



KATHY HOCHUL
Governor

ADRIENNE A. HARRIS
Superintendent

January 30, 2023

Dear Senate Majority Leader/President Tempore Stewart-Cousins and Speaker Heastie:

Pursuant to the requirements of Chapter 18-A, Article 2, §205-b of the Financial Services Law, I hereby submit a report of the State Charter Advisory Board meetings held during the calendar year 2022.

Respectfully submitted,

Adrienne A. Harris

Superintendent of Financial Services

State Charter Advisory Board Meetings Report



FOR THE CALENDAR YEAR 2022

JANUARY 2023



Background

The State Charter Advisory Board (“Board”) was created pursuant to Section 205-b of the Financial Services Law, with its term extended to October 3, 2026. The Board is charged with working with the Superintendent of the New York State Department of Financial Services (“DFS”) to retain state-chartered banking institutions, encourage federally chartered institutions to convert to a state charter, and promote the state banking system. The members of the Board, who are appointed by the Superintendent, consist of representatives from credit unions, consumers, foreign banks, and banks which, to the extent practicable, reflect a range of sizes and geographical locations, provided that at least one shall represent institutions of more than \$3 billion in assets and at least two shall represent institutions of less than \$500 million in assets.

The Board meets at least three times annually. Board discussions typically focus on promoting the state banking system and provide a forum for exchanging views and discussing supervisory and regulatory developments. Board meetings also foster regular discussions with the industry and consumers concerning trends and other issues of concern, such as financial inclusion, fintech partnerships, and consumer protection issues.

The Superintendent is required to make an annual report no later than thirty days after the end of each year to the temporary president of the Senate and the speaker of the Assembly, which shall include a summary of topics discussed at the Board meetings, and any legislative recommendations related to topics at the Board meetings.

DFS thanks all Board members for their time commitment and valuable contributions throughout 2022.

SUMMARY OF THE STATE CHARTER ADVISORY BOARD MEETINGS

HELD ON:

- March 14, 2022
- July 25, 2022
- December 1, 2022

State Charter Advisory Board Meeting Held On March 14, 2022: 3:30 – 4:30 p.m.

Superintendent Adrienne A. Harris called to order the first meeting of the Board in 2022, and after asking Board Members present to announce themselves, commenced the meeting for presentations and discussions relating to the following topics:

Topics of Discussion:

1. DFS Diversity Survey and Report
2. Community Development Financial Institution (CDFI)/Minority Depository Institution (MDI) Advisory Council
3. DFS Request for Information on its 1996 Vacation Policy
4. Bank On and Overdraft Fees
5. Competitiveness of New York Charter

Summary of Discussions

1. DFS Diversity Survey and Report

Superintendent Harris thanked the institutions for participation in the Fall 2021 Diversity survey for regulated entities. The survey required covered financial institutions to respond to a number of diversity-related questions to assist DFS in assessing the current state of diversity in the industry. Superintendent Harris informed the institutions that DFS has started reviewing the responses, with plans to issue a report at some point in the future.

The Superintendent announced that after holding a preliminary roundtable with a number of New York State-chartered CDFIs and MDIs in Fall 2021, DFS decided to form a CDFI/MDI Advisory Council, to establish a forum for more frequent and regular discussions to promote businesses of CDFIs and MDIs in New York. It was highlighted that CDFIs and MDIs play a critical role in delivering access to financial services and products to the underserved and underbanked communities in New York, including communities of color. Therefore, forming such an Advisory Council would assist DFS in better understanding the challenges and needs

of these communities and would inform DFS of the ways DFS may assist these institutions in their safe and sound operations so that they continue providing affordable financial services and products to New Yorkers.

2. DFS Request for Information on Vacation Policy

Superintendent Harris announced that, in response to requests from members of the CDFI/MDI Advisory Council, in January 2022, DFS issued a Request for Information (RFI) regarding its predecessor's 1996 "Vacation Policy as an Internal Control Safeguard" (the 1996 Vacation Policy), which required bank employees in sensitive positions to take two consecutive weeks of absence from the office every year. It was noted that the practices outlined in the 1996 Vacation Policy may be overly burdensome particularly for smaller and more leanly staffed institutions. Therefore, the Department issued an RFI to seek feedback from stakeholders to see if an update would be appropriate. It was further noted that the comment period ended shortly before the date of the State Charter Advisory Board Meeting and that the Department staff were reviewing the responses received.

3. Bank On and Overdraft Fees

Senior Deputy Superintendent of Banking Raymond Dorado provided an overview of the "Bank On National Account Standards" (Standards) that were developed through cooperation among the Cities for Financial Empowerment Fund, Bank On Advisory Board, and other key stakeholders. Financial institutions with accounts that meet these Standards can apply for national certification. Senior Deputy Superintendent Dorado compared the requirements of Bank On accounts with New York State's Basic Banking account requirements and highlighted the differences between the two, including the fact that Bank On accounts prohibit: (i) overdraft or non-sufficient funds fees; and (ii) account activation, closure, dormancy, inactivity and low balance fees, whereas New York Basic Banking accounts have no similar prohibitions.

To encourage New York State chartered banking institutions to seek Bank On certification, Senior Deputy Superintendent Dorado presented on a proposed guidance from DFS that would permit banking institutions to offer Bank On accounts as an alternative to New York's

Basic Banking accounts, so long as they contain the features specified in New York State Banking Law and the General Regulations of the Superintendent, as they are at least as advantageous to consumers as a New York State Basic Banking account. It was commented that such guidance would be good for consumers, including providing certainty and predictability over costs for consumers, and would facilitate regulatory compliance, even if it might not, by itself, be enough to help more people gain access to banking.

4. Competitiveness of the New York Charter

Deputy Superintendent of Banking Kathleen Scott presented on the maintenance and enhancement of the competitiveness and attractiveness of the New York State charter. She noted that DFS staff have been reviewing other states' requirements, incentives, and what they do to attract new banking organizations. Members were then asked to engage in discussions regarding what DFS and New York State can do to keep the New York State charter attractive, and to maintain New York's prominence as the financial capital of the world. Members provided feedback, including a suggestion for DFS to ensure that our regulations are "straightforward and complementary" to federal regulations; to permit a stipend to the board of directors of New York State-chartered credit unions; and to streamline the wildcard process. Members also emphasized the role of fintechs in the banking industry and noted that it is time for a regulatory guidance on bank/fintech partnerships.

There being no further items on the agenda, Superintendent Harris adjourned the meeting at 4:30 p.m.

State Charter Advisory Board Meeting Held On July 25, 2022: 2:00 – 3:00 p.m.

Superintendent Adrienne A. Harris called to order the second meeting of the Board in 2022, and after asking Board Members present to announce themselves, commenced the meeting with introductory remarks about the overall condition of New York-regulated banking institutions, followed by presentations and discussions regarding the following two topics:

Topics of Discussion:

1. Public Banks
2. Cannabis Banking

Summary of Discussions

1. Public Banks

Senior Deputy Superintendent of Banking Raymond Dorado made a general presentation on public banks, including some of the challenges that public banks have faced, such as those relating to development and funding. However, he noted a number of important and significant consumer-related goals and objectives of public banks that pertain to access to affordable financial services for consumers, particularly the underserved and underbanked consumers. He further stated that while we are providing technical expertise to the legislature on various public bank structures and options, we have also initiated discussions with the industry and developed a few ideas to implement some of the objectives of public banks, which were highlighted during the Board meeting, including the following:

- the Small Business Administration's Lender Match Program that matches potential borrowers with business plans, with potential lenders (primarily CDFIs);

- Creation of an alternative credit scoring model, which would enable a lender to provide credit and financing to consumers that do not meet the traditional credit standards; and
- CRA credits, which would offer CRA credits to banking institutions for successful lending referrals to CDFIs, or for partnering with CDFIs.

Some discussions followed, including a comment from a Board Member that it is not only a challenge to get people access to capital, but it is also a challenge to get consumers to come and to talk to bankers. The Member noted that financial education is important, and banks' gaining trust is key to ensuring that more people enter the banking system. There were some discussions about the possibility of capitalizing a number of CDFIs to create scale, as scale would be more likely to provide better access. With respect to the alternative credit scoring model, a Member commented that it would be helpful to have a range of credit scores without a hard pass-or-fail score, with clear guidance on expectations on underwriting standards and risk metrics.

2. Cannabis Banking

The Superintendent's Senior Advisor Tanuja Mohapatra updated the Board Members on the Marihuana Regulation and Taxation Act signed into law on March 31, 2021, legalizing adult-use cannabis business in New York. The legislation also created the new Office of Cannabis Management (OCM) to regulate adult-use, medical, and hemp cannabis businesses. The Senior Advisor provided an overview of the OCM and the fact that OCM is developing regulations to outline how a person or business can apply for a license for the new adult-use cannabis business, highlighting the fact that OCM will promote social and economic equity applicants who have been harmed by the prohibition of cannabis for adult use. The OCM has established a goal of awarding 50% of licenses to social and economic equity applicants. The Senior Advisor also noted that, to advance New York's goal, in the 2022–23 State Budget, the Dormitory Authority of the State of New York was given the statutory authority to create a Cannabis Social Equity Investment Fund for the sole purpose of funding the capital costs

associated with establishing adult-use cannabis dispensaries for social equity licensees deemed to be eligible by the OCM for financing.

Noting that over 50 adult-use Cannabis Conditional Cultivator licenses have been issued across the State, the Senior Adviser stated that these licensees will be seeking to develop banking relationships with financial institutions. Therefore, DFS would like to understand the challenges that financial institutions may face in providing banking services to such businesses, and if there is anything DFS can do to assist them.

Members highlighted a few challenges, including prohibition under federal law (even for state-chartered financial institutions), filing of Currency Transaction Reports (CTRs) and Suspicious Activity Reports (SARs), and the accuracy of representations regarding compliance with laws and regulations that financial institutions regularly make to their regulators, auditors and other service providers. Members also mentioned that a guidance by DFS, containing information on issues such as due diligence, on-boarding, compliance, and over-all supervisory expectations, would be helpful.

There being no further items on the agenda, Superintendent Harris adjourned the meeting at 3:00 p.m.

State Charter Advisory Board Meeting Held On December 1, 2022: 11:00 a.m. – 12:00p.m.

Superintendent Adrienne A. Harris called to order the third and last meeting of the Board in 2022, and after asking Board Members present to announce themselves, commenced the meeting for presentations and discussions relating to the following topics:

Topics of Discussion:

1. Introductory Remarks by Superintendent Harris
2. Presentation Regarding Bank/Fintech Partnerships
3. Open Forum for Discussions and Feedback from Members

Summary of Discussions

1. Introductory Remarks by Superintendent Harris

Superintendent Harris started the meeting by emphasizing the important role that New York State-regulated institutions play in New York’s economy and providing a high-level overview of the state of the economy, banking, and DFS’s supervisory focus. The Superintendent highlighted DFS’s commitment to make the financial system not only safer, but also fairer and more inclusive, which means ensuring that households and businesses have access to affordable and safe financial products and services. The Superintendent noted that one example to enhance financial inclusion would be to promote access to low-cost and safe banking services to “low-to-moderate income” consumers, such as through Bank On accounts. She highlighted DFS’s accomplishment in successfully championing to expand access for New Yorkers through the issuance of a guidance on April 15, 2022. That guidance allows New York-chartered banking institutions to offer Bank On accounts as an alternative to New York’s Basic Banking accounts, allowing more New Yorkers to have access to safe and affordable banking services without certain fees, such as overdraft, inactivity, and low-balance fees. Since the issuance of the guidance, 16 New York State-regulated banking

institutions had obtained Bank On certification as of the date of the meeting and were offering these accounts to New Yorkers.

Next, the Superintendent highlighted the various operational risks that financial institutions face, including cybersecurity risk, and the significance of operational resiliency. Given the increasing risk of cyber threats, particularly ransomware attacks, the Superintendent mentioned that on November 9, 2022, DFS published for public comments its proposed revisions to DFS's cybersecurity regulation, with a focus on more tailoring of the regulation, a renewed emphasis on governance, additional controls to prevent unauthorized access to institutions' systems, more regular vulnerability assessments, and a robust incidence response framework and reporting.

To continue the discussions about operational resiliency, the Superintendent noted another initiative of DFS, in response to feedback received from a number of banking institutions asking DFS to revisit its 1996 "vacation policy" requiring a mandatory two-week consecutive absence from the office for bank employees in sensitive positions. The Superintendent informed the Members that on November 15, 2022, after engagement with the industry, DFS issued a revised Guidance to reflect a more risk-based approach, facilitating the continued safe operations of regulated institutions in a way that would minimize costly and inconvenient disruptions to operations, while ensuring appropriate controls are in place to mitigate risk of illicit activities against banking institutions.

Next, Superintendent Harris highlighted DFS's initiatives regarding climate change. She noted numerous roundtables, webinars, and other engagements that staff of DFS had with the industry, as well as domestic and international regulatory counterparts, and other stakeholders relating to climate. She mentioned that through this process, DFS learned that the industry needed additional guidance. So, after further engagements with various stakeholders, DFS started working on a draft proposed supervisory guidance regarding management of material financial risks from climate change, which should be ready and forthcoming soon.

2. Presentation Regarding Bank/Fintech Partnerships

Executive Deputy Superintendent of Research and Innovation, Kaitlin Asrow, presented on a new DFS project for 2023 focusing on bank and fintech partnerships. This project will seek

to explore what services are being sought by banking institutions from fintechs, and challenges banking institutions face with partnerships. The goal of the project is to consider new guidance for the banking industry, along with training DFS exam teams to create a clear approach for review of the partnerships. The Executive Deputy Superintendent noted that engagement with institutions will be key to understanding the various models of bank/fintech partnerships and that DFS would value input on how this information could be collected on an ongoing basis without imposing undue regulatory burden.

Discussions then followed regarding concentration risk, and whether that is an area that DFS could clarify. Discussions also focused on coordination with federal banking agencies, and the challenges of defining the term “partnership”, and the need for guidance on how to characterize different types of relationships, as the characterization of the relationship is relevant, for example, in terms of the level of scrutiny of the relationship.

3. Open Forum for Discussions and Feedback from Members

During the open forum section of the meeting, Members raised the question of coordination among regulators. Specifically, it was noted that regulatory agencies need to coordinate with each other on any supervisory guidance regarding climate change. Otherwise, institutions would need more resources to comply with multiple different sets of regulatory requirements with slight variations.

Superintendent Harris noted DFS’s regular engagements and collaboration with federal regulators, including close coordination on supervisory matters, as well as monitoring federal policies and practices to ensure alignment to the extent possible. The Superintendent emphasized that DFS will use its authority where it can to make sure regulatory policies are fair and transparent, protect consumers and markets, and allow businesses to succeed.

Board Members noted that this message was appreciated, as they are smaller institutions, and their resources are constrained, which does not always allow them to lobby on their own behalf.

Finally, a Board Member suggested that it would be appreciated if DFS would be able to hold an annual town hall for all financial institutions to attend, to highlight what DFS is working on. This Member stated that it is a privilege to be on the Board and hear about DFS initiatives,

and that all financial institutions would benefit from having greater insight into DFS's initiatives.

There being no further items on the agenda, Superintendent Harris adjourned the meeting at 12:00 p.m.