additions and deletions are made to update and streamline the laws as noted herein. Some transactions are enhanced by the inclusion of other institutions. Additionally, all cross- references to Chapter 156B were changed to the corresponding sections of the new corporate statute, Chapter 156D. Among other things, that change will clarify that documents evidencing a corporate transaction will be officially "filed" with the Secretary of State and not merely "placed on record". The repetitive framework of the existing laws is reflected by the references to the cited statutes on which the new section in this Chapter is derived. All existing transactions are retained except for the authority for a mutual bank to be involved in a simultaneous conversion to stock and merger. No application for such a transaction has ever been filed for various reasons. Authorities for the Depositors Insurance Fund and the Co-operative Central Bank are retained for mergers as well as charter conversions out of or into the state system. Chapter 167I has 18 sections.

This summary details the substantive changes being proposed. It does not detail every wording change made to make the statutes internally consistent or applicable to all the various types of banks that can be involved in the covered transaction.

Section 1. Definitions

There are 19 definitions in this section and most address various types of banks and appear necessary to reflect all the possible transactions covered by the chapter.

A definition of Limited Purpose Trust Company is included to reflect the passage of Chapter 227 of the Acts of 2012 to recognize that such entities can now be merged or acquired. Although not affecting Massachusetts chartered limited purpose trust companies, the definition is broader than that in section 9A of Chapter 172 of the General Laws to cover such entities in other jurisdictions as well.

Section 2. Merger Or Consolidation Of Mutual Bank And Thrift Institution
(See C. 168 ss. 34, 34A, 34B and C. 170 ss. 25, 26A, 26B)

This section combines the several laws allowing a savings bank or co-operative bank in mutual form to merge with any other bank in mutual form. Such banks include intra-industry, other state chartered, out of state chartered or federally chartered mutual banks. Other provisions from the cited statutes above are retained.

COMMENT: Although there are separate sections at the end of this new chapter for transactions involving the excess insurers for savings banks and co-operative banks the requirement is retained in this section and section 3 that no merger can be consummated until satisfactory arrangements have been made with an excess insurer, if applicable. It is retained in these two sections to highlight it as a precondition to completing the transaction.

Section 3. Consolidation or Merger of Stock Corporations into State or Federally Chartered Stock Corporations
(See C. 168 s. 34D, C. 170 s. 26D and C. 172 s. 36)

This section combines the three cited laws allowing a state-chartered stock bank to merge with any other bank in stock form. Such banks include intra-industry, other state chartered, out of state chartered and federally chartered banks. Other provisions of the cited statutes are retained but cross -references to Chapter 156B are changed to applicable provisions of Chapter 156D.

As noted above, the law adds a limited purpose trust company to the listing of stock institutions in this section.

Section 4. Merger Or Consolidation Of Credit Unions Into A Mutual Bank Or Subsidiary Banking Institution
(See C. 168 s. 34F and C. 170 s.26F)

This section contains two substantive changes. Current law authorizes a state-chartered credit union to merge with and into a state-chartered savings or co-operative bank. That authority is retained and clarified to specify that the savings bank or co-operative bank must be in mutual form. As proposed, this section would add authority for a credit union to merge with and into the subsidiary stock bank of a mutual holding company. It also adds authority for a federal credit union to merge with and into any of the types of banks covered by this section. Other provisions of existing law are retained.

Section 5. Consolidation Of A Mutual Bank On An Expedited Basis
(See C. 170 s. 26)

Co-operative bank law allows for the expedited merger of a mutual co-operative bank with and into another co-operative bank based on specified supervisory conditions. That authority is retained in this section. No such provision exists in this form for a mutual savings bank. This section adds such authority for the expedited merger of a troubled savings bank under the same conditions in law for a co-operative bank. In summary, the existing law is now made applicable to both savings banks and co-operative banks.

Section 6. Restrictions On Approval Of Merger Or Consolidation Applications
(See c. 168 s.35A, C.170 s. 26G, C. 172 s.38A)

This section consolidates into one statute the three repetitive laws restricting the Commissioner's approval of a merger if certain factors exist. Those two factors precluding approval are (1) if the bank was chartered for less than three years or (2) if as a result of the merger the applicant bank would control more than 30% of deposits, as defined, in the Commonwealth. The laws allow the Commissioner to waive those restrictions if economic conditions so warrant. All such provisions are retained herein.

Section 7. Consummation Of A Merger Or Acquisition
(See C. 168 ss. 34, 34A, 34B, and C. 170 ss. 25, 26A, 26B)

As indicated above, upon the consummation of a merger certain statutes detail the rights and liabilities of the continuing institution. The laws also set out certain filing requirements. Section 7 combines those provisions into this one statute.

Section 8. Advance, Loan Upon Or Purchase Of Bank Assets Or Stock
(See C. 168 s.35, C.170 s.24 and C. 172 s. 38)

This section consolidates the three current laws governing the purchase of the assets or stock of a state chartered bank or a federally chartered bank as well as a bank in possession of the Commissioner. Loans upon such assets or stock are also included. The existing provisions are retained herein. The law adds a limited purpose trust company to the list of banks included in this section.

Section 9. Conversion Of A Mutual Bank To A Stockholder Form Of Corporation
(See c. 168 s.34C and C. 170 s. 26C)

Since 1982 state chartered mutual savings banks and co-operative banks have been authorized to convert to stock form. The stock conversion is subject to regulations of the Commissioner, which are required to be similar to federal regulations governing federal thrift institutions. Moreover, the present law requires the Commissioner's regulations to be filed with the Legislature for approval by Resolution of the House, the Senate and the Governor. This section makes several substantive changes to that process. It eliminates the requirement that the Commissioner follow federal regulations. It also deletes the requirement for submission of the regulations to the Legislature with the attendant approval by Resolution of the General Court and the Governor. The requirement for such a conversion to be subject to regulations of the Commissioner is retained.

Additionally, a provision is added to the statute to recognize the Commissioner's authority to conduct a supervisory conversion of a troubled mutual bank to stock form if he determines that upon liquidation, there would be no equity value realizable by the depositors.

COMMENT: Supervisory conversions have been conducted under the Division's regulations at 209 CMR 33.13 to 33.20, inclusive, as well as Regulatory Bulletin 3.1-101. The inclusion of the authority in this section is solely to add the statutory weight to this unique transaction. To date, no supervisory conversion has been challenged.

Section 10. Conversion Of A Credit Union To A Mutual Bank
(See c. 168 s. 34G and C. 170 s. 26H)

This section makes a substantive addition as well as consolidates the two sections cited above. It retains the existing authority for a state chartered credit union to convert to a mutual savings bank or a mutual co-operative bank. It adds the authority for a federal

credit union to do the same and do so under a specified provision of credit union law and subject to the approval of the Commissioner.

Section 11. Conversion To A Federal Charter
(See c. 168 ss. 36, 37, C. 170 s.28, and C. 172 s. 36)

Current laws cited above set out extensive provisions for a savings bank to convert to a federal savings bank or a federal savings and loan association and for a co-operative bank to make the same conversions to a federal charter. In all such conversions provisions relative to the excess insurer of a savings bank (DIF) or a co-operative bank (SIF) are triggered. Trust company law is completely different and not just for the lack of an excess deposit insurer. Chapter 172 provides for the so-called two-way street. It simply allows for a trust company to convert to a national bank charter without any approval of the Commonwealth. Only a 60-day notice to the Commissioner is required. Notice and vote of the stockholders is also required. This section establishes this same streamlined conversion process for savings banks and co-operative banks since the proposed law covers all state chartered banks the same. Important provisions for the excess deposit insurer for savings banks and co-operative banks are set out in later sections of this new Chapter. This same process for a merger with and into a federal charter, which currently exists for all banks, is retained herein. A major substantive change made by this section allows a state-chartered bank to convert to any federal charter as opposed to the current laws historical ties to similar industries (i.e. thrift to thrift institution and commercial to commercial bank) conversion authority.

Section 12. Conversion By A Federal Bank
(See C. 168 s. 38, C. 170 s. 29 and C. 172 s. 36)

As with the above section, the provisions for a federal bank to convert to a state charter are taken from trust company law and subject the federal bank only to the approval and conditions imposed by the Commissioner. Important provisions for an excess insurer are retained in later sections herein. Another major change now allows for the federal bank to convert to any type of state charter not just a conversion to a similar charter. Accordingly, as an example, this section will now authorize a federal savings bank in stock form to convert to a state-chartered trust company.

Section 13. Acquisition Of A Company Having Capital Stock Divided Into Shares
(See C. 172 s. 26B)

This section governs the reorganization of a stock bank into a holding company structure and is taken from the cited provision of Chapter 172. A substantive deletion eliminates the now statutory requirement for two newspaper publications of the meeting of the stockholders to vote on the reorganization. The section retains the current requirement of notice to a stockholder be sent to his or her address in the records of the bank.

Section 14. Notice Of Proposed Acquisition; Disapproval
(See C. 172 s. 26A)

This section governs a change in control of a stock bank and is taken directly from the cited provision of Chapter 172. All authorities of the Commissioner are retained.

Section 15. Dissolution And Liquidation
(See C. 168 s. 33, C. 170 s. 27, and C. 172 s. 39)

The authority to liquidate a sound bank is provided for in statute for all state chartered banks. The process requires the approval of the Commissioner and the voting body of the bank. The dissolution is to be carried out by a committee of three members of the voting body that would be trustees in a mutual savings bank, shareholders in a mutual co-operative bank, and stockholders in a stock bank. That similar process is consolidated into this one section.

Section 16. Provisions Applicable To Members Of The Depositors Insurance Fund
(See C. 168 ss. 34A, 34B, 34D, 36, 37, and 38)

The merger of a savings bank with and into a bank with a different charter, the conversion of a savings bank to a federal charter or the conversion of a federal bank to a state chartered savings bank all trigger important provisions currently in law for the Depositors Insurance Fund. Those provisions include but are not limited to cessation of excess insurance, rights to dividends, and proceeds from any dissolution of the Fund. Similarly, conversion to a savings bank requires payments into the Fund by the federal bank as specified in current law. This section retains all such provisions relative to the Fund for any of the corporate transactions now covered. As evidenced by the several cited statutes above there are a number of provisions resulting in a lengthy section.

Section 17. Provisions Applicable To Members Of The Co-operative Central Bank
(See C. 170 ss. 28 and 29)

This section retains the existing provisions of law applicable to a co-operative bank when merging or converting out of the state chartered co-operative bank system or for a federal bank converting into such system that trigger rights and authorities for the Co-operative Central Bank. Although the subject matter is the same as above for savings banks the provisions for the Depositors Insurance Fund and the Co-operative Central Bank vary significantly and therefore retained in separate sections of this Chapter. The section contains updates to the Co-operative Central Bank's law based on amendments in Chapter 235 of the Acts of 2012.

Section 18. Authority To Establish An Interim Bank

This section authorizes the Commissioner of Banks and not the Board of Bank Incorporation to authorize and issue appropriate certificates for the formation of an interim bank for the sole purpose of facilitating a multi-step corporate transaction

involving a state-chartered bank. An interim bank would not conduct banking business. The interim bank would be formed and owned by a bank, a bank holding company or a mutual holding company. The Commissioner is authorized to subject the formation of the interim bank to any terms and conditions he may impose.

COMMENT: This authority is granted in conjunction with amendments to the bank holding company statute, Chapter 167A, set out in SECTION 23 of the law as well as to the mutual holding company statute, Chapter 167H, set out in SECTIONS 49 and 50 of Chapter 482.

SECTION 53 (CONTINUED)
CORPORATE GOVERNANCE PROVISIONS AND REQUIREMENTS
CHAPTER 167J

This Chapter governing certain corporate provisions must be considered in conjunction with the revised chartering Chapters for savings banks, Chapter 168; co-operative banks, Chapter 170; and trust companies, Chapter 172. Those chartering Chapters control the formation of such banks; their internal Boards and their composition, committees, officers, meeting requirements and other such internal matters. For the most part, as more fully detailed in the summaries of those Chapters, traditional/historical provisions governing such operations and management are retained. However, certain sections are added that will be applicable to a savings bank or a co-operative bank in stock form.

The new Chapter 167J sets out in one law those provisions that were repeated in each chartering Chapter or were applicable to all mutual banks or to all stock banks with substantive additions and deletions made to update or streamline the laws as noted herein. The repetitive framework of the current laws is reflected by the references to the cited statutes on which the new section of this Chapter was modeled. Additionally, the title for each section, where appropriate, is taken from the existing title in the Official Edition of the General Laws for ease of reference.

This summary details substantive changes that are being proposed. It does not recite every wording change made to make the statutes internally consistent or applicable to all banks. Examples of such undocumented changes would include changing references to "trust companies" to stock banks or adding references in every case, to "trustees" or "directors" where necessary to cover all banks.

Section 1. Definitions

The definitions used in this chapter are primarily taken from existing chapter 167F of the General Laws with changes consistent with the statute's applicability to all state-chartered banks regardless of charter or mutual or stock form. Since this chapter governs internal operations of a state-chartered bank, the definition of "federally-chartered bank" is not included.

"Bank", A reference is added to chapter 167H to reflect banks organized under that law in conjunction with a reorganization into a mutual holding company structure.

"Capital stock", The reference to trust company in this definition from Chapter 167F is changed to stock corporation to also be applicable to savings banks and co-operative banks in stock form.

"Mutual bank", This term is used instead of the existing term "thrift institution" in Chapter 167F for savings banks and co-operative banks in mutual form.

"Stock corporation", This term is rewritten primarily to reflect the now existing possibilities for a savings bank or a co-operative bank to be in stock form such as being chartered as such; converting to stock; or as a result of a reorganization into a mutual holding company.

Section 2. Bonding Of Officers And Employees
(See C.168 s.18; C 170 s.15; and C. 172 s. 15)

The officers and employees of a bank are required to be bonded as reflected by the three cited statutes. The briefly stated requirement is the same in each law. This section is taken from C. 168 s. 18 with the added reference to the board of directors to cover other banks. The first sentence of s. 15 of C. 172 on the officers of a trust company is retained in that chapter.

Section 3. Duties Of Treasurer Under Other Provisions Of Law
(See C. 168 s. 21; C. 170 s.13; and C.172 s.17)

The duties of a bank treasurer are repeated exactly in each cited statute. The only difference is the reference to the internal chapter governing the bank for which the treasurer works. This one section refers to all three governing Chapters. This provision is taken from s. 21 of C. 168 and adds the references to the other governing Chapters, extends the reference to core banking laws from Chapter 167G to 167J and deletes the reference to Chapter 183 that would still be covered by the reference to "other laws".

Section 4. Misconduct Of Trustee, Director, Officer, Agent Or Employee
(See C. 168 s. 22; C. 170 s. 16; and C. 172 s. 21)

As in the above law, this provision on misconduct is replicated in each governing Chapter with internal reference only to that Chapter. This one section refers to all three governing Chapters. Chapters 170 and 172 make reference to an agent of the bank but C. 168 does not. The reference and applicability to an agent of the bank is retained. All other provisions including the punishments are the same and retained. It is taken from s. 16 of C. 170 and adds "trustee" to the list of people covered by the statute. It also extends the reference to the core banking statutes through Chapter 167J.

Section 5. Fees, Commissions, Gift Or Other Consideration For Or In Connection With The Business Of The Bank
(See C. 168 s.23; C. 170 s.17; and C.172 s.20)

This provision prohibiting the payment of fees, commissions or gifts to bank officials for their duties is repeated exactly in each governing Chapter. The law also allows for compensation or other reasonable fees for services rendered. It is taken from section 23 of Chapter 168 for its additional reference to trustees.

Section 6. Violations Of Law, Penalties
(See C. 168 s.23A; C.170 s.19A; and C.172 s.23)

This law sets out the punishment for bank officials violating certain specified internal governing laws. But for the references to those internal sections, the law and punishment in each governing Chapter is substantively the same. This provision is taken from section 23A of Chapter 168. The statutory cross-references are updated to the appropriate sections of the new Chapter 167J.

Section 7. Payment Of Interest On Deposits
(See C. 168 s. 29; C. 170 ss. 20 and 20A; and C. 172 s. 35)

Each governing Chapter authorized a bank's Board to pay interest on deposits with much discretion on the amount and timing of such payments left to the Board. The cited statutes were retained from laws applicable in the 1960s and 1970s and earlier. Accordingly there are references, in co-operative bank law to dividends on fully paid shares, distinguished from deposits, and in trust company law to the regulation of interest rates on deposits by federal authorities. This section, based on section 29 of Chapter 168, simply allows a bank to pay interest on deposits as allowed by law, the terms of the account and by-laws of the bank. A reference to section 10 of Chapter 167D is eliminated since that section was repealed in 2004. That section had governed school savings accounts.

Section 8. Trustees, Directors Or Officers Serving In The Same Capacity For Other Financial Institutions.
(See C.168 s. 10; C. 170 s. 10; and C. 172 s.19)

Each of the governing Chapters authorizes a bank official to work for another financial institution if the Commissioner of Banks issues a permit for such an interlocking capacity upon his finding it is in the public interest. Generally the statutes provide exemptions if one bank does not take deposits, makes real estate loans or if the banks are affiliates under the same holding company. The prohibition on such interlocks was relaxed beginning in 1975 with the ability to obtain a permit from the Commissioner. This section, based on section 19 of Chapter 172, updates the law by eliminating the prohibition and the reference to 1975 while retaining the permit requirement for such an interlock. It is also updated to reflect that the holding company may be a mutual holding company.

Section 9. Annual Report To Commissioner, Balance Sheet
(See C.168 s.26; C.170 s. 18; C. 172 ss. 22 and 22A)

Each bank is required to make an annual report to the Commissioner within thirty days of the last business day in December under the cited statute in each governing Chapter. Those

laws also require a balance sheet to be prepared under GAAP and available to depositors or members. Stock banks are required to have the annual report and its general books available to stockholders as well. This section is taken from section 22 of Chapter 172 to address that stockholder requirement. It deletes the requirement for the annual report and books of the stock bank be available and substitutes a statement of condition to be made available. For mutual banks the availability of a statement of condition of the bank is substituted for the now required balance sheet. A separate requirement for stock banks to submit trial balance sheets on order of the Commissioner in section 22A is eliminated since the Commissioner can require any report he so orders under section 7 of Chapter 167.

Section 10. Loans Or Extensions Of Credit To Officers, Trustees Or Directors
(See C.168 ss. 19 and 20; C. 170 s. 19; and C. 172 s.18)

The governing Chapter for each bank contains provisions relative to insider loans that in general prohibit such loans except as authorized in the statute. The laws then set out the approval process; the dollar limitations; a prohibition on preferential treatment; as well as the requirement for a specified annual report on such loans to be made to the Commissioner. The cited statutes make that report a public document. The dollar limitations and other provisions in each law are the same although savings bank law has the reporting provisions in a separate section, s.20, while co-operative bank and stock bank law each have all the requirements in one statute. This section makes a significant change in the law governing insider loans. It retains the general prohibition but then authorizes such loans only to be made in compliance with federal laws and regulations governing such loans. It does so by cross-referencing subsection (6) of section 2I of Chapter 167, added herein by SECTION 17. Section 2I, as described previously, establishes a listing of federal laws and regulations which a state-chartered bank must now comply with instead of similar state provisions in Massachusetts law or regulation.

Section 11. Reports to the Board Of Directors, Trustees Or Designated Committee
(See C.168 s. 11; C. 170 s. 11; and C. 172 s. 16)

The cited statutes all set out a detailed statutorily specified listing of matters to be reported periodically as specified to a bank's Board. The current laws specify transactions as well as dollar amounts that trigger reporting but allow the Commissioner, upon application, to waive or modify such reporting requirements. This section eliminates the list of transactions and allows the Board to determine what shall be included in any such report. This change reflects, in part, that the Commissioner could negate the specified reportable transactions as well as recognizes that technology can now provide a Board with a tailor made report of data vital to the operations of that bank's business model.

The section also allows the Board to designate a committee of the Board to receive such report. Under current law such a designation can occur for a bank in stock form. Moreover, this change also recognizes that under existing law a bank's Board of Trustees or Directors, as applicable, need to meet only quarterly except for the board of a mutual co-operative bank which must meet six times a year unless allowed to meet less frequently with the commissioner's approval.

Section 12. Audits Of Mutual Banks
(See C. 168 s. 25; and C. 170 s. 14)

Under existing law only savings banks and co-operative banks in mutual form are required to have an Audit Committee and for such Committee to conduct an audit of the bank at least once in every twelve months. Other provisions of the cited statutes are the same for each mutual bank such as choosing the CPA; informing the Commissioner of the CPA chosen and reporting the results to the Board and the Commissioner. This section retains all but one such provision for mutual banks with only other appropriate wording changes to apply to both savings banks and co-operative banks. The one provision not retained is the requirement for written notice to the Commissioner that an auditor has been chosen. The requirement that the commissioner receives a copy of the audit when completed is retained. The requirements for the formation of Audit Committees are set out in separate sections of current law, section 16 of Chapter 168 for savings banks and section 11 of Chapter 170 for a co-operative bank. The requirements for an Audit Committee are retained in sections 20 and 14, respectively, of their applicable rewritten Chartering Chapter.

Section 13. Maintenance Of Capital And Surplus Accounts
(See C.168 ss. 27 and 27A; C. 170 ss. 21, 22 and 23; C. 172 ss. 31 through 34)

As reflected by the several cited statutes in each of the governing Chapters, banks are required to maintain various capital and/ or surplus accounts. Some are at the discretion of the Board, some for specified historical purposes and some for Federal requirements. The several statutes may contain provisions for the funding of these accounts; minimum or maximum percentage amounts; authority for distributions from the account; specified composition of the investments for such reserve accounts as well ramifications for the failure to maintain such accounts. Today the primary purpose of such accounts is to ensure that the bank is in a safe and sound condition. Now that all state-chartered banks are required to have federal deposit insurance there are uniform standard measures for appropriate capital/surplus accounts for achieving safe and sound financial footings as well as measures for sufficient liquidity. Management of a bank is responsible for maintaining, at a minimum, appropriate ratios for all such measures.

For all these reasons this section does not retain any of the existing capital/surplus/reserve provision from existing law. It does mandate that a bank maintain the appropriate accounts to, at a minimum, be adequately capitalized as determined by the federal deposit insurer or, if applicable, the Commissioner.

NOTE: The following Sections 14 through 20 are taken directly from chapter 172 governing trust companies as well as savings banks and co-operative banks in stock form, which includes a subsidiary bank of a mutual holding company. The very few substantive changes are noted in each section.

Section14. Capital Stock
(See C.172 s.24)

The following six sections of this law are taken directly from the cited statute of Chapter 172 and govern the classes of stock; issuance; increase or reduction of stock; change in par value; as well as rights and options. All substantive provisions are retained including all powers of the Commissioner. One series of substantive changes is made to substitute cross references in the section to provisions of the old corporate law statute, Chapter 156B, to now refer to the appropriate similar provision in the new corporate statute, Chapter 156D. This change to cross-references to Chapter 156D is being consistently made throughout this rewrite of the banking laws. Two such changes are made. Two other internal statutory references are updated.

Section 15. Records And Reports Of Transfer Of Stock
(See c. 172 s.26)

This section relative to certain transfers of stock is taken directly from the cited statute. It requires, among other things, that the commissioner be notified of any transfers that would make a person the owner of 10% or more of the stock of the bank.

Section 16. Determination Of Record Date Of Right To Notice Of And To Vote At Stockholders' meeting
(See C.172 s. 27)

This section is taken directly from the cited statute and governs the record date for the right of a stockholder to vote; receive a dividend or the right to consent or dissent on matters.

Section 17. Dividends
(See C.172 s. 28)

This section governing the payment of dividends by a stock bank is taken directly from the cited statute. It specifies the timing and types of dividends which can be made as well as when the commissioner's approval is required for certain dividends.

Section 18. Options To Purchase, Issuance And Sale Of Shares Of Capital Stock To Employees
(See C. 172 s. 25)

This section governing stock option plans is taken directly from the cited statute. Stock banks are allowed to have stock option plans for their directors, officers and employees if approved by the stockholders and the commissioner.

Section 19. Stock Purchase Plans, Restricted Stock Purchase Plans and stock Grant Plans (See C. 172 s. 25A)

This section governing other stock plans for employees, officers and directors of a stock bank is taken from the cited statute with one substantive deletion. The existing proviso that any such stock plans established by a mutual savings bank or a mutual co-operative bank that has converted to stock must conform to federal regulations is deleted. The change reflects the goal of having all stock banks governed by this same statute as well as to recognize that a savings bank or co-operative bank can now be chartered in stock form or can become a stock bank as part of an internal reorganization into a mutual holding company and not just by a conversion from mutual to stock form.

Section 20. Issue And Sale Of Capital Notes And Debentures (See C. 172 s. 30)

This section governing the authority and requirements for a stock bank to sell and issue capital notes and debentures of any maturity is taken directly from the cited statute. The requirements for such a transaction, including when necessary, the approval of the commissioner, are retained.

The law includes a section 21 to provide a bank with additional options for its corporate governance provisions. It is similar to the authority added to section 6 of Chapter 167H for a mutual holding company.

Section 21. Selection of Corporate Governance Provisions

This provision authorizes a bank, subject to safe and sound banking laws, regulations and practices, to elect to follow the governance procedures under corporate law in chapter 156D or the provisions applicable to its parent holding company. The bank's by-laws would have to specify the governance selection.

SECTIONS 54, 55 AND 58
CHARTERING CHAPTERS 168, 170, and 172
SAVINGS BANKS, CO-OPERATIVE BANKS AND TRUST COMPANIES, RESPECTIVELY
INTRODUCTION

Prior to the 1982 Act re-codifying the banking laws, each of the Chartering Chapters contained all provisions of law relative to that type of charter. That recodification carved out into separate chapters the same powers for banking offices, deposits and accounts, mortgages and loans, investments and other powers and trust powers. As previously summarized, this law now draws out from each Chartering Chapter those similar provisions on corporate transactions as well as general corporate governance provisions. The result is the streamlined Chartering Chapters now focus on the provisions that govern the formation of the bank and its continuing internal management consistent with its historical establishment. For savings bank and co-operative banks which convert or reorganize into stock form, the applicable stock management statutes are added to the

Chartering Chapters for those banks thereby eliminating statutory cross references to the stock trust company statute, chapter 172. The provisions for the Employee Retirement Associations for savings banks and co-operative banks are also retained unchanged in their respective Chartering Chapters. The statutory process for organizing a bank is standardized within each chapter while retaining authority for a savings bank or a co-operative bank to be established in mutual form. The following is a general summary of the consistent changes made to the Chartering Chapters by Chapter 482. Specific changes made within each chapter are also detailed in a review of each chapter.

GENERAL CHANGES

- All corporate transaction laws are consolidated in the new Chapter 167I.
- All standard corporate governance provisions are consolidated in the new chapter 167J.
- The provisions for chartering a bank are taken from chapter 172 and used in chapters 168 and 170 for consistency with the following changes in all three chapters:
    - The Board of Bank Incorporation is specifically authorized to determine the amount of capitalization of a new bank based on the application and business plan before the Board. NOTE: The Board's current policy is for a capitalization of $ 8 million dollars, net of organizational expenses. Section 4 of chapter 172 refers to capitalizations of $100,000 and $200,000 for establishing a bank in municipalities of less than 50,000 or more than 50,000 respectively. The mutual bank capitalization provisions in savings bank and co-operative bank law are even less.
    - A separate newspaper publication listing the proposed organizers of the bank is eliminated since that is presently done in the Board's public hearing notice.
- A provision is added in each organization section to clarify that a bank can amend its Articles of Organization.
- Specifies that a bank's Board could take action by written or electronic unanimous consent without a corporal meeting similar to business corporation law.
- Adds a provision allowing a Board Resolution to negate the authority for a trustee or a director to attend meetings only by telecommunication.
- Similar to the statute governing a bank in stock form, a provision is added to savings bank and co-operative bank law for such a bank in mutual form to add two trustees or directors after the annual meeting.
- Following existing savings bank law, the law eliminates that the by-laws of a co-operative bank and of all stock banks are to be filed with the Division of Banks and for co-operative banks not effective until so filed, and for all stock banks to submit the amendments with a statement under pains and penalties of perjury that the filed by-laws are a true and correct copy.

SECTION 54
SAVINGS BANKS
CHAPTER 168

As of December 31, 2014 there were 59 savings banks covered by this chapter of the General Laws. The above summary describes the rewritten framework of this statute. The following highlights the specific changes affecting state-chartered savings banks.

Since the chapter will now contain provisions for savings banks in mutual as well as stock form, definitions are added to section 1 for "capital stock', "mutual bank", "stock bank" and "stockholder". For formation of a bank, definitions of "Board" for the Board of Bank Incorporation and "Incorporators" are added. The definition of "Annual meeting" is deleted as unnecessary.

The laws a savings bank is subject to are expanded in section 3 to now cover the new chapters 167I and 167J.

Consistent with the standardization of the process for organizing a bank the number of incorporators for a savings bank is reduced from 25 to 15 in section 5.

Section 10 now specifies which of the following sections apply to a mutual bank and those that apply to a stock savings bank.

Section 11 reduces the number of corporators who must be residents of the Commonwealth from three-fourths to a majority
A significant change for a mutual bank is made in section 18. Currently, the corporators of a mutual bank elect the President of the bank. Under this law, the President is elected by the Board of Trustees. NOTE: Trustees are elected by and from the Corporators and are charged with governing the mutual bank. Authority is also added to allow trustees to fill a vacancy in the office of President or clerk or other officers between annual meetings.

Section 21A is applicable to both mutual and stock savings banks and as described in the introduction to the Chartering Chapters allows a bank's governing board and its committees to take action by unanimous consent without a meeting.

The Savings Banks Employees Retirement Association statutes, now sections 27 to 32, are retained as they currently exist with only changes made to update several internal statutory cross references.

The completely rewritten Chapter 168 includes the provisions on the formation and chartering of a new savings bank whether in mutual or stock form. As part of that process the fifteen or more individuals who are seeking to form the bank must sign an Agreement of Association for that purpose. Among the several matters specified in statute to be included in that Agreement are the residence and post office address of each of the incorporators. Later in the formation process when Articles of Incorporation are filed for the corporate entity with the Secretary of State, the law similarly mandates that the

Agreement of Association be included with the filing as well as the "name, residence and post office address of each of the officers and directors…'.

Chapter 482 deletes the requirements for residence and post office addresses in sections 5 and 8. The deletions are done to protect the safety, confidentiality and privacy of the families and homes of these potential bank executives. All applicable bank regulatory agencies would have this information, as necessary, and would keep that information confidential as they have done so for many years. Such action by regulators has been done in response to situations of kidnappings of family members and home invasions. The same changes have been made in the chartering sections in chapters 170 and 172 on co-operative banks and trust companies, respectively.

SECTION 55
CO-OPERATIVE BANKS
CHAPTER 170

There were 50 state-chartered co-operative banks at December 31, 2014. In addition to the substantive changes discussed in the introduction to the Chartering Chapters the following amendments are made to co-operative bank law.

As in savings bank law, definitions are added to chapter 170 for co-operative banks in stock form. Those definitions are "Board", "Capital stock", "Mutual bank" and "Stock bank". Definitions deleted as unnecessary are "Bank day", "Net profits" and "Share capital".

Section 3 deletes the current requirement that a change in the name of a co-operative bank be approved by the Commissioner.
COMMENT: Neither savings bank nor trust company law now requires the Commissioner to approve such a bank's change to its name.

The minimum number of incorporators for a co-operative bank is reduced from 20 to 15 consistent with the standardization of the process for organizing a new bank.

Section 10 specifies those provisions of the chapter that apply to a mutual bank and those that apply to a stock co-operative bank.

The authority for a co-operative bank's board to act with unanimous consent without a meeting is set out in section 20 although the reference to a saving bank is incorrect here.

The Co-operative Bank Employees Retirement Association statutes, now sections 21 to 26, are retained as they currently exist with only changes made to internal statutory cross references.

The law deletes requirements for residency and post office address information on potential bank executives in the chartering process for a new bank in sections 5 and 8 for privacy and safety reasons. See a more detailed comment at the end of SECTION 54.

SECTIONS 56 AND 57
CREDIT UNION LAW
CHAPTER 171

Since 1992 a credit union has been authorized to merge with and into a savings bank or a co-operative bank under separate sections of law. The transaction can only go one way with the bank as the continuing institution. **SECTION 57** retains the one-way street component of the law; consolidates the two statutes into one, section 78A of chapter 171, and now clearly authorizes the merger of a credit union with and into the subsidiary banking institution of a mutual holding company. The cross -references to such a merger in savings bank law and co-operative bank law are substituted with the section in chapter 167I on corporate transactions for such a merger.

NOTE: SECTION 51 amends the MHC statute to recognize this authority.

NOTE: There were 76 state-chartered credit unions as of December 31, 2014.

A new section 8A is added to credit union law, by **SECTION 56**, to govern a credit union's authorities for Electronic Fund Transfer Systems, (EFTS). It treats credit unions the same as banks in all regards to such authority. In conjunction with prior SECTIONS that deleted credit unions from the coverage of the Commonwealth's EFTS statute, chapter 167B, the new section 8A subjects credit unions to the Federal EFT Act but maintains their compliance with the more protective measure in Massachusetts law of a maximum $50.00 liability for a consumer for an unauthorized electronic banking transaction. This section also includes all related EFTS authorities for a credit union to have and operate Automated Teller Machines (ATMs), join various organizations to provide ATM services and share ATMs among other powers transferred here from existing law.

SECTION 58
TRUST COMPANY LAW
CHAPTER 172

There were 17 state-chartered trust companies and one limited-purpose trust company as of December 31, 2014. However, many sections of current chapter 172 are also applicable to savings banks and co-operative banks in stock form. Since those stock related provisions were added to the Corporate Governance chapter 167J, the remaining provisions of chapter 172 remain unchanged but for those amendments discussed in the introduction to the Chartering Chapters. Other changes are noted as follows.

The definition of "Deposit book" in section 1 was deleted as unnecessary in the framework of the law as well as for its generality.

The current section 2 was deleted. Subsection (b) was unique to a trust company that had a charter that allowed that bank to adopt which new laws would be applicable to it. The law refers to a trust company with such a charter prior to 1888.

COMMENT: The Massachusetts Company, Boston, was established in 1818 and had such a charter. It was acquired by PNC in 1995 and subsequent thereto converted to a federal charter.

Although chapter 172 was used as the model for the formation of a bank, the deletion of the antiquated statutory capitalization amounts and the elimination of the publication of the proposed incorporators of the bank as discussed in the introduction are made in this chapter as well.

The Limited Purpose Trust Company statute, section 9A, in chapter 172 is retained and updated for the amendments made by Chapter 227 of the Acts of 2012.

NOTE: Trust companies, as stock entities, never have had a statutory established employee retirement association, hence there are no such provisions in Chapter 172. Such retirement associations were originally established for financial institutions in mutual form.

The law deletes the requirements for residency and post office address information on potential bank executives in the chartering process for a new bank in sections 5 and 8 for safety and privacy reasons. See a more detailed comment at the end of SECTION 54.

SECTION 59 THROUGH SECTION 63
PREDATORY HOME LOAN PRACTICES ACT
CHAPTER 183C

The Commonwealth enacted its own law on high cost mortgage loans in 2004 with the addition of chapter 183C to the General Laws. A then existing federal law on the same subject was implemented by the Federal Reserve and regulations issued by the Board. The Dodd-Frank Act, as noted earlier, transferred jurisdiction for various federal consumer protection provisions to the agency created by the Act, the Consumer Financial Protection Bureau (CFPB). The regulation of high cost loans on the federal side now rests with the CFPB. These five SECTIONS amend the Commonwealth's high cost loan statute to recognize that transfer. **SECTION 59** substitutes a reference to the Federal Reserve Board with the bureau of consumer financial protection. **SECTION 60**, **SECTION 61** twice, **SECTION 62,** and **SECTION 63** all substitute references to the Federal Reserve's regulations with the appropriate cite to the regulations of the CFPB. NOTE: In taking over jurisdiction and having regulations issued under its authority, the CFPB affirmatively acted to retain the same sequence and numbering within the regulations to eliminate confusion. Therefore, but for the initial numbering the references remain consistent.

SECTION 64
LICENSING OF MORTGAGE LOAN ORIGINATORS
CHAPTER 255F

Under the federal Dodd-Frank Act the responsibilities of the Office of Thrift Supervision (OTS) were assumed by the regulator of national banks, the Office of the Comptroller of the Currency (OCC). Chapter 255F of the General Laws governs mortgage loan originators. The

definition of "Federal banking agencies" includes the OTS. **SECTION 64** deletes that reference. The OCC is currently and remains listed in that definition.