For the Record

Submitted Statement of Commissioner David M. Frankel
New York City Department of Finance

On Intro 485-A regarding the evaluation of depository banks

April 30, 2012

I am David M. Frankel, Commissioner of the New York City Department of Finance. I am issuing this written statement regarding Intro 485-A.

The Administration shares many of the concerns that the Council and supporters of this bill have voiced regarding the significant impact of the 2008 financial crisis on City home owners and businesses. Responses to the crisis at all levels of government have been plentiful and varied. Each proposal requires a balancing of many concerns. With respect to Intro 485-A, we believe that the balance does not weigh in favor of New York City residents and taxpayers.

While New York City as a whole has not faced the same level of single-family foreclosures as the rest of the country, foreclosure rates in certain City neighborhoods – particularly in Southeast Queens and Eastern Brooklyn – are as high as any nationwide. Foreclosures harm the owners and residents of the properties affected and lower the values of surrounding home.

Multi-family buildings also face significant foreclosure issues. The Department of Housing Preservation and Development (HPD) estimates that there are thousands of overleveraged multi-family buildings in New York City. These overleveraged buildings can result in serious consequences and dangerous conditions for residents and tenants if owners are forced to direct more of their rent into mortgage payments than into needed maintenance and repairs.

Furthermore, in the wake of the credit crisis, many of New York City's small businesses have not been able to access sufficient credit to stay in business or put more New Yorkers back to work. That is why the Bloomberg Administration, in partnership with Speaker Quinn and the City Council, has pursued a multi-pronged strategy of helping New Yorkers deal with the fallout of the financial crisis.

The City is helping connect more New Yorkers to financial services. The Office of Financial Empowerment (OFE) is one of the Center for Economic Opportunity's most successful programs to focus on these important issues. Established in 2006 within the Department of Consumer Affairs, OFE helps low-income New Yorker connect with financial services. Through its Financial Empowerment Centers, OFE provides one-on-one financial counseling and helps New Yorkers to reduce their debt. As of November 2011, FEC counselors had conducted more than 25,000 counseling session with nearly 13,500 clients, and helped New York City residents reduce more than $6.5 million in debt and build more than $840,000 in savings. Due to this success, the Centers will now receive $2.4 million annually in City funds to expand the program, with the goal of providing approximately 10,000 counseling sessions to New Yorkers each year.

The City has many other programs to address the important issues of foreclosure prevention, assistance and expansion of credit opportunities. In 2007, HPD established the Center for New York City Neighborhoods (CNYCN) to help address the challenge of single-family foreclosures. In the

past three years, the Center has assisted nearly 16,000 homeowners with counseling and legal services. Nearly 7,000 loan modification requests have been submitted by homeowners working with CNYCN, resulting in more than 2,700 loan modifications that have reduced mortgage payments by an average of more than $1,000 a month.

In 2010, HPD, in partnership with Speaker Quinn and the City Council, also launched the Proactive Preservation Initiative, which identifies and treats buildings in physical decline before they fall into disrepair. Financial distress is a key indicator HPD considers. Once identified as a potentially troubled building, HPD surveys the property, and then identifies a proper course of action – ranging from placing it on a watch list, to offering the owner a rehab loan to bringing code enforcement action against the owner. To date, more than 640 buildings have been surveyed as part of this initiative. HPD is also sharing code and lien data with bank regulators in order to increase transparency and encourage lenders to take steps to improve distressed assets.

Finally, the Department of Small Business Services (SBS) has also worked with banks to expand access to credit for small business throughout the City. As part of the Bank Advisory Council convened by Deputy Mayor Robert K. Steel on behalf of Mayor Bloomberg, ten partner banks have committed to a variety of initiatives to facilitate enhanced access to capital for small businesses, including referral partnerships between four banks and the City's network of Business Solutions Centers; new online tools to support the City's small businesses; making capital assistance materials available in more languages; training for City staff on underwriting

standards and best practices; and support for SBS in pursuing an innovative partnership with the U.S. Export-Import Bank to increase support for New York's exporting small businesses. In fact, New York City is one of only two cities nationwide to participate in this program, which will help more New Yorkers participate in the export-based economy that many national leaders, including President Obama, have identified as critical to the country's economic future.

The work of the Bank Advisory Council builds on the already-strong track record of the Department of Small Business Services during the Bloomberg Administration of connecting a record number of small businesses with the credit they need to start, survive, and thrive in New York City. In 2011, SBS' NYC Business Solutions Centers connected more than 800 businesses with financing solutions, up from just over 600 in 2010 and less than 150 in 2007. SBS helped connect New York's small businesses with more than $39 million of capital in 2011, up from $21.4 million in 2010.

In summary, the Bloomberg Administration is committed to helping New York's neighborhoods and small businesses respond to the lingering effects of the financial crisis and ensuing recession. And we welcome the opportunity to continue our partnership with the City Council and the supporters of this bill to strengthen and improve these programs.

But while we share many of the concerns of the Council – and have taken meaningful action to address these concerns – we cannot support Intro. 485-A.

Last year, my Assistant Commissioner, Treasurer Elaine A. Kloss, explained the Administration's opposition to Intro 485, which required the creation of a new classification system for the City's depository banks seeking to become designated by the Banking Commission. Today I submit this statement regarding Intro 485-A to share our continued opposition to this bill and our heightened concerns about the unwarranted regulatory intervention this bill proposes. This bill, by creating a new entity and empowering that entity with the responsibility not only to evaluate banks but also the needs of the City's communities, is ill-conceived, overreaching, and far too costly.

Fundamentally, the Banking Commission and the Department of Finance's role regarding the City's depository banks is to ensure that taxpayer money is deposited in banks that can best provide the safety and security of those deposits and the services the City needs. This bill effectively anoints the Department of Finance a banking regulator. However, neither Finance nor any other City entity has the expertise, resources or legal authority to step into the much broader role contemplated by this legislation. This is not surprising since bank regulation should be and currently is a matter of primarily national interest and secondarily state interest. Interposing yet another level of regulation at a municipal level threatens not only the overarching federal scheme but practically places the City at a competitive disadvantage to retain private banking functions and the tax revenues and jobs that come with them.

Pursuant to the City Charter, the Department of Finance is charged with the power and duty to "provide for the reception and safekeeping of all moneys paid into the treasury of the City and for the payment of all moneys" drawn and countersigned by the City Comptroller. Pursuant to this framework, the Department of Finance, in conjunction with the Banking Commission and the City Comptroller, manages the City's cash flows.

The Banking Commission has three members: one representative of the Mayor; one representative of the Commissioner of the Department of Finance; and one representative of the City Comptroller. Three Finance staff members currently support the Banking Commission on a part-time basis.

The Banking Commission has three primary responsibilities. First, each year the Banking Commission recommends interest rates to the City Council for late payments of property taxes and water and sewer rents, as well as discount rates for early payments of property taxes. Second, the Banking Commission reviews and approves or denies applications from banks or trust companies to hold City monies by being named New York City Designated Banks. Finally, the Banking Commission participates in the New York State Banking Development District (BDD) Program and approves deposits of City funds in BDD branches.

Intro 485-A completely overhauls the mandated responsibilities of the Department of Finance with respect to the operations of the Banking Commission and the designation of the City's depository banks. The bill seeks to create an additional bureaucratic entity, a community investment

advisory board, charged with conducting a biennial community level "needs" assessment. The board would also issue an annual report that evaluates if and how well NYC designated banks meet the needs of the City's numerous communities. The Banking Commission would consider the findings in the report when it considers the applications of banks to hold City funds and to do business with the City.

We recognize and support the need for all communities to be sufficiently serviced by banks. However, this is already a function of the federal and state governments. For example, the federal Community Reinvestment Act (CRA) ratings system requires banks to report their activities at the community level for evaluation of whether the needs of communities are met. These ratings are done by professional staff skilled in the process with years of experience. On the other hand, the New York City Banking Commission exists primarily to protect City money deposited at those regulated banks, not to regulate those banks. The Banking Commission considers the federal CRA ratings and related State ratings in reviewing a banks designation or re-designation application. However, the paramount consideration for the Banking Commission is to ensure that the City's money is safe and that the banks will continue to provide their procured bank services to City agencies.

Additionally, the bill requires the community investment advisory board to delve into the processes by which banks conduct their business and essentially impose best practices upon the banking industry. Our federal and state governments do not impose best practices on private businesses but instead ensure consumer protection through law or regulation. Therefore this

bill not only encroaches upon the authority of higher levels of government but of private businesses as well.

More specifically, Intro 485-A requires that the advisory board and the Banking Commission consider how banks operate on a census tract level. To comply with this new mandate, the advisory board and the Banking Commission would have to consider voluminous data that the banks would have to submit to be approved for designation. Further, the advisory board would have to evaluate and determine the banking needs of the City's neighborhoods. On both a policy and an operational level, this is a stark departure from the traditional role assigned to the Department of Finance and the Banking Commission. Not only is this type of activity overreaching but it also imposes significant unnecessary costs. We estimated the initial cost of an earlier version of this bill at approximately $500,000 and annual costs thereafter ranging from about $100,000 to $250,000. We have only had this version of the bill since Friday and have not had the time to fully price out the cost of implementing all of its provisions. However, it is not unreasonable to place the cost of this new version to be at least double – or a minimum of $1 million in additional startup costs and $500,000 annually thereafter.

There are also perhaps unintended consequences of this proposal that would put the City of New York at a grave disadvantage. The bill creates a high cost of compliance for banks to meet robust reporting requirements thereby potentially decreasing the quality and quantity of banks seeking to do business with the City of New York. We do not want to put smaller community banks at any disadvantage by making it too expensive to be

eligible to do business with the City of New York. Similarly, we do not want to limit the number of banks eligible to do business with the City in this way, thereby decreasing competition and possibly causing increased fees and fewer options in terms of services and products available to the City. We also do not want to disincentivize application for designation from the larger banks.

The City carefully selects its operating banks based on product offerings, customer service and pricing. In general, government payment processing requirements are so complicated and unique that only a limited number of banks are capable of fulfilling the City's needs. It would be particularly troubling if a City bank, one that is very important to the City's cash management and that can best assure the safety of the taxpayer money, needed to be replaced due to a failure to satisfy elements of the proposed bill.

The enactment of Intro 485-A might also create confusion by giving the public and businesses the impression that the City of New York oversees, regulates and evaluates banks. It does not and should not. People could misinterpret the annual bank reports to mean that one bank has a stronger financial condition than another. In reality, however, there are many other government agencies, like the U.S. Office of the Comptroller of the Currency, the FDIC, the Board of Governors of the Federal Reserve System and the newly created Consumer Financial Protection Bureau plus the New York State Department of Financial Services, that have the authority, obligation and developed expertise to regulate these banks and their

activities. It is preferable that people seek guidance from these regulatory agencies for evaluation of bank financial stability and performance.

Finally, but significantly, the Law Department has expressed concerns that the bill is preempted under state and federal law, and unlawfully impinges on the powers of the Mayor and Banking Commission.

In closing, as Treasurer Kloss mentioned last year in her testimony regarding the prior version of this bill, the Treasury Division of the Department of Finance is a relatively small group and its support of the Banking Commission is only one of its many duties. Without new funding and additional resources we could not successfully administer the broad scope of this bill. More importantly, we do not believe that this bill supports the fundamental purpose of the Banking Commission, which is to limit City deposits to institutions that are best equipped to secure taxpayer money while offering competitive pricing and services. Given the extensive regulatory scheme already in place, dedicating scarce City dollars to this effort would not be in the best interests of City taxpayers.

For the Record

New York Bankers Association

MEMORANDUM IN OPPOSITION

April 30, 2012

New York City Council Proposed Intro. 485-A

The New York Bankers Association (NYBA) opposes this proposed local law which establishes a Community Investment Advisory Board (the "Board") to evaluate whether banks, which are or wish to become New York City depositories, are addressing the "credit, financial and banking services needs throughout the City" and mandates that the annual report which the Board will produce evaluating the banks' performance is "considered by the banking commission in reviewing a bank's application for designation or redesignation as a deposit bank." NYBA is comprised of 150 community, regional and money-center banks operating in New York State, with over 200,000 New York employees.

We believe that the evaluation process embedded in this proposal remains inherently subjective and coupled with the public access to volumes of other bank information, cannot help but create unfair and damaging reputational risk for would-be City depositories. This is particularly true as the bill calls for public hearings in each borough of the City as part of the Board's need assessment process. Moreover, the depth of business and strategic information sought in order for the City to make its evaluation, as well as the implied mandate contained in the proposal regarding the types of products and services banks will be required to offer in order to qualify for depository status, infringes on both State and federal preemption principles, as comprehensive banking laws setting out the parameters of acceptable banking practices and procedures already exist at the State and Federal level.

Intro. 485-A sets forth a number of categories of activities on which banks would be evaluated by the Board. Despite the resultant potential additional mountain of paperwork that banks would need to provide, the ultimate evaluation and selection process for depository institutions remains subjective, with no clear guidance on how much weight would or should be put on any one category. For example, it remains completely unclear whether an investment by a bank in economic development projects would be deemed to be more or less worthy than a bank's emphasis on meeting the needs of small businesses and what impact such focus would have on a bank's evaluation.

Even more concerning is the fact that the Board will establish its own subjective benchmarks, best practices, and recommendations on which the banks will be judged, separate and apart from (and perhaps in conflict with) the volumes of federal and state laws and regulations on which banks are already judged. Additionally, the Board will evaluate banks on their improvement year over year in meeting such benchmarks and best practices.

Moreover, the criteria continue to contemplate a world where banks offer the same or similar products and services; how differences between retail and wholesale banks, for example, would be reconciled to ensure fairness in the evaluation process, continues to appear subject solely to the subjective view of the evaluating Board. The legislation therefore may unfairly disadvantage many banks in competing for City deposits, and importantly may tarnish their reputations by inappropriate public evaluations. Such inequities and reputational risk could inadvertently discourage safe and sound institutions with strong records of corporate responsibility from seeking to become public depositories. Significantly, this version of Intro. 485-A appears not to consider in any way whatsoever whether the banks being evaluated and designated for depository status (or removed from such designation), have the means, from a safety and soundness perspective, to accept public deposits.

It is important to note, as well, that this legislation could require that information that provides a competitive advantage for individual banks be made public. For example, Intro. 485-A calls upon banks to disclose excessive amounts of information related to their products and service offerings and strategic focus, and to do so essentially at a community-by-community level. We oppose forcing competitive institutions to share with their competitors the types of trade information called for in this bill.

NYBA remains extremely concerned that the criteria for evaluating would-be depository institutions represents an inappropriate mandate for which products and services a bank may offer. If banks are to be evaluated based upon their record of meeting the credit needs of the community, beyond what is intended by CRA, then we believe it possible that certain institutions would be penalized with a poor evaluation due to their lack of subprime products, for example. This penalty would be tantamount to a requirement to offer such products – a result, we believe, far outside the scope of the Board, the Banking Commission and the Finance Department's purview. Additionally, as the criteria include, among other considerations, the types of products and services to be offered by banks, the expectation for home loan restructuring, and construction loans and permanent loans for affordable housing, the criteria delve into the business of banking itself – an area preempted by both State and federal banking law. It is well settled law that New York State has occupied the field of the business of banking for state-chartered banking institutions (see Section 10 of the Banking Law). The recently enacted federal Dodd-Frank Act, which has codified aspects of the United States

Supreme Court case, *Barnett Bank v. Nelson,* also prohibits the application of local law with respect to federally chartered institutions if such law "prevents or significantly interferes" with the exercise by a national bank of its powers. Intro 485-A's criteria would appear to do just that.

For the reasons set forth above, NYBA respectfully opposes this proposed local law and asks that it be held.

Respectfully Submitted,

New York Bankers Association