

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
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 any information that is covered by 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 retained or engaged by a regulated entity to provide accounting or auditing services to such regulated entity.

(c) The term *legal counsel* shall mean an external attorney and counselor at law admitted to practice in any of the courts of record of the United States 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 under the Banking Law.

(e) The term *person* shall include any individual, 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) General Rule. Except as provided in section 36.10 of the Banking Law, or subdivisions (b), (c) and (d) 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 that are imposed by the Department on any such disclosure.

(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 pursuant to an engagement letter or written agreement, provided that such legal counsel or an independent auditor has in writing:

(1) acknowledged that such disclosed information is confidential supervisory information under section 36.10 of the Banking Law; and

(2) agreed to abide by, the prohibition on the dissemination of confidential supervisory information contained in subdivision (a) of this section.

(c) Exception for Client Acceptance of New or Continuing Engagement of Independent Auditors. A regulated entity may disclose confidential supervisory information, which is lawfully in the possession of such regulated entity, to independent auditors as part of the independent auditor's acceptance of a new client engagement or the continuation of an existing annual audit engagement; provided that the regulated entity receives a written acknowledgement from the independent auditor that such disclosed information is confidential supervisory information under section 36.10 of the Banking Law, and the independent auditor agrees in writing to abide by the prohibition on the dissemination of confidential supervisory information contained in subdivision (a) of this section.

(d) Exception for Affiliates. When necessary and appropriate for business purposes, a regulated entity may disclose confidential supervisory information, which is lawfully in the possession of such regulated entity, to its affiliates and the directors, officers and employees thereof on the condition that such persons maintain the confidentiality of such information.

(e) Duty When Served. Any regulated entity, any affiliate, legal counsel, independent auditor or any other person served with a request, subpoena, order, motion to compel, or other judicial or administrative process to provide confidential supervisory information shall:

(1) immediately notify and inform the Office of the General Counsel of the Department of all relevant facts, including the specific documents and information requested, in a timely manner so that the Department will be able to intervene in the judicial, administrative, or other action if appropriate;

(2) inform the requester of the substance of this Part and the obligation to maintain the confidentiality of the confidential supervisory information described in subdivision (a) of section 7.2 hereof; and

(3) at the appropriate time, inform the court, the tribunal, or other issuing authority, of the substance of section 36.10 of the Banking Law and this Part.

(f) Actions of the Department Following Notice of Service. Following receipt of notice pursuant to subdivision (e) of this Part, the Department may direct the requester to intervene in the judicial, administrative, or other action, take all reasonable efforts to have the compulsory process withdrawn, register other appropriate objections, or take other action.

(g) Disclosure to Government Agencies. Upon written request to and approval by both the Senior Deputy Superintendent for Banking (or his or her delegate) and the General Counsel (or his or her delegate), when not prohibited by law, confidential supervisory information relating to a regulated entity may be made

available to a state or federal supervisory agency having direct supervisory authority over such regulated entity.

(h) Intention of the Department Not to Waive Rights. The possession of confidential supervisory information by any regulated entity, any affiliate, legal counsel, independent auditor or any other person does not constitute a waiver by the Department of its right to control, or impose limitations on, the subsequent use and dissemination of such confidential supervisory information.



Department of Financial Services

ANDREW M. CUOMO
Governor

LINDA A. LACEWELL
Superintendent

CERTIFICATION

I, Linda A. Lacewell, Superintendent of Financial Services, do hereby certify that the foregoing is Part 7 to Title 3 of the Official Compilation of Codes, Rules and Regulations of the State of New York, entitled “Information Subject to Confidential Treatment,” signed by me on March 19, 2021, pursuant to the authority granted by Banking Law Sections 10, 14 and 36 and Financial Services Law Sections 102, 201, 202, 301 and 302, to take effect upon publication of the Notice of Adoption in the New York State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed rule was published in the New York State Register on September 9, 2020. No other publication or prior notice is required by statute.

Linda A. Lacewell
Superintendent of Financial Services

Date: March 19, 2021