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MEMORANDUM IN OPPOSITION

March 1, 2011

S. 1439 Squadron (Senate Consumer Protection) A. 1028 Pheffer (Assembly Ways & Means)

AN ACT to amend the general business law, and the civil practice law and rules, in relation to debt collection agencies

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.

The New York Bankers Association opposes this legislation that would require that debt collection agencies in the business of collecting debts on behalf of third parties be licensed by the Department of State. We do not object to the concept of licensing debt collection agencies, but we believe that banks and their affiliates, which engage in debt collection both on their own account and for their customers, and which are already comprehensively regulated, subject to regular examination and enforcement, and supervised by numerous State and federal agencies, should not be subject to another layer of regulation. We urge that this bill be held.

This legislation would require third-party debt collectors to be licensed with the Department of State and to abide by a number of fair debt collection practices. The bill would exempt a number of categories of persons, including principal creditors collecting debts on their own behalf and affiliates of such principal creditors. The legislation establishes a comprehensive system of licensing, supervision and enforcement regarding third-party debt collectors, including a surety requirement to secure the financial fitness of debt collection agencies.

The New York Bankers Association urges that an additional exemption be adopted for financial institutions and their affiliates chartered and supervised under any other provision of State or federal law. Far more than third party debt collection agencies or than any of the provisions of this legislation, banks and thrifts and their affiliates are subject to pervasive federal regulation and supervision that includes intense, on-site examination not less than every 18 months (continuously, in the case of larger institutions), responding to frequent supervisory instructions and guidance, recordkeeping and quarterly reporting requirements on all aspects of their operation, and a comprehensive enforcement system that includes civil money penalties, cease-and-desist actions,

officer and director removals and prohibitions, potential criminal penalties and, in extreme cases, charter revocation.

Banks and thrifts and their affiliates are already subject to regulation by at least seven different federal agencies, the State Banking Department, and, depending on the businesses in which they operate, other federal, State and local agencies. This legislation would impose a new regulator – the Department of State – on any depository institution that established a separate debt collection affiliate, even though such affiliates are already subject to comprehensive State and federal regulation. The Federal Reserve Board’s Regulation Y specifically permits bank holding companies to establish separate debt collection agency affiliates (see 12 CFR 225.28 (b)(2)(iv)). But all activities permitted bank holding companies under the Fed’s regulation Y come with capital requirements, heightened supervision, regular examination and supervision, including for compliance with the federal Fair Debt Collection Practices Act which is at least as comprehensive as the New York statute. The New York Bankers Association believes that the licensing requirement contained in this legislation will be less consequential than the supervisory and enforcement regime already in place for banks and thrifts and their affiliates under federal law. It will provide no additional discernible consumer protection, but will add an additional, unnecessary layer of regulation, with all of its concomitant costs and burdens.

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