

**MEMORANDUM OF UNDERSTANDING  
ON THE SHARING OF INFORMATION  
BETWEEN  
THE NEW YORK STATE INSURANCE DEPARTMENT  
AND  
THE NEW YORK STATE BANKING DEPARTMENT**

This Memorandum of Understanding (*Memorandum*) is entered into by and between the New York State Insurance Department (*the Insurance Department*) and the New York State Banking Department (*the Banking Department*)(each independently, *an Agency or*, collectively, *the Agencies*).

The Banking Department has supervisory and regulatory responsibilities over various entities pursuant to New York State Banking Law (*a Banking Company or Banking Companies*). The Insurance Department regulates the business of insurance and has supervisory and regulatory responsibility over insurers, agents, and any other entities engaged in the business of insurance in the State of New York (*an Insurance Licensee or Insurance Licensees*).

This Memorandum is to provide for the mutual sharing of certain confidential or other information by the Agencies to permit them to better perform their respective supervisory functions.

The Agencies believe that mutual communication and cooperation between them will facilitate the effective oversight and regulation of companies subject to the concurrent regulatory jurisdiction of both Agencies and of

companies regulated by one Agency that are affiliated with companies regulated by the other Agency. Accordingly, to the extent permitted by law, the Agencies agree to share certain confidential or other information in a manner consistent with the provisions below.

In exchanging information under this Memorandum, each Agency continues to act independently and not as agent for the enforcement actions by the other. Thus, the mechanisms for sharing information under this Memorandum are not to be used to circumvent the rights of individuals and institutions with respect to an enforcement action and are not a substitute for procedures that apply to the use and production of information for enforcement purposes.

As used throughout this Memorandum, the term *Affiliate or Affiliated* means any company that controls, or is controlled by, or is under common control with, another company. When used in connection with the Banking Department, *Confidential Information* means: (i) examination or inspection reports and workpapers; (ii) internal memoranda; (iii) correspondence between the Banking Department and a regulated entity, or another agency; (iv) reports, in whatever form, prepared by a regulated entity, including for internal use, which are prepared by, or provided to, the Banking Department; (v) information confidential by law or privilege; and (vi) any other information that the Banking Department determines to be of a non-public nature. When used in connection with the Insurance Department, *Confidential Information* means: information confidential by law or privilege, including examination work papers, analyses of financial condition, draft examination reports, reports of potential fraudulent

activity and any other information that the Department determines to be of a non-public nature.

This Memorandum remains in force until terminated by either Agency.

**I. SHARING NON-PUBLIC INFORMATION FOR PURPOSES OF SUPERVISION**

**A. SHARING BY THE BANKING DEPARTMENT WITH THE INSURANCE DEPARTMENT**

1. Information on an Insurance Licensee

Upon request, the Banking Department agrees to provide the Insurance Department with Confidential Information in its possession concerning or affecting an Insurance Licensee that is, or proposes to become, affiliated with a Banking Company.

2. Other appropriate information

The Banking Department agrees to provide the Insurance Department with any other information, including Confidential Information, that the Banking Department believes is necessary or appropriate to permit the Insurance Department to administer and enforce the New York State Insurance laws.

3. Coordination of supervisory activities

The Banking Department agrees to provide the Insurance Department with information, including Confidential Information, that is necessary or appropriate for the coordination by the Banking Department and the Insurance Department of their respective supervision of affiliated

Banking Companies or affiliated Insurance Licensees they supervise, including the coordination of examinations by the Banking Department and the Insurance Department.

4. Enforcement actions

The Banking Department agrees to notify the Insurance Department promptly of any significant enforcement action that the Banking Department takes against a Banking Company with an affiliate Insurance Licensee domiciled in the State of New York.

**B. SHARING BY THE INSURANCE DEPARTMENT WITH THE BANKING DEPARTMENT**

1. Information about affiliated companies

Upon request, the Insurance Department agrees to provide the Banking Department with Confidential Information in its possession concerning or affecting an Insurance Licensee that is, or proposes to become, affiliated with a Banking Company.

2. Other appropriate information

The Insurance Department agrees to provide the Banking Department with any other information, including Confidential Information, that the Insurance Department believes is necessary or appropriate to permit the Banking Department to administer and enforce state and federal laws applicable to Banking Companies.

3. Coordination of supervisory activities

The Insurance Department agrees to provide the Banking Department with information, including Confidential Information, that is necessary or appropriate for the coordination by the Insurance Department and the Banking Department of their respective supervision of affiliated Banking Companies or affiliated Insurance Licensees they supervise, including the coordination of examinations by the Insurance Department and the Banking Department.

4. Enforcement actions

The Insurance Department agrees to notify the Banking Department promptly of any significant enforcement action that the Insurance Department takes or, to the extent permitted by applicable law, knows has been taken by another state insurance regulator against an Insurance Licensee domiciled in the State of New York that is affiliated with a Banking Company.

**C. PROCEDURES FOR THE SHARING OF INFORMATION**

- 1 The Banking Department shall designate its Point(s) of Contact for making and receiving requests for information sought or shared under this Memorandum. The Insurance Department shall designate its Point(s) of Contact for making and receiving requests for information sought or shared under this Memorandum. Any change in designation of the Point(s) of Contact will be provided to the other Agency as soon as possible. It is expected that each Banking Company with an affiliate Insurance Licensee and that each Insurance Licensee with an affiliate

Banking Company will have a respective Point(s) of Contact designated by the Banking Department and the Insurance Department.

2. Requests for information under Part I of this Memorandum can be made either in writing or orally. In addition, as appropriate, the Banking Department and the Insurance Department may share information under this Memorandum without the submission of a request by the other Agency. Oral requests should be followed up in writing as soon as is practicable.
3. The information provided under this Memorandum shall be shared only with appropriate staff of the Receiving Agency (*Agency receiving the information*).
4. Information provided under this Memorandum may be used for supervisory or regulatory purposes only and disclosed only in accordance with Part I, Section D of this Memorandum.
5. Information in the Banking Department's possession or the Insurance Department's possession belonging to another agency may not be shared without permission of that other agency, except as provided in this Memorandum.

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#### **D. CONDITIONS OF DISCLOSURE**

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1. As provided herein, the Banking Department and the Insurance Department agree to take all actions reasonably necessary to preserve, protect, and maintain all privileges and claims of confidentiality related to Confidential Information exchanged pursuant to Part I of this Memorandum, in accordance with applicable state and federal law. The Banking Department and the Insurance Department each acknowledge that all Confidential Information provided by the Furnishing Agency (*Agency providing the information*) to the Receiving Agency remains the property of the Furnishing Agency. The Banking Department and the Insurance Department, in the role of Receiving Agency, agree not to disclose Confidential Information outside of their Agency without the prior written consent of the Furnishing Agency except as provided herein.
2. In the event of termination of this Memorandum, the Banking Department and the Insurance Department agree that Confidential Information remains confidential and will continue to be protected under the terms of this Memorandum.
3. Other than as provided in paragraph 4 of this section, if the Receiving Agency receives from a third party a request for Confidential Information furnished under Part I of this Memorandum, or if the Receiving Agency is served with a subpoena, order, or other process requiring production of such Confidential Information or testimony related thereto, the Receiving Agency shall:

- a. unless prohibited by law (e.g., grand jury subpoena), immediately notify the Furnishing Agency that production is being sought, and afford the Furnishing Agency the opportunity to take whatever action the Furnishing Agency deems appropriate to protect the confidential and/or privileged nature of the non-public information. The Receiving Agency shall cooperate fully in preserving and protecting the full scope of all privileges and claims of confidentiality which may apply to such Confidential Information;
- b. notify the party seeking production of the Confidential Information that the information is covered by this Memorandum and that requests for release of such information must be made directly to the Furnishing Agency, pursuant to any applicable laws and regulations (e.g., Article 6 of the New York Public Officers Law and 11 NYCRR 241 (Regulation 71) for requests to the Insurance Department, Article 6 of the New York Public Officers Law and 3 NYCRR Supervisory Procedure G 106 for requests to the Banking Department);
- c. take all reasonable steps to oppose any effort to secure disclosure of Confidential Information pending written permission of the Furnishing Agency;
- d. consent to application by the Furnishing Agency to intervene in any related action for the purposes of asserting and preserving any privilege(s) and/or claims of confidentiality with respect to the Furnishing Agency's Confidential Information; and,

- e. cooperate with the Furnishing Agency to determine the appropriate response to an order or demand issued by a court of competent jurisdiction to compel production of Confidential Information.
4. It is expressly agreed and understood that if a duly constituted standing committee of the U.S. Congress or the standing committee of the Legislature of the State of New York with authority to request and receive the information requests Confidential Information provided under Part I of this Memorandum, the Banking Department or the Insurance Department may comply with the request of their respective legislative body if compliance is deemed compulsory. In complying with the request, the Receiving Agency will use its best efforts to obtain from the requestor a commitment to maintain the confidentiality of the information and advise the legislative body that the information to be produced belongs to the other Agency. The Receiving Agency agrees to advise the Furnishing Agency as promptly as is reasonably possible of such a request prior to complying with any such request.
  5. The sharing of information described in this Memorandum shall not constitute a waiver of or otherwise affect any privilege or confidentiality to which the information is subject.
  6. It is expressly agreed and understood that in the event a court of competent jurisdiction issues an order to compel the Receiving Agency to produce Confidential Information covered by this Memorandum, the Receiving Agency may comply with such order

following consultation with the Furnishing Agency in accordance with the terms of this Memorandum. The Receiving Agency agrees to advise the Furnishing Agency as promptly as is reasonably possible of such order to compel.

## **II. SHARING OF CONSUMER COMPLAINT INFORMATION**

### **A. BY THE BANKING DEPARTMENT WITH THE INSURANCE DEPARTMENT**

To the extent required or permitted by applicable law, regulation, rule, letter, policy, or practice, and by the terms of this Memorandum, the Banking Department shall forward to the Insurance Department a copy of any complaint that the Banking Department receives relating to an Insurance Licensee or an insurance activity in the State of New York. Complaints shall be forwarded as soon as practicable upon receipt by the Banking Department. Information relating to the resolution of the complaint shall also be sent to the Insurance Department as soon as practicable.

### **B. BY THE INSURANCE DEPARTMENT WITH THE BANKING DEPARTMENT**

To the extent required or permitted by applicable law, regulation, rule, letter, policy, or practice, and by the terms of this Memorandum, the Insurance Department shall forward to the Banking Department a copy of any complaint that the Insurance Department receives relating to the non-insurance activities of a Banking Company and those complaints regarding

the sale, solicitation, advertising, or offers of any insurance product or annuity to a consumer by a state bank or by any other person or entity at an office of a state bank or on behalf of a state bank. Complaints shall be forwarded as soon as practical upon receipt by the Insurance Department. Information relating to the resolution of the complaint shall also be sent to the Banking Department as soon as practicable.

### **C. DESIGNATION OF POINT OF CONTACT**

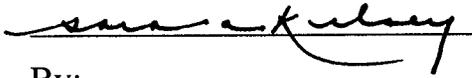
The Banking Department shall designate its Point(s) of Contact for Complaint Information under Part II of this Memorandum. The Insurance Department shall designate a Point(s) of Contact for Complaint Information under Part II of this Memorandum. Any change in designation of the Point(s) of Contact for Complaint Information will be provided to the other Agency as soon as possible.

### **D. CONFIDENTIALITY OF INFORMATION**

The Banking Department agrees to treat complaints exchanged under Part II of this Memorandum in the same manner as consumer complaints received directly by the Insurance Department and the Insurance Department agrees to treat complaints exchanged under Part II in the same manner as consumer complaints received directly by the Banking Department, including referring a complaint to another appropriate regulator. The identity of the complainant or other Confidential Information that may be contained in the complaint will be protected, except for such disclosure as may be necessary to refer or to investigate a complaint.

The Banking Department or the Insurance Department may release aggregate information regarding complaints so long as the identity of the complainant is not revealed.

NEW YORK STATE  
BANKING DEPARTMENT



By:  
Deputy Superintendent &  
Counsel

Executed on July 11, 2003

NEW YORK STATE  
INSURANCE DEPARTMENT



By:  
Deputy Superintendent and  
General Counsel

Executed on July 1, 2003