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MEMORANDUM

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TO: IBANYS Board of Directors
FROM: William Y. Crowell, III
DATE: June 8, 2011
RE: Legislative Update

Assembly Banks Committee

Speaker Silver has not named a new chair to the Assembly Banks Committee with only six scheduled session days remaining. The Committee met yesterday, with Assemblyman Harvey Weisenberg as acting Chairman, to act on a five bill agenda. Assemblyman Weisenberg is the prime sponsor of legislation to extend municipal deposits to credit unions.

ATM Safety Act Compliance

[S.5488 \(Marcellino\)](#) is a Banking Department bill which shifts compliance responsibilities for the ATM Safety Act from the Department to the banks. Responding to the feedback from members, attached please find a memorandum in opposition to this bill which has been circulated to the Legislature. A companion bill has not been introduced in the Assembly to date.

Information Subpoenas

[S.4530 \(Saland\)](#) which requires a statement of the grounds on which the judgment creditor formed a reasonable belief, and for each information subpoena to be separately mailed, was unanimously reported to the Senate calendar from the Judiciary Committee. IBANYS expects favorable action by the Senate on this measure and has discussed it with the Assembly sponsor, Assemblyman Lentol, to urge favorable action. The Assembly is considering a different approach based on concerns relative to the availability of default judgments.

Community Bank Deposit Program

A companion bill to S.4927 (Griffo) has been introduced in the Assembly by Assemblyman Bill Magee – [A.8147](#). Member banks located in his District (111th, Madison County and portions of Oneida and Otsego Counties) should reach out to thank him for taking on this issue (District

Office phone (315) 361-4125, or by e-mail at mageew@assembly.state.ny.us). This bill did not make the recent Assembly Banks Committee agenda.

Home Office Protection for Bank Holding Company

A companion bill to S.5004 (Griffo) has been introduced in the Assembly by Assemblyman Peter Abbate – [A.8157](#). It was reported from the Assembly Banks Committee meeting yesterday to the Assembly Rule Committee. This bill corrects the definition of “bank holding company” as it applies to home office protection.

Institutional Investor Recovery Act

[A.6060-A \(Lancman\)/S.4497-A \(Libous\)](#) expands the Martin Act, NY General Business Law §352 to permit public pension funds and private sector multi-employer health and welfare plans to bring an action if damaged under the Martin Act. The Martin Act is exclusively enforced by the Attorney General, and does not require proof of intent by the defendant. This bill was considered by the Assembly Codes Committee yesterday and removed from the agenda. There were a significant number of negative votes on both sides of the aisle.

Wild Card Time Limits

[S.4612-A \(Griffo\)/A.8156 \(Lancman\)](#) would amend the wild card law to mandate that wild card applications be determined within one hundred and twenty (120) days of receipt by the Superintendent, unless the applicant consents to an additional time period. The Superintendent is required to notify the bank within 10 days of the determination of the reason for failure to meet the requirements. The Senate Banks Committee reported this bill to the Senate Calendar on Tuesday. The Assembly Banks Committee also reported this bill on Tuesday to the Assembly Rules Committee. This bill would require decisions on wild card issues and end the practice of indefinite deferral of a determination.



June 6, 2011

RE: AN ACT to amend the banking law, in relation to ATM safety.

MEMORANDUM IN OPPOSITION

S.5488 (Marcellino)

This memorandum is submitted on behalf of our client, the Independent Bankers Association of New York State, Inc. ("IBANYS"), in strong opposition to the subject bill which transfers compliance responsibility from the Banking Department to financial institutions with respect to the requirements of the ATM Safety Act.

IBANYS exclusively represents community banks headquartered and doing business in New York State.

Under current law, every banking institution with an ATM facility is required to file an annual compliance report with respect to the ATM Safety Act. This bill would change the requirements to quarterly compliance reports. It also prescribes that any violation of the ATM Safety Act would need to be corrected within 10 days after filing a report of the violation or determination of a violation by the Department. A violation carries a significant penalty exposure.

Currently, the Banking Department performs inspections of ATM lighting at night using personnel trained to determine whether adequate lighting is provided. Measurements of illuminance are taken as prescribed in the ATM Safety Act. This legislation would shift the responsibility for such testing to banks who neither have the equipment or expertise to perform such tests. Not only would banks be required to assume this financial burden but would also be required to perform such tests on a quarterly basis, which is significantly more frequently than the Banking Department currently performs these inspections.

In the event that a repair is necessary, the 10 day period provided for in the bill is not realistic for accomplishing adjustments which require an electrical contractor to perform the work at night.

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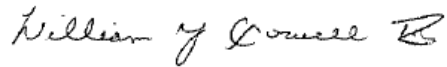
Frank J. Capaldo

Neither the State of New York nor the Banking Department bear any cost for the administration of the current inspection program as it is funded through assessments charged to state banking institutions. These state banks also pay the costs of inspecting federally chartered banks included in the program.

Shifting of these responsibilities to banks would be expensive, difficult to comply with, and result in a negative cost benefit. The efficacy of the ATM safety program should be examined together with the industry to determine the most effective way to insure compliance.

Based on the foregoing, it is respectfully requested that this bill be defeated.

Respectfully submitted,

A handwritten signature in cursive script that reads "William Y. Crowell, III". The signature is written in dark ink and includes a stylized flourish at the end.

William Y. Crowell, III

Whiteman, Osterman, & Hanna LLP

Legislative Counsel to the Independent Bankers Association of New York State, Inc.