*** § 12-a. Power of state chartered banking institutions to exercise the rights of counterpart federally chartered banking institutions.** 1. Definitions. (a) As used in this section, "state chartered banking institution" shall mean any bank, trust company, private banker, savings bank, savings and loan association, foreign banking corporation, or credit union.

(b) As used in this section and as is applicable, "federally chartered banking institution" shall mean (i) any national banking association organized pursuant to the National Bank Act of 1864, as amended, (12 USC 21 et seq.); (ii) any federal savings association as such term is defined by the Federal Deposit Insurance Act, as amended, (12 USC 1813(b)(2)); (iii) a federal branch and agency of a foreign bank, as such terms are defined by the International Banking Act of 1978, as amended, (122 USC 3101); or (iv) a federal credit union, as such term is defined by the Federal Credit Union Act, as amended, (12 USC 1752(1)).

(c) As used in this section, "charter" shall mean the organization certificate or comparable document of a state banking institution, or the license for a state branch or agency of a foreign banking corporation, or a similar organizational document for a federal banking institution or a federal branch or agency, and "chartered" shall mean the formal act of the state or appropriate federal regulatory agency in approving and conveying such charter of a banking institution.

(d) As used in this section, "federally permitted power" shall mean any right, power, privilege or benefit, any activity, or any loan, investment or transaction which a federally chartered banking institution directly or through a subsidiary or subsidiaries, may lawfully exercise or into which it may lawfully engage or enter.

(e) As used in this section "foreign banking corporation" shall mean a banking corporation organized under the laws of a foreign country and acting through a branch or agency licensed pursuant to section twenty-six of this article.

(f) As used in this section, unless the context requires otherwise, the term "subsidiary" shall have the same meaning as set forth in subdivision five of section one hundred forty-one of this chapter, except that (i) any reference therein to "bank holding company" shall be deemed to refer to a "state chartered banking institution" as defined in this section, and (ii) with respect to a credit union, the term

"subsidiary" as used in this section shall mean a "credit union organization".

2. Pursuant to this section and notwithstanding any other provision of law, except as otherwise provided in its charter, a state-chartered banking institution may exercise any federally permitted power of its counterpart federally chartered banking institution as herein set forth:

(a) a bank, private banker, or trust company may exercise any federally permitted power of a national banking association;

(b) a savings bank or savings and loan association may exercise any federally permitted power of a federal savings association;

(c) a foreign banking corporation acting through a branch may exercise any federally permitted power of a foreign bank acting through a federal branch;

(d) a foreign banking corporation acting through an agency may exercise any federally permitted power of a foreign bank acting through a federal agency;

(e) a credit union may exercise any federally permitted power of a federal credit union.

Nothing contained in this section shall be deemed to permit a state chartered banking institution to exercise any federally permitted power except in a manner consistent with the following provisions of law, in each case, as the terms contained in such provisions may be amended from time to time:

(i) chapter one of the laws of nineteen hundred ninety-four;

(ii) chapter nine of the laws of nineteen hundred ninety-six; and

(iii) sections fourteen-c, twenty-eight-b, thirty-nine and forty-four of this article, and sections six hundred five through six hundred thirty-four of this chapter, and with respect to savings banks and savings and loan associations, respectively, section two hundred forty and section three hundred ninety-six of this chapter.

3. Except with respect to a federally permitted power approved pursuant to subdivision four of this section, prior to any state chartered banking institution initially exercising any federally permitted power pursuant to this section, such banking institution shall

make an application individually or with one or more state chartered banking institutions to the superintendent indicating that such institution or institutions intend to exercise such federally permitted power and the basis on which such institution or institutions believe such power is a federally permitted power. The superintendent shall have one hundred twenty days from receipt of the application to determine whether it meets the requirements of this section, provided that such period may be extended for an additional period of time with the written consent of the applicant or applicants. If such application meets the requirements of this section, the superintendent shall post such application upon the bulletin board of the department pursuant to section forty-two of this article. If such application does not meet the requirements of this section, the superintendent shall, within ten days of such determination, notify the applicant or applicants of the reasons why the application fails to meet the requirements. The superintendent shall determine, consistent with the standards set forth in subdivision five of this section, whether to approve such application subject to such terms and conditions as the superintendent may deem appropriate, in the superintendent's sole discretion. Such determination, shall be made by the superintendent within forty-five days after the posting of such application, provided however that the superintendent may notify the applicant or applicants that the review of the application shall be extended for an additional period of time not exceeding sixty days after the posting of such application, and provided further that such period of time may be extended for an additional period of time with the written consent of the applicant or applicants. The superintendent shall not act upon the application prior to thirty days after such application has been posted. If the superintendent approves such application, the superintendent shall, within ten days of approving the application, notify the applicant or applicants in writing thereof, and the applicant or applicants may exercise such federally permitted power subject to such terms and conditions as the superintendent may have approved. If the superintendent declines such application, the superintendent shall, within ten days of making such determination, notify the applicant or applicants in writing thereof. An applicant or applicants may, upon the superintendent's failure to comply with this section, petition the superintendent to act upon the application. The failure of the

superintendent to act upon the application or notify the applicant or applicants, in writing, as to the reasons why action cannot be taken within thirty days of receipt of such petition shall be deemed a denial of the application, which shall be subject to judicial review. Notwithstanding any other law, the superintendent may make the approval of an application under this section applicable to one or more additional state chartered banking institutions that are qualified to exercise the same federally permitted powers as the applicant or applicants pursuant to subdivision two of this section, subject to such terms and conditions as the superintendent shall find necessary and appropriate.

4. Notwithstanding any other law, the superintendent, in the superintendent's discretion, may, when the superintendent deems it necessary and appropriate after considering the standards set forth in subdivision five of this section, by order, authorize one or more state chartered banking institutions to exercise a federally permitted power, subject to such terms and conditions as the superintendent shall find necessary and appropriate. Prior to issuing such order, the superintendent shall post notice of the superintendent's intention to issue such order upon the bulletin board of the department pursuant to section forty-two of this article, and shall not act upon such intention prior to thirty days after such notice has been posted.

5. Prior to approving any application or proposal pursuant to subdivision three or four of this section, the superintendent shall make a finding that the approval of such application or proposal is:

(i) consistent with the policy of the state of New York as declared in section ten of this article and thereby protects the public interest, including the interests of depositors, creditors, shareholders, stockholders and consumers; and

(ii) necessary to achieve or maintain parity between state chartered banking institutions and their counterpart federally chartered banking institutions with respect to rights, powers, privileges, benefits, activities, loans, investments or transactions.

6. A federally permitted power authorized pursuant to this section

shall not exceed and shall be limited by any conditions, qualifications or restrictions on the same when exercised by a counterpart federally chartered banking institution of a state chartered banking institution unless the state chartered banking institution is so authorized by other New York state law, or a rule, regulation or policy adopted pursuant to such other New York state law, or by a judicial decision. Notwithstanding any other law, the superintendent may, at any time, impose by order any other terms and conditions as he or she finds necessary and proper including, but not limited to, a requirement that any federally permitted power authorized by this section be exercised, conducted or held in a subsidiary of a state chartered banking institution. In the event that federally chartered banking institutions located in the state of New York lose the authority to exercise a federally permitted power, based upon which comparable authority was granted to the counterpart state chartered banking institutions pursuant to this section, then unless such authority is authorized by other New York state law, or a rule, regulation or policy adopted pursuant to such other New York state law, or by a judicial decision, the authorization for such state chartered banking institutions pursuant to this section shall be deemed revoked, provided, however, that any such revocation shall be subject to such terms and conditions as may be imposed upon the counterpart federally chartered banking institutions or by the superintendent.

7. (a) In those instances where state chartered banking institutions are permitted to engage in the business of insurance pursuant to this section, they shall do so subject to all insurance laws, rules, and regulations; provided, however, that the superintendent may exempt state chartered banking institutions from any insurance law, rule or regulation which has been preempted under federal law, rule or regulation for federally chartered banking institutions if such law, rule or regulation has been preempted because it applies to insurance activities of federally chartered banking institutions and not to those of other entities.

(b) In those instances where a federally permitted power authorized pursuant to this section is subject to regulation by an agency, as defined in subdivision one of section one hundred two of the state

administrative procedure act, other than the superintendent, then when a state chartered banking institution exercises such federally permitted power, unless it is so authorized by other New York state law, or a rule, regulation or policy adopted pursuant to such other New York state law, or by a judicial decision, it shall do so subject to such regulation to the same extent and in the same manner as such agency regulates entities other than state chartered banking institutions, except to the extent that federally chartered banking institutions are not subject to such regulation.

(c) Any state chartered banking institution or federally chartered banking institution and any subsidiary or affiliate thereof which is licensed to sell insurance in this state shall maintain separate and distinct books and records relating to its insurance transactions, including all files relating to and reflecting consumer complaints, and such insurance books and records shall be made available to the superintendent for inspection upon reasonable notice.

8. On or before June first of each year, the superintendent shall submit a report to the governor, the speaker of the assembly, the temporary president of the senate, the minority leaders of the senate and assembly, and the chairs and ranking minority members of the senate and assembly banks committees, which shall include, with respect to the authority provided for in this section, with respect to the preceding calendar year, (1) a listing of state chartered banking institutions that were established, (2) a listing of institutions that have converted to a federal charter or have been acquired by, or merged with, another banking institution, (3) the number of New York banking institutions exercising the insurance activities authorized by this section, (4) the total number of New York chartered banking institutions located in this state, and (5) the total amount of assets of such chartered banking institutions by type.

9. Any rules or regulations promulgated by the banking board pursuant to former sections fourteen-g and fourteen-h of this chapter prior to September first, two thousand seven, and any resolutions adopted by the banking board pursuant to this section after September first, two thousand seven and before the effective date of the chapter of the laws

of two thousand eleven which amended this subdivision, including any such rules, regulations and resolutions which in whole or in part impose conditions, qualifications or restrictions on any federally permitted powers authorized thereby which exceed the conditions, qualifications or restrictions imposed on the same when exercised by a federally chartered banking institution, shall remain in full force and effect on or after such date, unless any such rule, regulation or resolution is thereafter superseded, modified, or revoked by the superintendent pursuant to the provisions of subdivisions three and four of this section.

* NB Repealed September 10, 2029