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Sam L. Abram  
Secretary of the Banking Board  
New York State Banking Department  
One State Street  
New York, New York 10004-1417

Re: Executive Order #25 -Existing Regulation Review

Dear Secretary Abram:

In response to the invitation by the New York State Banking Department to comment on its existing regulations to identify “unsound or unduly burdensome rules and paperwork that can be eliminated or reformed while maintaining appropriate protections for the public health, safety and welfare”, the New York Bankers Association (NYBA) submits the following comments. NYBA is comprised of the community, regional and money center commercial banks and thrift institutions doing business in New York State, with almost 250,000 employees and over \$9 trillion in assets.


We respectfully suggest an amendment to Section 6002.2 of the New York State Banking Law (Banking Law) which provides that the annual meeting of stockholders must be held within the first four months of a financial institution’s fiscal year. Such a change would provide much needed and appropriate flexibility, particularly for banking institutions who wish to hold their holding company’s annual meeting on the same day as that of the financial institution’s shareholder meeting, and who find that the time limitation set forth in Section 6002.2 - which does not contemplate the increased compliance requirements of the Securities and Exchange Commission (SEC), as well as possible additional compliance requirements of the U.S. Treasury, when the institution is a TARP participant - may make that goal unachievable. For example, SEC regulations with respect to timing of the release of an institution’s proxy statement and other disclosure documents, including year-end financial information, prior to the date of its annual meeting of stockholders, can often make it difficult to hold such a meeting within the first four months of the year.

We believe that the requirement that the annual meeting be held within the first four months of a fiscal year is unnecessarily arbitrary, unduly burdensome, and not in line with other corporate governance standards. In this regard, it should be noted that the corporate governance provisions of the New York Business Corporation Law (NYBCL), Delaware General Corporation Law (DGCL), the Office of the Comptroller of the Currency (OCC) and the Model Business Corporation Act (MBCA) all provide companies with the flexibility to decide when in the fiscal year a company wishes to hold its annual stockholders' meeting.

For example, federal law provides, at 12 USC Section 71, that meetings of stockholders of national banks to elect directors may be held on a day specified in the bank's bylaws. Additionally, Section 7.2000(b) of the OCC's rules and regulations provides that, to the extent not inconsistent with applicable Federal banking statutes or regulations, or bank safety and soundness, a national bank may elect to follow the corporate governance procedures of the law of the state in which the main office of the bank is located, the law of the state in which the holding company of the bank is incorporated, the DGCL or the MBCA. As New York's "wild card" law (see Section 12-a of the Banking Law and Sections 6.1 and 6.2 of the General Regulations of the Banking Board) allows for state-chartered banking institutions to apply to the Banking Department for the right to exercise any federally permitted power of a national bank, the rationale for amending Section 6002.2 is compelling. This is particularly true as the NYBCL (at Section 602(b)) provides that a stockholder's meeting shall be held annually on a date fixed by or under the bylaws, while Section 211(b) of the DGCL provides that the annual meeting of stockholders shall be held on a date and at a time designated by or in the manner provided in the bylaws. Similarly, the MBCA provides that a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws. (See Section 7.01) Therefore, an amendment to Section 6002.2 of the Banking Law at this time would seem to be consistent with a wide body of modern law, and would relieve a significant burden for many state-chartered banking institutions.

For all these reasons, we respectfully ask that the Banking Department consider amending Section 6002.2 to allow state-chartered banks the flexibility of holding their annual meeting of stockholders at any time during the year. Thank you for the opportunity to comment on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael P. Smith". The signature is fluid and cursive, with the first name "Michael" being the most prominent part.

Michael P. Smith