

Regulatory Impact Statement for the Proposed First Amendment to 23 NYCRR 2

1. Statutory authority: Financial Services Law (“FSL”) Sections 102, 201, 202, 302 and 305 and the State Administrative Procedure Act (“SAPA”) Section 301.

FSL Section 102 states the legislative goals for the Department of Financial Services (“Department”) as including, among other things, “to establish a modern system of regulation, rule making and adjudication that is responsive to the needs of the banking and insurance industries and to the needs of the state’s consumers and residents”, and “to promote the reduction and elimination of fraud, criminal abuse and unethical conduct by, and with respect to, banking, insurance and other financial services institutions and their customers”.

FSL Section 201 authorizes the Superintendent of Financial Services (“Superintendent”) to take such actions as she believes is necessary to, among other things, “foster the growth of the financial industry in New York and spur state economic development through judicious regulation and vigilant supervision”; “ensure the continued solvency, safety, soundness and prudent conduct of the providers of financial products and services”; and “eliminate financial fraud, other criminal abuse and unethical conduct in the industry”.

FSL Section 202 establishes the Office of the Superintendent.

FSL Section 302 empowers the Superintendent to, among other things, prescribe, amend, or withdraw rules and regulations involving financial products and services consistent with the Banking Law, Insurance Law, Financial Services Law, and any other law in which the Superintendent is given authority, including but not limited to governance of the procedures to be followed in the practice of the Department.

FSL Section 305 sets forth provisions regarding hearings held by the Department.

SAPA Article 3 governs adjudicatory proceedings. SAPA Section 301 directs all state agencies subject to SAPA to adopt rules governing the procedures on adjudicatory proceedings and appeals.

2. Legislative objectives: The statutory sections cited above establish the Legislature’s intentions for the Superintendent to modernize adjudication proceedings; ensure the financial solvency and sound practices of the

individuals and entities that are regulated by the Superintendent; and protect consumers from fraud, criminal abuse and unethical conduct through the Superintendent's supervision and regulation of the financial services, banking and insurance industries.

3. Needs and benefits: The proposed amendment accords with the public policy objectives that the Legislature sought to advance in the foregoing sections by specifying that the Department may hold administrative hearings by videoconference.

Since March 7, 2020, when Executive Order Number 202 was issued declaring a disaster emergency in the State of New York in response to the novel coronavirus ("COVID-19") pandemic, COVID-19 spread to millions of people worldwide. The total reported number of COVID-19 cases in New York State is more than 4.9 million. Given the public health implications related to COVID-19, it had been essential that the Department promulgate emergency regulations that implemented protective measures, whenever it was possible, to help stop its spread.

As more people have been vaccinated, the dominant strain of COVID-19, Omicron, appears to cause less severe illnesses and death, and indications are that infection rates are waning. Thus, the need to promulgate the emergency regulations is expected to diminish accordingly. That said, the emergency regulation currently in effect has proven to provide benefits that reach beyond its initial purpose of helping to protect against the spread of COVID-19. The proposed rulemaking effectuates the modernization of adjudication proceedings intended by the Legislature by keeping pace with technological advances, optimizing agency functions and creating efficiencies for the Department and the public that it serves. This amendment would make permanent a new section 2.19 of 23 NYCRR Part 2 to allow hearing participants and witnesses to attend hearings virtually, avoiding the time and expense of traveling to a hearing location or traveling during inclement weather or other conditions inconducive to travel.

The amendment accords with the Legislature's goals for the Department to modernize adjudication proceedings and protect the public from harmful actions committed by regulated parties. This rule making will also continue to protect the safety of those participating in or witnessing a hearing by avoiding personal contact in a way that will help limit the spread of COVID-19 or any future pandemic disease.

4. Costs: The rule making is not expected to impose any costs on any individual who or entity that may be impacted by the rule making. An individual who or entity that does not have a computer, or does not have video-conferencing capability, is not required by the regulation to purchase equipment to attend a hearing. The individual or entity may object to the hearing being conducted by videoconference as described in the rule making.

5. Local government mandates: This amendment does not impose any program, service, duty, or responsibility upon a county, city, town, village, school district, fire district, or other special district.

6. Paperwork: The rulemaking should not result in any individual who or entity that is impacted by the amendment to generate any additional paperwork.

7. Duplication: The rule making does not duplicate, overlap, or conflict with any existing New York or federal laws, rules, or other legal requirements.

8. Alternatives: The alternative was to not utilize videoconference hearings. However, by not amending the regulation, the Department would not advance the legislative intentions of modernizing adjudication proceedings and would not provide protection to hearing participants by avoiding personal contact in a way that would help limit the spread of COVID-19 or any future pandemic disease.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The rulemaking will take effect upon publication of the Notice of Adoption in the State Register.

Regulatory Flexibility Analysis for Small Businesses and Local Governments for the Proposed First Amendment to 23 NYCRR 2

1. Effect of the rule: The rule making has the potential to impact small businesses as defined by State Administrative Procedures Act (“SAPA”) Section 102(8), which are defined as both independently owned and operated and have 100 or less employees. Licensees and non-licensees that are small businesses may become parties to Department of Financial Services (“Department”) adjudicatory proceedings for having been charged with a violation of the Banking Law, Insurance Law, Financial Services Law, or any other law that authorizes the Superintendent of Financial Services to take action. The actual number of participants in adjudicatory proceedings in a given year may reach into the hundreds, based on prior history.

The rule making does not apply to any local government.

2. Compliance requirements: The rule making does not impose any recordkeeping, reporting or other affirmative acts upon any small business that may be impacted by this rule making, nor upon any local government because the rule making does not apply to any local government.

3. Professional Services: No small business impacted by the rule making will need to retain professional services to comply with the rule making, nor will any local government because the rule making does not apply to any local government.

4. Compliance costs: The rule making does not impose any compliance costs on any small business or local government. An individual who or entity that does not have a computer, or does not have videoconferencing capability, is not required by the regulation to purchase equipment to attend a hearing. The individual or entity may object to the hearing being conducted by videoconference as described in the rule making.

5. Economic and technological feasibility: No small business impacted by the rule making should experience any economic or technological impact as a result of the rule making, nor should any local government because the rule making does not apply to any local government.

6. Minimizing adverse impact: The Department believes that no small business will be adversely affected by the rule making, nor will any local government because the rule making does not apply to any local government.

7. Small business and local government participation: The Department complied with SAPA § 202-b(6) by posting the draft regulation on its website for informal outreach on March 7, 2022 and notifying trade organizations that represent small businesses of the posting, in compliance with State Administrative Procedures Act Section 202-b(6). In addition, interested parties, including small businesses, will also be given an opportunity to review and comment on the regulation once it is published in the State Register and posted on the Department's website.

Statement Setting Forth the Basis for the Finding that the Proposed First Amendment to 23 NYCRR 2 Will Not Impose Any Adverse Impact on Rural Areas

The Department previously adopted an emergency measure adding section 2.19 to 23 NYCRR 2, specifying that the Department may conduct administrative hearings by videoconference. When a hearing is conducted by videoconference, the parties, witnesses, and the hearing officer do not need to be physically present at the same location.

This proposed rulemaking would add, on a permanent basis, a new section 2.19 to 23 NYCRR Part 2 specifying that the Department will hold administrative hearings by videoconference unless a hearing officer makes a determination to conduct a hearing, or upon a finding of good cause shown by a party that a hearing should be conducted, where the parties, witnesses, and the hearing officer are physically present at the same location.

The Department finds that this rule making does not impose any additional burdens on persons located in rural areas and will not have an adverse impact on rural areas because it applies uniformly to all persons that are resident or do business in both rural and non-rural areas of New York State. In fact, this rule making may benefit hearing participants and witnesses who are located in rural areas by allowing them to attend hearings virtually, avoiding the time and expense of traveling to a distant hearing location or traveling during inclement weather or other conditions non-conducive to travel.

Statement Setting Forth the Basis for the Finding that the Proposed First Amendment to 23 NYCRR 2 Will Not Have a Substantial Adverse Impact on Jobs and Employment Opportunities

The Department of Financial Services (“Department”) finds that this rulemaking should not adversely impact job or employment opportunities in New York. The Department previously adopted an emergency measure adding section 2.19 to 23 NYCRR 2, specifying that the Department may conduct administrative hearings by videoconference. When a hearing is conducted by videoconference, the parties, witnesses, and the hearing officer do not need to be physically present at the same location.

This proposed rulemaking would add, on a permanent basis, a new section 2.19 to 23 NYCRR Part 2 specifying that the Department will hold administrative hearings by videoconference unless a hearing officer makes a determination to conduct a hearing, or upon a finding of good cause shown by a party that a hearing should be conducted, where the parties, witnesses, and the hearing officer are physically present at the same location.

The Department, therefore, has no reason to believe that this rulemaking will result in any adverse impact on job or employment, including self-employment, opportunities in New York.