



New York Bankers Association

**STATEMENT OF
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NEW YORK BANKERS ASSOCIATION**

**BEFORE THE
NEW YORK STATE SENATE
STANDING COMMITTEE ON INVESTIGATIONS AND GOVERNMENT
OPERATIONS
SENATE STANDING COMMITTEE ON BANKS
SENATE STANDING COMMITTEE ON INSURANCE**

**MARCH 7, 2011
ALBANY, NEW YORK**

Good morning. My name is Michael P. Smith and I am President and CEO of the New York Bankers Association (NYBA). Thank you for the opportunity to set out NYBA's position regarding provisions of the Executive Budget, which call for the consolidation of financial regulation and consumer and investor protection, under the auspices of a single, newly created state agency - the "Department of Financial Regulation." NYBA is comprised of the community, regional and money center banks and thrifts doing business in New York State. Our members in aggregate hold assets in excess of \$9 trillion and employ more than 200,000 New Yorkers.

NYBA supports efforts to streamline and modernize New York State's banking charter and regulatory structure. Therefore, we have pledged to work with the Governor and the Legislature on a proposal to merge the Banking and Insurance Department along with the Consumer Protection Board. Such a combination should be structured not only to protect consumers, but also to create efficiencies in regulation. Importantly, the merger should result in more effective enforcement against lightly regulated non-bank financial institutions. This is especially important since the new Dodd-Frank law establishes a whole new federal regime aimed directly at state and federally-chartered banks – our members. Many other industry sectors are not subject to this new federal agency and it will be up to the states to make sure that enforcement is now conducted on a level playing field. Another key part of the mission of the Department of Financial Regulation (hereinafter the "Department") should be to promote the state banking charter and the economic health of our State, and to protect the safety and soundness of our financial institutions.

In general, we believe that the modernization of the State's financial regulatory system is an appropriate undertaking – especially in a State like New York, which boasts an

impressive history of pro-consumer initiatives that serve as models for other states and federal law. New York pioneered truth-in-lending, truth-in-savings, check clearing, basic banking accounts, and anti-predatory lending laws. While there is much included in this merger proposal to enhance financial regulation for the benefit of all New Yorkers, NYBA has some concerns that remain despite the significant improvements made in the 21-Day Amendments. Our recommendations are aimed ultimately at enhancing the new Department and preserving New York's position as a global financial capital.

In the original proposal, NYBA had concerns about the breadth and scope of the new Department's authority, particularly with respect to the expansive definitions of financial fraud and financial products and services. The 21-Day Amendments have significantly alleviated those concerns, as they have eliminated from the definition of financial fraud, among other things, Martin Act violations and criminal activity. The definition of financial products has also been narrowed to appropriately encompass only the banking law and insurance law, rather than an array of undefined "other laws." Section 307 in the original Executive Budget which granted immunity from prosecution, has also been eliminated in the 21-Day Amendments, which we believe is an important improvement, as it dispels confusion between the application of immunity in a Department hearing and a possible grant of immunity in a potentially related criminal proceeding.

Again, while we feel that the improvements made have been important, we would urge that some additional recommendations be adopted.

First, we believe that the "safety and soundness" of banking institutions in New York should be among the fundamental goals for the Department. We note, that the 21-Day Amendments reflect the inclusion of the word "safety" within the Declaration of Policy, as

Section 201(b)(2), now states that the “superintendent shall... ensure the continued safety, soundness and prudent conduct of the providers of financial products and services” (emphasis added). We believe, however, that a more definitive policy statement should also be included.

It has also consistently been our understanding that the strengthening of the State banking charter and revitalization of New York’s financial industries have been articulated as rationales of and goals for the creation of the Department, but there is no reference to this in the Declaration of Policy or elsewhere. We believe that the “safety and soundness” of financial institutions should, at a minimum, be given the same equality of purpose as consumer protection. In fact, during the Congressional debate over the structuring of the new federal Consumer Financial Protection Bureau, we argued that the prudential regulators who are charged with maintaining safety and soundness be directly involved with the consumer agency. Unfortunately, that approach was rejected but we have an opportunity to do a better job here in New York. Notably, the CFPB, at this point, is still in formation, has no director, and has yet to write a single rule.

We believe that additional clarification as to the division of assessment costs between financial institutions and insurance companies should be made to Section 206. That provision gives the Superintendent total discretion, beginning on April 1, 2012, to determine the level of assessments for its regulated entities. While the document states that banks will not be assessed for expenses that are deemed by the superintendent to *benefit solely* (emphasis added) persons regulated under the insurance law, and vice versa, it is not clear how this crucial determination will be made.

We remain extremely concerned that the financial frauds and consumer protection unit not be financed through penalties or assessments. As currently drafted (see Section 53), the Department's consumer and investor protection activities would be funded through extremely onerous penalties and fines – \$5,000 for each violation, as well as restitution (see Section 408). Such a funding mechanism would create clear conflicts of interest which could result in inappropriate findings of bad deeds and inappropriate imposition of penalties. A better funding mechanism, we believe, would be through a general fund appropriation, on budget, with all fines going to reduce the respective assessments of the banking and insurance divisions, with any further excess, if any, going directly to the general fund.

We also believe that the hearing and review procedures should be reworked to ensure fairness and due process. As currently drafted (see section 305), 120 days after the effective date of a determination of liability for a civil penalty, the determination may be entered as a judgment and enforced, *without court proceedings, in the same manner as the enforcement of a money judgment in civil actions* (emphasis added), leaving only article 78 proceedings as an appeals process (see section 308). Given the potential seriousness of the accusations, as well as the potential for debilitating penalties (which as currently written, could result in multiple millions of dollars of liability to a single institution), regulated entities should have the ability to challenge hearing determinations, via an internal appeals process and through court proceedings. Additionally, the mandate that all hearings be open to the public would obviate protected privacy rights of the regulated entities, their customers, and the traditional confidentiality of bank exams.

In conclusion, we commend the Governor for launching this bold initiative and for

considering the implications on the regulated industries – who together are the largest employers in the State. NYBA pledges to work with the Legislature as it refines this proposal. We urge that this work be undertaken with the goal of preserving New York's status as a world financial center.

Thank you.

3/2/2011 12:19 p.m.