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MEMORANDUM IN OPPOSITION

June 1, 2011

**A.6060-A Lancman (Assembly Codes Committee)
S.4497-A Libous (Senate Consumer Protection Committee)**

AN ACT to amend the general business law, in relation to enacting the “institutional investor recovery act”

This memorandum in *opposition* is written on behalf of our client, the New York Bankers Association (NYBA). 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 200,000 New Yorkers and hold more than \$9 trillion in assets.

This proposed legislation would improperly expand the enforcement powers given to the Attorney General under New York’s securities law, the Martin Act (the “Act”), to public pension funds and private sector multi-employer health and welfare plans. The Act is widely considered to be one of the toughest securities laws in the country, as, among other things, it contains an expansive definition of fraud, and does not require scienter or intent by the defendant. To extend Martin Act powers to private attorneys working on behalf of large institutional private plaintiffs, is not only unnecessary to protect the rights of shareholders, but also would undoubtedly have a significant negative impact on New York’s ability to attract and retain businesses.

Institutional investors already are entitled to a host of remedies under current state and federal law. New York’s Attorney General has already utilized the Act to recover more than \$5 billion from securities fraud cases. Additionally, the Private Securities Litigation Reform Act provides a damages remedy at the federal level and the SEC, pursuant to the Sarbanes-Oxley Act, has the power to compensate victims of securities fraud. Additionally, private litigants also may seek redress for fraud under New York common law. Thus, additional new private remedies are unnecessary and inappropriate. This is particularly true, as under New York’s common law fraud principles, the plaintiff is required to show that the defendant intended to commit the fraud – a requirement not necessary under the Martin Act. This lax standard (which is currently extended only to the Attorney General) would undoubtedly – and unfairly – invite frivolous litigation and virtually force issuers of securities to settle cases without a fair hearing in court.

Should this proposed legislation become law, it is without doubt that it would have a chilling effect on current and future business investment in our State. At a time when New York is trying to encourage corporations to create jobs and to ensure its continued status as the financial capital of the world, this proposed legislation is particularly counter-intuitive and extremely harmful.

For all these reasons, we *oppose* this legislation and urge that it be held.

Respectfully Submitted,

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP