STATE OF NEW YORK
LEGISLATURE
ALBANY

PHIL STECK
Member of Assembly, 110th District

JAMES SANDERS, JR.
State Senator, 10th District

February 10, 2021

The Hon. Andrew Cuomo
Governor of the State of New York
The Capitol

RE: Response to SIFMA letter dated February 4, 2021 concerning A3353/S1406

Dear Governor Cuomo:

We write in response to the concerns raised in above-referenced communication sent to your office regarding the legislation commonly known as the Stock Transfer Tax (STT). All of the arguments set forth in Securities Industry and Financial Markets Association's (SIFMA) letter of February 4 are outdated and without merit.

Potential for job loss in New York City

SIFMA utilizes information from a 2003 study produced by the New York City Independent Budget Office (IPO) to allege there will be job losses in the financial sector. Unfortunately, their statistical estimate was based on data for the years 1929 – 1987 only. The statistical model did not take account of any of the major changes in the operations of the securities industry that began in the early 1990s and then accelerated dramatically with the spread of computer technology, the internet, and the unprecedented rise in stock prices.

A study by University of Massachusetts at Amherst economists debunked the outdated IPO projections. They found that employment in the securities industry is related to trends other than transaction costs (STT being a transaction cost). Robert Pollin and James Heintz, "Evaluation of a Proposal to Reinstate the New York Stock Transfer Tax," (July/ August 2003). Pollin and Heintz looked at actual employment data to rebut and address the flaws of the modeling used by the IPO. In fact, the economists state: "When we make the appropriate adjustments in statistical procedures to control for this technical problem, the result we now obtain is that there is no reliable statistical relationship at all between trading volume and employment between January 1990 and January 2003."

According to The Business Council of New York State, between 2008 and 2019, 26% of jobs in the securities brokerages sector were lost. Interestingly, SIFMA attributes this to job migration out of New York City, something the data in the table presented by The Business Council does not

substantiate. In fact, the Business Council data shows a 8.4% drop in the same jobs throughout the country in the same time period.

Please see below:

Table 1 – Jobs in Securities Brokerages NAICS 52312

	2008	2019	% Change 2008 to 2019
NYS Jobs	82,000	60,200	-26.9%
US Jobs	305,300	279,800	-8.4%
NYS as % of US Jobs	27.0%	21.5%	

Yet, mysteriously, the financial sector is at its most profitable point in history. The stock market has been roaring. Trading in New York is at its highest volume ever. The financial sector has expanded from 10% of corporate profits to 30+%, all the while losing jobs. One thing is certain. This trend has nothing to do with STT or taxes. Perhaps the answer is found in computerization. In any event, increased profitability in the securities industry has meant job loss. Nor is there evidence of job migration, otherwise jobs within this sector would be rising throughout the country.

No effect on pensions

The Stock Transfer Tax [STT] does not affect pensions. Pension funds already pay huge sums of money to financial firms in the form of brokerage fees, asset management fees, financial advisor fees, and legal fees, which directly reduce plans' rates of return. [This is why some in the industry bribed a New York State Comptroller — because the work for a pension plan with billions in assets is so lucrative.]

Let's take the New York State Teachers Retirement System (NYSTRS), for example, which has approximately $122 billion in assets under management. Its annual report shows payments far in excess of $300 million per year in fees to the financial industry. In contrast, STT on the trading that this pension plan engages would cost about $13 million per year. [The financial industry charges fees based on assets under management. STT does not; it applies only to trades.]

The amount that a defined benefit plan like NYSTRS pays to beneficiaries is set by law. This is the nature of what is called a "defined benefit plan" (the same is true of private sector defined benefit plans, like union pension plans, though their defined benefit is set by contract). STT cannot affect what pensioners receive in income. It could put pressure on the plan in the case of NYSTRS to save $13 million (or more) by reducing the well in excess of $300 million the plan pays yearly in fees to the financial industry, which could easily be done. The firms do not want to lose access to that gravy train.

Pension plans pay very small amounts in STT precisely because STT is a sales tax on turnover, that is frequent buying and selling of stock, like day trading. Pension plans do not engage in high frequency trading, and it is a breach of fiduciary duty for them to do so. Pension plans are long-term investors. Pension plans care about stock market levels, that is increases in the prices of stock, not volume. Stock market levels are what generate return on investment, not volume. There is no evidence that financial transaction taxes anywhere in the world (or when in use in New York State from 1905 to 1981) ever affected stock market levels.

"Defined contribution" plans, like 401k plans, work differently than defined benefit plans. Defined contribution plans incur the same huge transaction costs as defined benefit plans. The STT pales in comparison to these costs, which exist within the plan. However, STT is applied at the time of the individual investor's purchase of securities. It's not hidden inside the plan. If, for example, a person buys $20,000 of stock in a year, the STT on that would be about $10 paid just like a sales tax. The owner of the defined contribution plan's rate of return has already been reduced by the same brokerage fees, asset management fees, financial advisor fees, and legal fees paid by the plan to the financial industry which far exceed that $10, probably in the same proportion as such fees are to transaction taxes in the NYSTRS.

Waiting for the Federal Godot

The federal panacea won't fly. As you are aware, if there is a proposed federal Financial Transaction Tax (FTT), that will only exacerbate an existing problem – our State already loses 20% of its tax revenue to other states. Thus, New York needs its own STT to assure that this revenue, which is generated in New York, won't be lost to New York.

Further, the proposed federal tax is significantly higher than that of the Stock Transfer Tax. The current federal proposal is to tax stock trades at 0.5% and bond trades at 0.1%, while derivatives transactions would be taxed at 0.005%. The STT rate is much lower and does not tax bonds or derivatives, because those securities must be valued to be taxed, which is complicated, whereas taxing the purchase price of stocks is simple.

The flight from New York argument

The most absurd argument of all is that STT will cause the financial sector to leave New York State. As a great New York Yankee, Yogi Berra, once said, "this is déjà vu" all over again. This argument was made in 1905, when the Republican Party introduced STT, and was accepted by *The New York Times.* When the tax succeeded, business was not lost, volume in fact increased, and the newspaper admitted it was wrong.

We have participated in discussions with the NYSE, NASDAQ, Black Rock, and the Partnership for New York City in a listening role. Indeed, during those discussions, a representative of The Brookings Institution, who heard all the "flee New York arguments" was present. At the end, he said: "Yes we understand your arguments. But our research shows that the tax is too low to cause any of those harmful effects." The Brookings Institution is a mainstream Democratic think tank. Joseph Stiglitz, Nobel Prize winning economist and former Chief Economist of the World Bank, has endorsed the New York State Stock Transfer Tax. Indeed, the greatest economist in the history

of the world, John Maynard Keynes, whose policies helped more people move out of poverty and into the middle class, was a supporter of STT.

A variant of this argument that is even more ridiculous is that "we'll just move the computers and evade the tax." However, where the computers that process trades are located does not affect this tax. The computers could be located in Bora Bora and the trades would still be taxable in New York. Here's what the experts have said in response to questions as to whether moving the computers would avoid the tax:

> **Timothy Noonan**, a partner at Hodgson Russ LLC who specializes in litigation on tax residency in New York City and State, said the *Wayfair* decision of the United States Supreme Court gives New York broad authority to tax trades that are requested in other parts of the country. *"I think the government would point to the Wayfair case—point to the trend indicating that nexus, in 2020, is a lot easier to establish, and that an economic presence, such as trading over the New York Stock Exchange, is enough to create that taxable nexus."* The bill utilizes the maximum jurisdiction allowed under Wayfair – it taxes any trade that is facilitated in NY.
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> **Darien Shanske**, a tax professor at UC Davis Law School, said: *"If everything is the same, except that instead of yelling into your phone on the New York Stock Exchange [floor], you're yelling into your phone in New Jersey—but all the other machinery is the same— then that still looks like New York has a good claim to tax that transaction."*
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> Furthermore, Shanske said, New York's tax department "is notorious for being persnickety." The Department of Taxation and Finance has aggressively brought cases seeking to tax financiers who work from second homes in Connecticut or Vermont—and won them. "The idea that the New York revenue authority is just going to be like, *'Yeah, you moved to New Jersey, I guess we can't tax you anymore'—that's just not how it's gonna go."*

It is important to note in this context that STT is not a tax on Wall Street. It is a tax on those who buy stock in NY. Like any other sales tax, it is paid by the purchaser; the business simply collects it and remits it to the government.

It would cost billions of dollars for Wall Street firms to move from New York. They are not going to move to avoid a tax they do not pay. Nor will investors flee because all major exchanges have the tax and the costs involved in moving to a nascent exchange would be prohibitively high.

The case of Sweden

Opponents of financial transaction taxes often cite the negative experience of the Swedish transaction tax on equities that was in effect from 1984 to 1991 as proof that FTTs do not work. However, the existence of successful FTTs in many other countries, like France, Hong Kong, Singapore, the United Kingdom, etc., proves that the Swedish experience is the exception and not the rule. It is now widely acknowledged that the problems with the Swedish FTT were related to design flaws, not the general concept of financial transactions taxes.

A report by the International Monetary Fund to the G20 in September 2010 highlighted one major problem: The equities tax was only levied on trades conducted through registered Swedish brokers, making this tax easily avoided by using non-Swedish brokers.

As a result, much of the trading of Swedish stocks moved to British brokers. In contrast, the UK version of STT falls on the purchase of shares in UK-registered companies wherever they are traded in the world, because its payment is connected to the legal transfer of ownership (as was the original 1905 STT), and can therefore not be avoided. Most investors are willing to pay a modest tax to ensure legal title to their asset.

The IMF concluded that the Swedish model should not be misused as an argument against financial transaction taxes, and the European Union, with the support of Germany, the financial leader of Europe, is working on such a proposal right now.

The experience of France is to the contrary. When France instituted its financial transactions tax, the same threats and arguments were made, yet the tax succeeded to such an extent that France increased its rate from .2% to .3%. In New York, on the other hand, we do not need rates that high. New York has 50% of all trading and by far the highest volume in the entire world. For that reason, we can keep our tax extremely low and simple, without affecting market behavior to any appreciable extent.

Thank you for your consideration.

Sincerely,

Phillip G. Steck
Member of Assembly, 110th A.D.

James Sanders, Jr
State Senator, 10th S.D.

Cc: The Honorable Carl Heastie
Speaker, New York State Assembly

The Honorable Andrea Stewart-Cousins
New York State Senate, Majority Leader

[1] "Evaluation of a Proposal to Reinstate the New York Stock Transfer Tax," Robert Pollin and James Heintz, (July/ August 2003).

[2] Memorandum in opposition from The Business Council of New York State dated January 26, 2021.

[3] https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/ftt_final_report.pdf