

March 19, 2020

NYDFS Guidance in Response to COVID-19

NYDFS Issues Order Granting Temporary Relief from Requirements of Certain New York State Banking and Finance Laws to Affected DFS Regulated Entities

BACKGROUND

On March 12, 2020, the Superintendent of the New York State Department of Financial Services (“DFS”) issued an order (the “Order”) granting temporary relief from certain requirements of the New York Banking Laws and the New York Financial Services Laws and the regulations promulgated thereunder (collectively, the “NY Banking and Financial Services Laws”) to regulated entities affected by COVID-19.¹ The Superintendent explained that the DFS was issuing the Order to help regulated entities meet their ongoing compliance obligations under the NY Banking and Financial Services Laws while managing disruptions associated with the COVID-19 outbreak. Key forms of relief include the modification of the DFS’s application requirements to close or relocate an authorized place of business, branch, office or location and a 45-day extension for certain compliance and reporting filings, including the certification of compliance with the DFS’s Part 504 transaction monitoring and filtering program requirements and the DFS’s cybersecurity program requirements. The Order does not extend the deadlines for notifying the DFS of a cybersecurity event or the submission of a regulated entity’s LIBOR cessation and transition plans.

A. RELIEF GRANTED

Subject to conditions discussed below, the DFS’s Order has granted the following relief:

- **Temporary Relocations or Closures:** Regulated entities including, but not limited to, banking organizations and foreign banking corporations may temporarily relocate any of their authorized places of business or close any of their branch offices or locations without complying with the prior notice or application requirements of the Banking or Financial Services Laws, provided that the regulated entity submits prompt written notice to the Superintendent and that all activities

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conducted from the relocated place of business remain subject to the regulation and supervision of the DFS.

- **Filing Deadline Extension:** The DFS also granted a 45-day extension of the due date for certain filings from regulated entities that are unable to meet the original due date because of the COVID-19 outbreak. Such extensions include, but are not limited to:
 - Certifications of compliance with cybersecurity requirements, as required by 23 NYCRR 500.17(b), and transaction monitoring and filtering programs, as required by 3 NYCRR 504.4.
 - Annual Reports and Comparative Statements of commercial banks, trust companies, stock-form savings banks and stock-form savings and loan associations, as required by 3 NYCRR 24.
 - Volume of Operation Reports of mortgage bankers and mortgage brokers as required by 3 NYCRR 410.7.
- **In-Person Presence at Board Meetings:** To satisfy the requirement of in-person participation at a meeting of an institution's board of directors or trustees, or any committee thereof, a regulated entity, including a bank, trust company, investment company, savings and loan association or credit union, may use telephone, video-conferencing, or similar electronic means that allows all meeting participants to hear each other.

B. LIMITS OF RELIEF

The Order explicitly notes that all individuals that work for a regulated entity that are conducting licensable activities from temporary locations due to the outbreak of COVID-19 shall remain subject to the full supervision and oversight of the DFS. In addition, regulated entities and the individuals that work for them must continue to maintain appropriate safeguards and controls to maintain the safety and soundness of the regulated entity, including, but not limited to, controls related to data protection and cybersecurity. The Order further notes that individuals working for regulated entities may not conduct licensable activities with members of the public at or from their personal residences.

The Order does not modify the deadlines for notifying the DFS of a cybersecurity event or the submission of LIBOR cessation and transition plans.

C. APPLICABILITY OF THE ORDER

The Order applies to "COVID-19 affected regulated entities and persons." However, the Order does not define what qualifies as "COVID-19 affected." Given the Order's relief to regulated entities that have closed or temporarily relocated an authorized business location and the mention of employees working from their personal residences, the Order should be interpreted to apply to a regulated entity that has closed a place of business or instructed its employees to work remotely.

In addition, the provision granting a filing extension for certain compliance certifications and reports applies to "regulated entities and persons unable to meet filing deadlines due to the outbreak of COVID-19." This broad language should be sufficient to cover regulated entities that are unable to meet the filing deadlines due to a wide variety of issues, including, but not limited to, the illness or absence of key employees, delays

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in the ability to gather information for purposes of reporting, and delays associated with constrained staffing or technological resources as regulated entities respond to the COVID-19 outbreak.

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ENDNOTES

- ¹ https://www.dfs.ny.gov/system/files/documents/2020/03/ea20200312_covid19_relief_order.pdf.

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CONTACTS

New York

Nicolas Bourtin	+1-212-558-3920	bourtinn@sullcrom.com
Elizabeth T. Davy	+1-212-558-7257	davye@sullcrom.com
Shari D. Leventhal	+1-212-558-4354	leventhals@sullcrom.com
Sharon Cohen Levin	+1-212-558-4334	levinsc@sullcrom.com
Alexander J. Willscher	+1-212-558-4104	willschera@sullcrom.com

Washington, D.C.

James A. Earl	+1-202-956-7566	earlja@sullcrom.com
Eric J. Kadel, Jr.	+1-202-956-7640	kadelej@sullcrom.com
Judson O. Littleton	+1-202-956-7085	littletonj@sullcrom.com
Jennifer L. Sutton	+1-202-956-7060	suttonj@sullcrom.com
Adam J. Szubin	+1-202-956-7528	szubina@sullcrom.com
