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October 27, 2011

Honorable Sam L. Abram
Secretary of the New York State Department of Financial Services
New York State Department of Financial Services
One State Street
New York, New York 10004

RE: **Amendment to Part 23 and Addition of Part 342 to Title 3
NYCRR**

Dear Secretary Abram:

Thank you for the opportunity to comment on the above-referenced proposed amendment to Part 23 and the proposed addition of Part 342 to Title 3 NYCRR. We appreciate what appears to be the primary objective of this proposal – that is to “ensure that the Department has an explicit and direct legal basis on which to take appropriate enforcement action against any of its regulated banking institutions which fails to file a call report or files a report which is not true and correct, or against any individual who certifies an inaccurate report” - and to do so without additional undue burdens to financial institutions. However, we believe that the proposal could, over time, inadvertently create certifications at the State and federal level that are inconsistent with each other. This could be particularly problematic, as the State certification would not actually have been certified to in writing. The New York Bankers Association (NYBA) is comprised of the community, regional and money center commercial banks and thrift institutions doing business in New York State. In aggregate, members of the Association employ approximately 250,000 New Yorkers and hold more than \$9 trillion in assets.

Existing State banking law provisions currently require banking institutions regulated by the Department of Financial Services (the “Department”) to provide

call reports to the Department. The current Department proposal is intended to provide “an explicit and direct legal basis” on which to take appropriate

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enforcement action” by (1) formalizing the requirement that banking institutions which are now required to file call reports with their primary federal regulator on forms specified by the Federal Financial Institutions Examination Council, shall also file them with the Department; (2) formalizing the requirement that those banking institutions regulated by the Department which are not required to file call reports with a federal regulator file such reports with the Department using the same forms as the federal filers; and (3) requiring that banking institutions filing call reports with the Department provide the same certification as to the accuracy and completeness of the reports that federal filers provide to their principal federal regulator.

While we appreciate the Department’s goal of minimizing the regulatory cost and burden to banking institutions of this proposal by incorporating the language currently found on the federal certification into the proposed regulations, and deeming it applicable to the Department, we are concerned that any future changes made to the federal form would have the immediate result of creating an inconsistency in the State and federal certification. This would be very problematic, as certain certification language could be ascribed to the signer of the federal call report for State purposes that no longer exist and were not intended to be certified to in the federal report. Therefore, if the Department feels that the certification requirement is necessary in the future, we believe that the final regulation provide more flexibility, by stating that whatever form the required federal certification takes now or in the future should be deemed applicable for Department purposes as well.

Thank you for providing us with an opportunity to comment on these proposed regulations. If you would like to discuss this matter further, please do not hesitate to call.

Sincerely,

Michael P. Smith