

COVID-19: EMERGENCY CLOSINGS OF NEW ENGLAND BANKING OFFICES

Date: 30 March 2020

Finance Alert

By: Stanley V. Ragalevsky, Robert M. Tammero, Jr, Erin M. Bruynell, Andrew H. Galtieri

The COVID-19 pandemic presents extraordinary and unique challenges for financial institutions. Banks provide critical financial services to the public and are an integral part of the financial life of most Americans. Unlike other businesses, a bank generally may not close a retail banking office without regulatory approval or non-objection. These requirements maintain public confidence in the stability of the banking system.

During the COVID-19 pandemic, some banks have remained open entirely, others have closed branches, while many others are operating on a limited basis. This alert summarizes the legal and regulatory requirements for emergency closings of banking offices in New England.

FDIC GUIDANCE

On March 13, 2020, the Federal Deposit Insurance Corporation issued guidance acknowledging that banks may need to temporarily close offices due to COVID-19.[1] The guidance "encourages financial institutions to reduce disruptions to their customers, provide alternative service options when practical, and reopen affected facilities when it is safe to do so." Further, it directs banks to notify their primary federal and state regulators and their customers of any temporary closure and the availability of any alternative service options, as soon as practical.

On March 19, 2020, the FDIC issued additional COVID-19-related guidance, in the form of frequently asked questions.[2] That guidance, which covers a range of topics, authorizes banks to consider alternative service options, including limiting customer access to banks' drive-up teller windows — a practice adopted by a number of banks during the pandemic. The guidance also clarifies that the FDIC does not require an application to temporarily close a banking office in connection with the COVID-19 pandemic.

MASSACHUSETTS

Under Massachusetts law, a bank may close any of its offices if its officers believe there is an existing or imminent threat to the safety or security of its personnel or property.[3] A bank does not need prior approval from the Massachusetts Division of Banks to close an office temporarily.[4] However, in its recently issued *Statement on Financial Institutions Working with Customers Affected by the Coronavirus and Regulatory Assistance*, the Division encourages banks to notify the Division of any temporary office closure, as well as alternative service options offered by the bank, as soon as practical.[5] As explained in the Division's *Regulatory Bulletin 2.1-105, Emergency Temporary Closing of Banking Offices*, a bank must notify the public of the temporary closure and must record such closure in the records of its governing board.[6]

While Massachusetts banks may decide to close or limit branch operations in connection with the COVID-19 pandemic, there is no government-mandated requirement to do so. On March 23, 2020, the Governor of Massachusetts issued an order requiring the temporary closure of non-essential businesses and organizations.[7] All banks supervised by the Division are exempt from such order and, at this time, may continue to operate within the Commonwealth during the pandemic.[8]

CONNECTICUT

Under Connecticut law, the Connecticut Bank Commissioner may authorize the closing of a bank, or any of a bank's offices, whenever such action is required as a result of an emergency or where good cause is shown.[9] However, a bank may close any of its offices on its own initiative without prior approval from the Bank Commissioner when an emergency does not afford an opportunity to obtain such approval.[10]

The Governor of Connecticut issued an order, effective as of March 23, 2020, directing all non-essential businesses to prohibit in-person functions. Banks are deemed essential businesses under, and thus are exempt from, such order.[11]

MAINE

Maine law permits banks to temporarily close any of their offices for "good cause". A bank is required to notify its customers of a temporary office closing by posting conspicuous public notice of the closing.

NEW HAMPSHIRE

Under New Hampshire law, a bank may close any of its offices if its officers are of the opinion that an existing or impending emergency affects any or all of the bank's offices.[12] The offices may remain closed until the officers determine that the emergency has ended or for such further time as may reasonably be required to reopen.[13]

On March 16, 2020, the New Hampshire Banking Department issued guidance concerning branch closings that result from the COVID-19 pandemic. Under the guidance, the Banking Department authorizes banks to close lobby and branch offices, while maintaining only the drive-through portion of their branches, without requesting approval of the Bank Commissioner[14]. The guidance also relaxed a requirement under New Hampshire law that banks seek approval from the Commissioner to close an office for more than 48 hours.[15] Under the guidance, notice to the Banking Department in the form of a letter or email is sufficient to close offices due to COVID-19. The Banking Department requests that banks ensure their customers are aware of any changes to operations, including adjustments to branch hours, branch closures, or branch access.[16]

VERMONT

Vermont law permits a bank to close any office at the determination of its officers if an emergency arises or is so imminent and immediate as to interfere with or threaten the conduct of normal banking transactions or the safety and welfare of the bank or its personnel. In the event of an emergency branch closing, the bank must notify the Commissioner of the Vermont Department of Financial Regulation as soon as reasonably possible.[17] Further, the bank must notify its customers by posting conspicuous public notice of the closing.

Vermont law generally provides that a bank office may not remain closed for more than two consecutive business days except as provided by law or as expressly authorized by the Commissioner or the Governor of Vermont.[18]

However, on March 16, 2020, the Commissioner issued *Statement on Financial Institutions Working with Customers Affected by the Coronavirus (COVID-19) and Regulatory Assistance*, which indicates a policy of regulatory non-objection to longer temporary closures by banks during the pandemic. The statement encourages banks to notify the Commissioner and customers of alternative service options as soon as practical and to reopen offices when safe to do so.[19]

RHODE ISLAND

The Rhode Island Department of Business Regulation, Division of Banking issued *Banking Bulletin 2020-2, Customer Assistance COVID-19* on March 23, 2020. In this Bulletin, the Division acknowledges that banks may need to temporarily close facilities as a result of the COVID-19 pandemic and encourages banks that do so to reduce disruptions to customers, provide alternative service options when practical, and reopen affected facilities when safe to do so. The Division requests that banks notify both customers and the Division of temporary closures and the availability of alternative service options as soon as practical.[20]

CONCLUSION

During these unprecedented times, many banks will understandably decide to temporarily close offices and operate on a limited basis until the spread of COVID-19 is contained. Bank regulatory guidance regarding COVID-19 has been supportive of practical efforts by banks to limit services in light of the public emergency created by the pandemic. As banks evaluate whether to temporarily close offices or otherwise limit their activities, they must consider and remain compliant with their legal and regulatory obligations.

Notes:

[1] FDIC FIL-17-2020 (Mar. 13, 2020).

[2] FDIC FIL-18-2020 (Mar. 19, 2020).

[3] Mass. Gen. Laws ch. 167 § 21.

[4] Div. of Banks, Regulatory Bulletin 2.1-105, Emergency Temporary Closing of Banking Offices (Mar. 23, 2020), <https://www.mass.gov/regulatory-bulletin/21-105-emergency-temporary-closing-of-banking-offices>.

[5] Div. of Banks, Statement on Financial Institutions Working with Customers Affected by the Coronavirus and Regulatory Assistance (Mar. 16, 2020), <https://www.mass.gov/files/documents/2020/03/16/COVID-19%20DOB%20Industry%20Statement%2003-16-20.pdf>.

[6] Div. of Banks, Regulatory Bulletin 2.1-105, Emergency Temporary Closing of Banking Offices (Mar. 23, 2020), <https://www.mass.gov/regulatory-bulletin/21-105-emergency-temporary-closing-of-banking-offices>.

[7] Off. of the Governor, Comm. of Mass., Order Assuring Continued Operation of Essential Services in the Commonwealth, Closing Certain Workplaces, and Prohibiting Gatherings of More Than 10 People (Mar. 23, 2020), <https://www.mass.gov/doc/march-23-2020-essential-services-and-revised-gatherings-order/download>.

[8] Div. of Banks, Financial Services Are "Essential Services" Exempt from Governor Baker Order to Close Physical Locations (Mar. 23, 2020), <https://www.mass.gov/news/financial-services-are-essential-services-exempt-from-governor-baker-order-to-close-physical>.

[9] Conn. Gen. Stat. § 36a-23(b).

[10] Conn. Gen. Stat. § 36a-23(d).

[11] State of Conn., Exec. Order No. 7H, Protection of Public Health and Safety During COVID-19 Pandemic and Response – Restrictions on Workplace for Non-Essential Businesses, Coordinated Response Effort (Mar. 20, 2020), <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7H.pdf>.

[12] N.H. Rev. Stat. § 383-A:8-801(c).

[13] *Id.*

[14] State of N.H. Banking Dep't, Branch Closings – Clarification and FAQs (Mar 13, 2020), <https://www.nh.gov/banking/documents/updated-guidance-faqs-20200316.pdf>.

[15] N.H. Rev. Stat. § 383-A:8-801(c).

[16] State of N. H. Banking Dep't, Branch Closings – Clarification and FAQs (Mar. 13, 2020), <https://www.nh.gov/banking/documents/updated-guidance-faqs-20200316.pdf>.

[17] Vt. Stat. Ann. tit. 8 § 11205(a).

[18] *Id.*

[19] Vt. Dep't of Fin. Reg., Memorandum - Statement on Financial Institutions Working with Customers Affected by the Coronavirus (COVID-19) and Regulatory Assistance (Mar. 16, 2020), https://dfr.vermont.gov/sites/finreg/files/doc_library/dfr-banking-memo-covid19-working-with-customers.pdf.

[20] Dep't of Bus. Reg., Banking Div., Banking Bulletin 2020-2, Customer Assistance COVID-19 (2020), https://www.ccu.org/images/uploads/Banking_Bulletin_2020-2_Customer_Assistance_COVID-19.pdf.

KEY CONTACTS



STANLEY V. RAGALEVSKY
PARTNER

BOSTON
+1.617.951.9203
STANLEY.RAGALEVSKY@KLGATES.COM



ROBERT M. TAMMERO, JR
PARTNER

BOSTON
+1.617.951.9114
ROB.TAMMERO@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.