

8105

2011-2012 Regular Sessions

I N A S S E M B L Y

June 1, 2011

Introduced by M. of A. SCARBOROUGH -- (at request of the Banking Department) -- read once and referred to the Committee on Banks

AN ACT to amend the banking law, in relation to access to examination and investigatory reports, investment limits for banks, savings banks, references to credit rating agencies, foreign banking corporations and money transmitters, changes to the organization certificate or by-laws of a savings bank and savings and loan association and making related technical changes thereto; and to amend the real property actions and proceedings law, in relation to the disclosure of certain filings made with the superintendent of banks

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 10 of section 36 of the banking law, as amended
2 by chapter 472 of the laws of 2008, is amended to read as follows:
3 10. All reports of examinations and investigations, correspondence and
4 memoranda concerning or arising out of such examination and investigations,
5 including any duly authenticated copy or copies thereof in the
6 possession of any banking organization, bank holding company or any
7 subsidiary thereof (as such terms "bank holding company" and "subsidiary"
8 are defined in article three-A of this chapter), any corporation
9 or any other entity affiliated with a banking organization within the
10 meaning of subdivision six of this section and any non-banking subsidiary
11 of a corporation or any other entity which is an affiliate of a
12 banking organization within the meaning of subdivision six-a of this
13 section, foreign banking corporation, licensed lender, licensed casher
14 of checks, licensed mortgage banker, registered mortgage broker,
15 LICENSED MORTGAGE LOAN ORIGINATOR, licensed sales finance company,
16 registered mortgage loan servicer, licensed insurance premium finance
17 agency, licensed transmitter of money, licensed budget planner, ANY
18 OTHER PERSON OR ENTITY SUBJECT TO SUPERVISION UNDER THIS CHAPTER, or the
19 department, shall be confidential communications, shall not be subject

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 to subpoena and shall not be made public unless, in the judgment of the
2 superintendent, the ends of justice and the public advantage will be
3 subserved by the publication thereof, in which event the superintendent
4 may publish or authorize the publication of a copy of any such report or
5 any part thereof in such manner as may be deemed proper OR UNLESS SUCH
6 LAWS SPECIFICALLY AUTHORIZE SUCH DISCLOSURE. For the purposes of this
7 subdivision, "reports of examinations and investigations, and any corre-
8 spondence and memoranda concerning or arising out of such examinations
9 and investigations", includes any such materials of a bank, insurance or
10 securities regulatory agency or any unit of the federal government or
11 that of this state any other state or that of any foreign government
12 which are considered confidential by such agency or unit and which are
13 in the possession of the department or which are otherwise confidential
14 materials that have been shared by the department with any such agency
15 or unit and are in the possession of such agency or unit.

16 S 2. The section heading, paragraphs (i), (j), (k), and the closing
17 paragraph of subdivision 1 of section 103 of the banking law, the
18 section heading as amended by chapter 619 of the laws of 1937, paragraph
19 (i) and the closing paragraph of subdivision 1 as amended by chapter 1
20 of the laws of 1983, paragraphs (j) and (k) of subdivision 1 as added by
21 chapter 367 of the laws of 1997, are amended to read as follows:

22 Restrictions on loans, purchases of securities [and], total liabil-
23 ities AND OTHER CREDIT EXPOSURES to A bank or trust company of any one
24 person.

25 (i) The limitations in this subdivision shall not apply to the invest-
26 ment of such bank or trust company in the bonds, debentures, notes or
27 other obligations of any person, provided: (i) such bonds, debentures,
28 notes or other obligations mature not less than one year after their
29 respective dates of issuance, and, at the time of such investment, [are
30 rated in one of the three highest rating grades by an independent rating
31 service designated by the banking board] MEET THE STANDARDS OF CREDIT-
32 WORTHINESS ESTABLISHED BY REGULATION BY THE SUPERINTENDENT; (ii) such
33 investment does not exceed fifteen per centum of the capital stock,
34 surplus fund and undivided profits of such bank or trust company; and
35 (iii) such investment complies with such additional limitations and
36 conditions as the [banking board] SUPERINTENDENT from time to time may
37 prescribe by [general] regulation.

38 (j) In the case of a trust company which (1) does not receive deposits
39 from the general public and (2) has been exempted by the [banking board]
40 SUPERINTENDENT from the requirements of section thirty-two of this chap-
41 ter, the limitations of this subdivision shall not apply to the invest-
42 ment of such trust company in the bonds, debentures, notes or other
43 obligations of, any foreign nation, or any political subdivision, agency
44 or instrumentality thereof, provided: (i) at the time of such invest-
45 ment, such bonds, debentures, notes or other obligations [are rated in
46 one of the three highest rating grades by an independent rating service
47 designated by the banking board] MEET THE STANDARDS OF CREDITWORTHINESS
48 ESTABLISHED BY REGULATION BY THE SUPERINTENDENT; (ii) for any such
49 bonds, debentures, notes or other obligations, the foreign nation, or
50 any political subdivision, agency or instrumentality thereof, has guar-
51 anteed payment (by guaranty or commitment to purchase or otherwise) of
52 such principal and interest, or is committed to supply, by loan, subsidy
53 or otherwise, funds sufficient to pay such principal and interest, or
54 has otherwise pledged its faith and credit for the payment of such prin-
55 cipal and interest; (iii) such investments do not exceed the per centum
56 applicable to such obligor of the capital stock, surplus fund and undi-

vided profits of such bank or trust company as the superintendent shall approve[,] and (iv) such investments comply with such limitations and conditions as the superintendent may from time to time prescribe.

(k) In the case of a trust company which (1) does not receive deposits from the general public and (2) has been exempted by the [banking board] SUPERINTENDENT from the requirements of section thirty-two of this chapter, the limitations of this subdivision shall not apply to the purchase of securities under repurchase agreement provided that the repurchase agreement relates to not less than a like amount of direct obligations (based on their principal amount or market value, whichever is lower, at the time the purchase occurs) of any foreign nation, or any political subdivision, agency or instrumentality thereof, provided: (i) at the time of such purchase, such direct obligations [are rated in one of the three highest rating grades by an independent rating service designated by the banking board] MEET THE STANDARDS OF CREDITWORTHINESS ESTABLISHED BY REGULATION BY THE SUPERINTENDENT; (ii) for any such direct obligations, the foreign nation, or any political subdivision, agency or instrumentality thereof, has guaranteed payment (by guaranty or commitment to purchase or otherwise) of the principal and interest thereof, or is committed to supply, by loan, subsidy or otherwise, funds sufficient to pay such principal and interest, or has otherwise pledged its faith and credit for the payment of such principal and interest; (iii) the purchase price of such securities does not exceed the per centum applicable to the obligor of such securities of the capital stock, surplus fund and undivided profits of such bank or trust company as the superintendent shall approve; and (iv) such purchase complies with such limitations and conditions as the superintendent may from time to time prescribe.

The [banking board] SUPERINTENDENT shall be empowered to promulgate rules and regulations as shall be appropriate to carry out the purposes of this subdivision.

THE SUPERINTENDENT ALSO SHALL BE AUTHORIZED TO DETERMINE THE MANNER AND EXTENT TO WHICH CREDIT EXPOSURE RESULTING FROM DERIVATIVE TRANSACTIONS, REPURCHASE AGREEMENTS, REVERSE REPURCHASE AGREEMENTS, SECURITIES LENDING TRANSACTIONS AND SECURITIES BORROWING TRANSACTIONS SHALL BE TAKEN INTO ACCOUNT FOR PURPOSES OF THIS SECTION. AS USED IN THIS SECTION, THE TERM "DERIVATIVE TRANSACTION" INCLUDES ANY TRANSACTION THAT IS A CONTRACT, AGREEMENT, SWAP, WARRANT, NOTE OR OPTION THAT IS BASED, IN WHOLE OR IN PART, ON THE VALUE OF, ANY INTEREST IN, ANY QUANTITATIVE MEASURE OF, OR THE OCCURRENCE OF ANY EVENT RELATING TO, ONE OR MORE COMMODITIES, SECURITIES, CURRENCIES, INTEREST OR OTHER RATES, INDICES OR OTHER ASSETS. IN MAKING SUCH DETERMINATIONS, THE SUPERINTENDENT MAY, BUT IS NOT REQUIRED TO, ACT BY ORDER OR REGULATION.

S 3. The article heading of article 3-A of the banking law, as added by chapter 146 of the laws of 1961, is amended to read as follows:

BANK HOLDING COMPANIES; CONTROL OF BANKING INSTITUTIONS

S 4. Subdivision 1 of section 202-b of the banking law, as amended by chapter 131 of the laws of 2002, is amended to read as follows:

1. Upon opening a branch or agency and thereafter, a foreign banking corporation licensed pursuant to article two of this chapter shall keep on deposit, in accordance with such rules and regulations as the [banking board] SUPERINTENDENT shall from time to time promulgate [by a three-fifths vote of all the members thereof], with such banks or trust companies or private bankers or national banks in the state of New York as such foreign banking corporation may designate and the superintendent may approve, interest-bearing stocks and bonds, notes, debentures, or

1 other obligations of the United States or any agency or instrumentality
2 thereof, or guaranteed by the United States, or of this state, or of a
3 city, county, town, village, school district, or instrumentality of this
4 state or guaranteed by this state, or dollar deposits, or obligations of
5 the International Bank for Reconstruction and Development, or obli-
6 gations issued by the Inter-American Development Bank, or obligations of
7 the Asian Development Bank, or obligations issued by the African Devel-
8 opment Bank, or obligations issued by the International Finance Corpo-
9 ration, or bonds, notes, debentures, or other obligations issued by or
10 guaranteed by the Federal Home Loan Mortgage Corporation (Freddie Mac)
11 or by the Federal National Mortgage Corporation (Fannie Mae), or bonds,
12 notes, debentures, or other obligations issued by or guaranteed by the
13 Student Loan Marketing Association (SALLIE MAE) or all bonds, notes,
14 debentures, or other obligations issued by or guaranteed by a federal
15 home loan bank, or bonds, notes, debentures or other obligations of any
16 unaffiliated issuer [provided that, at the time of such investment, the
17 obligation has received the highest rating of an independent rating
18 service designated by the banking board or, if the obligation is rated
19 by more than one such service, the highest rating of at least two such
20 services] THAT MEET THE STANDARDS OF CREDITWORTHINESS ESTABLISHED BY
21 REGULATION BY THE SUPERINTENDENT, or such other assets as the super-
22 intendent shall by rule or regulation permit, to an aggregate amount to
23 be determined by the superintendent, based upon principal amount or
24 market value, whichever is lower, in the case of the above-described
25 securities, and subject to such limitations as he or she shall
26 prescribe; provided, however, that the superintendent may determine, in
27 his or her discretion, that any such bonds, notes, debentures or other
28 obligations of a particular issuer are not acceptable for purposes of
29 meeting the requirements of this subdivision. The superintendent may
30 from time to time require that the assets deposited pursuant to this
31 subdivision may be maintained by the foreign banking corporation at such
32 amount, in such form and subject to such conditions as he or she shall
33 deem necessary or desirable for the maintenance of a sound financial
34 condition, the protection of depositors and the public interest, and to
35 maintain public confidence in the business of such branch or branches or
36 such agency or agencies. The superintendent may give credit to reserves
37 required to be maintained with a federal reserve bank in or outside the
38 state of New York pursuant to federal law, subject to such rules and
39 regulations as the superintendent may from time to time promulgate. So
40 long as it shall continue business in the ordinary course, such foreign
41 banking corporation shall be permitted to collect interest on the secu-
42 rities so deposited and from time to time exchange, examine and compare
43 such securities.

44 S 5. Paragraph (a) of subdivision 12-a and subdivision 21-a of section
45 235 of the banking law, as added by chapter 674 of the laws of 1968, are
46 amended to read as follows:

47 (a) Obligations of any corporation organized under the laws of any
48 state of the United States maturing within two hundred seventy days,
49 provided that such obligations [receive the highest rating of an inde-
50 pendent rating service designated by the banking board] MEET THE STAND-
51 ARDS OF CREDITWORTHINESS ESTABLISHED BY REGULATION BY THE
52 SUPERINTENDENT.

53 21-a. Interest-bearing obligations payable in United States funds
54 which at the time of investment [are rated in one of the three highest
55 rating grades by each rating service, designated by the banking board,
56 which has rated such obligations] MEET THE STANDARDS OF CREDITWORTHINESS

ESTABLISHED BY REGULATION BY THE SUPERINTENDENT, provided that the aggregate amount invested in the obligations of any single issuer pursuant to this subdivision and pursuant to subparagraph (2) of paragraph (a) of subdivision twenty-one of this section may not exceed one per centum of the assets of the savings bank, and provided further that the aggregate amount invested in the interest-bearing obligations of any single issuer pursuant to this subdivision and pursuant to any provision of this section specifically authorizing such investment, may not exceed the percentage limitations contained in any such provision.

S 6. The banking law is amended by adding a new section 260-a to read as follows:

S 260-A. AMENDMENT OF ORGANIZATION CERTIFICATE AND BY-LAWS. ANY PROPOSED CHANGE IN THE ORGANIZATION CERTIFICATE OR THE BY-LAWS OF ANY SAVINGS BANK SHALL BE SUBMITTED TO THE SUPERINTENDENT AND, UPON THE SUPERINTENDENT'S WRITTEN APPROVAL THEREOF, SHALL BE POSTED IN A CONSPICUOUS PLACE IN THE OFFICE OF THE SAVINGS BANK FOR THIRTY DAYS. SUCH PROPOSED CHANGES MAY THEREAFTER BE INCORPORATED IN THE ORGANIZATION CERTIFICATE OR THE BY-LAWS OF THE SAVINGS BANK BY BEING DULY ADOPTED BY ITS TRUSTEES. A COPY OF SUCH CHANGE SHALL BE FILED IN THE OFFICE OF THE SUPERINTENDENT WITHIN THIRTY DAYS AFTER SUCH ADOPTION.

S 7. Section 402 of the banking law, as amended by chapter 849 of the laws of 1964, is amended to read as follows:

S 402. Amendment of articles of association and by-laws[; application to supreme court]. [1.] Any proposed change in the articles of association, certificate of association, organization certificate or the by-laws of any savings and loan association shall be submitted to the superintendent and, upon the superintendent's written approval thereof, shall be posted in a conspicuous place in the office of the association for thirty days. Such proposed changes may thereafter be incorporated in the articles of association, certificate of association, organization certificate or the by-laws of the association by being duly adopted by its directors. A copy of such change shall be filed in the office of the superintendent within thirty days after such adoption.

[2. Any association may, upon notice to the superintendent, apply to any justice of the supreme court of the district wherein the principal office of such association is located, for a review of the superintendent's refusal to approve any proposed change in its articles of association, certificate of association, organization certificate or by-laws. Any proposed change approved by such court may be incorporated in the articles of association, certificate of association, organization certificate or the by-laws of such association by being duly adopted by its directors. A copy of such change shall be filed in the office of the superintendent within thirty days after such adoption.]

S 8. Paragraphs (v) and (vi) of subdivision 9 of section 640 of the banking law, as added by chapter 374 of the laws of 1979, are amended to read as follows:

(v) interest-bearing bills, notes, bonds, debentures or other obligations issued or guaranteed by the United States or any state or other local governmental entity or any agent or instrumentality thereof, [bearing a rating of one of the three highest grades by a nationally recognized investment service organization that has been engaged regularly in rating state and municipal issues for a period of not less than five years] WHICH MEET THE STANDARDS OF CREDITWORTHINESS ESTABLISHED BY REGULATION BY THE SUPERINTENDENT;

(vi) interest-bearing bills, notes, bonds, debentures or preferred stock traded on any national securities exchange or on a national over-

1 the-counter market or [bearing a rating of one of the three highest
2 grades by a nationally recognized investment service organization that
3 has been engaged regularly in rating corporate debt or equity issues for
4 a period of not less than five years] WHICH MEET THE STANDARDS OF
5 CREDITWORTHINESS ESTABLISHED BY REGULATION BY THE SUPERINTENDENT; and

6 S 9. Subdivisions 3 and 4 of section 1306 of the real property actions
7 and proceedings law, as added by chapter 507 of the laws of 2009, are
8 amended to read as follows:

9 3. Within one hundred eighty days of the effective date of this
10 [subdivision] SECTION, or such later time as the superintendent may
11 determine, the superintendent shall develop with the assistance of the
12 commissioner of the division of housing and community renewal, an elec-
13 tronic database that shall be capable of receiving all filings required
14 by this section.

15 4. The information provided to the superintendent pursuant to this
16 [subdivision] SECTION shall not be subject to article six of the public
17 officers law or paragraphs (a), (c) and (d) of subdivision one or subdi-
18 vision six of section ninety-four of the public officers law. All such
19 information shall be used by the superintendent exclusively for the
20 purposes of monitoring on a statewide basis the extent of foreclosure
21 filings within this state, to perform an analysis of loan types which
22 were the subject of a pre-foreclosure notice and directing as appropri-
23 ate available public and private foreclosure prevention and counseling
24 services to borrowers at risk of foreclosure. The superintendent may
25 share information contained in the database with housing counseling
26 agencies designated by the division of housing and community renewal as
27 well as with other state agencies with jurisdiction over housing, for
28 the purpose of coordinating or securing help for borrowers at risk of
29 foreclosure.

30 S 10. This act shall take effect immediately; provided that sections
31 two, four, five and eight of this act shall take effect only upon such
32 time as the superintendent of banks shall certify that the superinten-
33 dent has adopted the regulations required by this act; and provided
34 further that the superintendent of banks shall notify the legislative
35 bill drafting commission upon the occurrence of such certification in
36 order that the commission may maintain an accurate and timely effective
37 data base of the official text of the laws of the state of New York in
38 furtherance of effectuating the provisions of section 44 of the legisla-
39 tive law and section 70-b of the public officers law.