

September 4, 2019

Via Email and Certified Mail

Linda A. Lacewell
Superintendent
New York State Department of Financial Services
One State Street
New York, NY 10004-1511

Re: Section 36.10 of the New York Banking Law

Dear Superintendent Lacewell:

Congratulations on your recent confirmation as Superintendent of the New York State Department of Financial Services (“DFS”). The Committee on Banking of the New York County Lawyers Association (“Committee”) wishes you the utmost success.

The Committee is researching the applicability, if any, of Section 36.10 of the New York Banking Law to a financial institution’s disclosure of confidential supervisory information in the financial institution’s lawful possession to its outside legal counsel on a confidential basis. As you know, Section 36.10 provides that confidential supervisory information in a supervised financial institution’s possession “shall not be made public” unless the Superintendent authorizes the “publication” of such materials. Merriam-Webster defines “public” as “exposed to general view”; “of, relating to, or affecting all the people or the whole area of a nation or state”; or “of or relating to people in general.” It defines “publish” as “to make generally known”; “to make public announcement of”; “to disseminate to the public”; “to produce or release for distribution”; or “to issue the work of (an author).”

In connection with the Committee’s research, the Committee requests a written response from the Superintendent on the following topics:

1. Does the Superintendent interpret Section 36.10 to prohibit a financial institution from disclosing “reports of examinations and investigations, correspondence and memoranda concerning or arising out of such examination and investigations” (“Confidential Materials”) in a financial institution’s lawful possession to its outside legal counsel, on a confidential basis, for the purpose of obtaining legal advice and/or representation before DFS (or, in the case of joint federal-state Confidential Materials, such as joint reports of examination, before the appropriate federal financial regulatory agency)?
2. Has DFS or its predecessor agency, the New York State Banking Department, issued any written guidance regarding the interpretation, scope, or applicability of Section 36.10?
3. Do any regulations or supervisory procedures govern: (a) requests by financial institutions for authorization to disclose Confidential Materials in their lawful possession to their outside legal counsel, and (b) DFS’s obligations in response to such requests (e.g., in terms of timeliness)?

In order to move forward with its study of Section 36.10 in a timely fashion, the Committee requests a response to these questions within six weeks. Please note that although the Committee previously requested a response to similar questions in a letter to Superintendent Vullo dated December 11, 2018, the Committee did not receive a response from Superintendent Vullo or DFS staff.

A response may be sent to the Committee care of:

Anthe Maria Bova
General Counsel & Director of Pro Bono Programs
New York County Lawyers Association
14 Vesey Street
New York, NY 10007
abova@nycla.org

Respectfully yours,

/s/ Dustin N. Nofziger

Dustin N. Nofziger
Chair, Committee on Banking

cc: Anthe Maria Bova, General Counsel & Director of Pro Bono Programs, NYCLA
abova@nycla.org