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MEMORANDUM IN OPPOSITION

March 29, 2011

S.378 Diaz (ON SENATE BANKS COMMITTEE AGENDA) A1175 Crespo (Assembly Banks Committee)

AN ACT to amend the banking law, in relation to requiring banking institutions to accept the Dominican consular identification card issued by the consulate general of the Dominican Republic as a valid form of identification for all banking transactions

This memorandum in *opposition* is written on behalf of our client, the New York Bankers Association. The Association 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.

The New York Bankers Association opposes this legislation that would require banking institutions in New York State to accept the Dominican consular identification card issued by the Consulate General of the Dominican Republic as a valid form of identification for all banking transactions. This legislation, while well-intentioned, is unnecessary and would impose a burden on State-chartered banks to which national banks, federal thrift institutions and federal credit unions would not be subject. We urge that this bill be held.

The purpose of this legislation is to provide a convenient form of identification for individuals who might not otherwise have access to banking services. The bill would require all banking institutions in New York State to accept consular identification cards issued by the Dominican Republic's Consulate General as valid forms of identification for all banking transactions. While the bill has a well-intentioned purpose, however, it is flawed in making acceptance of the Dominican consular identification card a required rather than acceptable form of identification, and by excluding other validly issued forms of consular identification.

Regulations of the United States Treasury Department define what forms of identification are acceptable for banking transactions. They require that banks, savings institutions, credit unions and other depositories must positively identify any potential customers, including their name, date of birth, address, and identification number. For non-U.S. persons, acceptable forms of identification numbers include a U.S. "taxpayer identification number, passport number and country of issuance, alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard." 31 CFR section 103.121 (b)(2)(i)(A)(4)(ii). The depository institution must then verify the identity of the customer, ensuring that it has a "reasonable basis for belief that it knows the true identity of the customer." 31 CFR section 103.121 (b)(2). It may use either documentary or non-documentary means for verification and must

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retain in its records all information obtained under these verification procedures. Penalties for failure by a depository institution to have in place an adequate “know your customer” system can be severe, including, in at least one instance, criminal prosecution.

The Treasury currently allows the acceptance of the consular identification cards of a number of countries as acceptable forms of identification, but does not require any financial institution to accept them. The Mexican Matricula Consular card, which is apparently the current most widely used form of consular identification card, is accepted by approximately 27% of the banking institutions in the United States. However, many of the banks that accept consular identification cards also require a second form of identification, which may include utility bills, social security cards, or employer identification cards. Given that banks only began accepting consular identification cards in late 2001, their relatively rapid spread reflects a desire on the part of the industry to serve all segments of their customer base.

Nevertheless, recognizing that many banks, thrifts and credit unions are unfamiliar with all forms of consular identifications cards, the Treasury Department does not require these cards to be accepted. The FDIC, in a December 2008 report (FDIC Survey of Banks Efforts to Serve the Unbanked and Underbanked) found that efforts by local consulates to establish relationships with banking institutions were instrumental in the spread of the acceptance of these cards. Our Association has supported the use of such cards as acceptable forms of identification in banking transactions (including in a comment letter to the Treasury Department on proposed regulations implementing the customer identification program). However, we oppose mandating the use of such cards.

In addition, the State of New York cannot require that national banks, federal thrift institutions, and federal credit unions provide particular banking services. This legislation would apply only to State-chartered institutions, giving such institutions an additional incentive to convert to federal charter and reducing further the State’s ability to influence its banking institutions.

For these reasons, the New York Bankers Association **opposes** this legislation and urges that it be **held**.

Respectfully Submitted,

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP