

August 14, 2020

George Bogdan
Office of General Counsel
New York State Department of Financial Services
One State Street
New York, NY 10004

Re: Draft Proposed Regulations – 3 NYCRR PART 7

Dear Mr. Bogdan:

On behalf of the American Financial Services Association (AFSA)¹ thank you for the opportunity to comment on the Department’s draft proposed regulations (3 NYCRR Part 7) regarding information subject to confidential treatment under Section 36.10 of the Banking Law.

We believe clear regulations with well-defined terms leave financial institutions in the best position to understand the regulatory landscape and, in turn, operate within full compliance of the law. While we do not have general concerns with the proposed regulations or the intent behind them, we believe the extensive requirements of Part (b) of Section 7.2 would be overly burdensome for regulated entities seeking to engage with independent auditors or legal counsel, and particularly for smaller financial institutions with limited compliance staff.

In some cases, this burden would affect matters otherwise-beyond New York’s regulatory authority. The regulations define “confidential supervisory information” as any information covered by section 36.10 of the Banking Law. In part, this section’s large scope includes reports of examinations and investigations, and any correspondence and memoranda concerning or arising out of such examinations and investigations of any other state or that of any foreign government. As a result, Section 7.2(b) would require regulated entities to execute extensive confidentiality agreements to engage with auditors or legal counsel on non-New York matters, even though such information and materials related to outside state and foreign governments generally exist outside of New York’s regulatory authority.

To ensure that regulated entities have full access to engage with independent auditors and legal counsel, we respectfully request that you amend proposed Section 7.2(b) to remove subsections (1) – (4) and that the section in its entirety read:

¹ Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA’s 350+ member companies provide consumers with many types of credit, including traditional installment loans, direct and indirect vehicle financing, mortgages, leases and payment cards. They serve the entire credit spectrum, from non-prime to super-prime consumers. AFSA members include companies of all sizes, ranging from large national banks to small independent financial institutions operating in a single state.

(b) Limited Exception to Prior Written Approval Requirement. Notwithstanding the requirements of subdivision (a) of this section, without obtaining the prior written approval of the Department, a regulated entity may disclose confidential supervisory information, which is lawfully in the possession of such regulated entity, to legal counsel or an independent auditor that has been retained or engaged by such regulated entity.

Thank you for your consideration of our comments. If you have any questions about how AFSA can be of any further assistance to you as you move forward, please do not hesitate to contact me at 952-922-6500 or dfagre@afsamail.org.

Sincerely,



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