

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
PROPOSED
3 NYCRR PART 7**

**SUPERINTENDENT'S REGULATIONS: INFORMATION SUBJECT TO CONFIDENTIAL
TREATMENT UNDER SECTION 36.10 OF THE BANKING LAW**

I, Linda A. Lacewell, Superintendent of Financial Services, pursuant to the authority granted by Banking Law Sections 10, 14 and 36, and Financial Services Law Sections 102, 201, 202, 301, and 302 do hereby promulgate Part 7 of Title 3 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to take effect upon publication of the Notice of Adoption in the State Register, to read as follows:

(ALL MATERIAL IS NEW)

§ 7.1 Definitions

(a) The term *confidential supervisory information* shall mean information subject to confidential treatment and protected from disclosure pursuant to section 36(10) of the Banking Law.

(b) The term *independent auditor* shall mean a certified public accountant or a firm lawfully engaged in the practice of public accountancy employed by the regulated entity to provide accounting or auditing services to the regulated entity.

(c) The term *legal counsel* shall mean an attorney and counselor at law admitted to practice in the courts of record of this State, or another state, or a law firm retained to provide legal representation to the regulated entity.

(d) The term *regulated entity* shall mean an entity or individual licensed, chartered, authorized, registered, or otherwise subject to supervision by the Department.

(e) The term *person* shall include any individual, sole proprietorship, partnership, corporation, trust, association, or any other form of entity, as well as any federal, state, or local government or any agency, instrumentality or political subdivision thereof.

§ 7.2 Disclosure of Confidential Supervisory Information.

(a) Except as provided in section 36.10 of the Banking Law, or subdivision (b) below a regulated entity shall not disclose any confidential supervisory information to any person, without the prior written approval of the Department, and subject to any terms and conditions which will be placed by the Department on any such disclosure.

(b) Limited Exception to Prior Written Approval Requirement. Notwithstanding the requirements of subdivision (a) of this section, a regulated entity may disclose confidential supervisory information, which is legally in the possession of such regulated entity, to legal counsel or an independent auditor employed by such regulated entity without obtaining the prior written approval of the Department if there is a written agreement in which the legal counsel or independent auditor:

(1) states its awareness of, and agreement to abide by, the prohibition on the dissemination of confidential supervisory information contained in paragraph (a) of this section;

(2) agrees to use any disclosed confidential supervisory information only for the purpose of providing legal representation or auditing services, as applicable, under a contract to provide services to the regulated entity;

(3) agrees not to disclose the supervisory confidential information to its employees, officers, or directors, except on a “need to know” basis, and on the condition that they maintain the confidentiality of such information;

(4) agrees to notify the Department, promptly and in writing, of any demand or request for the supervisory confidential information, and agrees to assert on behalf of the Department all such legal privileges and protections as the Department may request; and

(5) agrees to obtain any required prior consent or approval from any other state or federal agency and executes a statement affirming such consents and approvals were obtained, or if no other consents or approvals are required, so stating.

(c) Record Keeping. Regulated entities must keep a written record of all confidential supervisory information disclosed pursuant to the provisions of this Part and a copy of each party’s written agreement mentioned in subdivision (b) of this section for inspection and review by the Department.

(d) Return of Information Subject to Confidential Treatment. The Department may, at any time, require any person or entity in possession of confidential supervisory information to return that material to the Department and to destroy any copies thereof however stored.