

New Registration and Examination Requirements for New York Investment Adviser Representatives

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What You Need To Know:

- Personnel for certain investment advisers and solicitors with natural person clients in New York will have to meet new registration and examination requirements.
- Affected persons must be approved before December 2, 2021, to continue conducting investment advisory business in New York state.

Effective February 1, 2021, amendments to the New York Investment Advisory Act (the "Amendments") require supervised persons representing certain New York-registered investment advisers, and, to a lesser degree, investment advisers registered with the Securities and Exchange Commission ("SEC"), to register with the New York Department of Law's Investor Protection Bureau (the "Department") and meet new examination requirements. These supervised persons, called investment adviser representatives, have until August 31, 2021 to meet the new requirements and must have their registration approved before December 2, 2021 to continue operating within New York. As discussed in more detail below, private fund managers who are federally registered investment advisers are not affected by the Amendments.

I. Who Must Register: Personnel of State-Registered Advisers

The Amendments primarily affect personnel representing New York-registered investment advisers ("NY IARs"). Under New York State law, NY IARs include any persons who represent a New York-registered investment adviser in performing any activities that would cause

the individual to be considered an investment adviser under New York law. Such investment advisers include those (i) advising members of the public, either directly or through published material within or from the state of New York, as to (a) the value of securities or (b) the advisability of investing in, purchasing, selling, or holding securities; or (ii) providing analyses or reports concerning securities to members of the public within or from the state of New York for compensation and as part of regular business. NY IARs also include (i) any persons who directly or indirectly control a New York-registered investment adviser ("Principals"); and (ii) any persons who directly supervise one or more individuals associated with a New York-registered investment adviser in their capacity as NY IARs ("Supervisors").

II. Who Must Register: Personnel of State-Registered Solicitors

The Amendments also apply to the personnel of certain solicitors ("Solicitors"). Under New York State law, Solicitors are persons who, as part of a regular business, engage in the business of providing investment advice to the limited extent that such persons receive compensation for introducing a prospective investor or

investors to an investment adviser. Solicitors are now required to register as investment advisers if they (i) are not SEC-registered investment advisers; (ii) are not exempted from New York's definition of investment advisers; and (iii) have six (6) or more clients in the state of New York (whether individuals or entities, but excluding financial institutions and institutional buyers). The personnel, Principals, and Supervisors of Solicitors who must register will be subject to the same registration and examination requirements as those of affected investment advisers.

III. Exemptions: Personnel of SEC-Registered Advisers and Exempt Reporting Advisers

The Amendments will not affect personnel of many federally registered investment advisers. Personnel representing SEC-registered investment advisers ("Federal IARs") will be subject to the new registration and examination requirements **only if** they are supervised persons of investment advisers which, under Rule 203A-3 of the Investment Advisers Act of 1940, as amended (the "Advisers Act"), (i) have more than five (5) natural persons as clients; and (ii) have a client base of which more than ten percent (10%) is comprised of natural persons. The Advisers Act does not count "qualified clients" toward this threshold (*i.e.*, (i) persons with at least \$1,000,000 under management with the investment adviser immediately after participating in an investment; (ii) persons with an individual or matrimonial net worth of at least \$2,100,000 (excluding a primary residence); and (iii) qualified purchasers or knowledgeable employees (as defined under the Investment Company Act of 1940). Further, any persons who do not regularly solicit, meet with, or communicate with an investment adviser's clients, or who only provide impersonal investment advice, are excluded from the Federal IAR definition. If supervised persons of an SEC-registered investment adviser do not meet the above threshold for natural person clients (*i.e.*, private fund managers), then the personnel will not be subject to the Amendments.

Of special note, the Amendments largely do not affect personnel of exempt reporting advisers ("Exempt Reporting Advisers"). Such Exempt Reporting Advisers are investment advisers that are exempt from SEC registration under either (i) the private fund adviser exemption [Section 203(m) of the Advisers Act]; or (ii) the venture capital adviser exemption [Section 203(l) of the Advisers Act]. Many Exempt Reporting Advisers

may be New York-registered investment advisers with ongoing state reporting obligations. However, New York law exempts investment advisers if they advise less than six (6) clients (whether individuals or entities, but excluding financial institutions and institutional buyers) residing in New York in a twelve (12)-month period; such exempted investment advisers include many Exempt Reporting Advisers. As such, the new registration and examination requirements will not apply to the personnel of Exempt Reporting Advisers who are not otherwise required to register with the state of New York.

IV. Registration Process for Affected Personnel

Affected personnel may apply for registration with the Department by submitting an online Form U4 to the Central Registration Depository ("CRD") / Investment Adviser Registration Depository ("IARD") website along with a \$200 filing fee. Persons engaged in investment advisory services before February 1, 2021 have until August 31, 2021 to submit an application to the CRD/IARD website. The Department will approve applications only after an applicant has completed a required examination before December 2, 2021.

To meet the examination requirement, investment adviser representatives must achieve a passing grade on either (i) the Uniform Investment Adviser Law Examination (Series 65 Examination); or (ii) **all three (3)** of the following exams: (a) the Securities Industry Essentials Examination; (b) the General Securities Representative Examination (Series 7 Examination); and (c) the Uniform Combined State Law Examination (Series 66 Examination).

The Amendments waive the examination requirements in one (1) of three (3) scenarios:

- 1. Prior Registration:** Examinations are waived if a person (i) has been continuously registered to provide investment advice in **any jurisdiction** for at least two (2) years prior to filing a Form U4 application with New York; (ii) has not had any lapse in registration for more than two (2) years at a time; and (iii) is not, or has not been, within ten (10) years prior to filing a Form U4, subject to any regulatory or civil actions, proceedings, or arbitrations that would require disclosure on Form U4.
- 2. Certification:** Examinations are waived if a person currently holds one of several

professional designations in good standing from an **enumerated list** available in the Amendments (e.g., Certified Financial Planner awarded by the Certified Financial Planner Board of Standards, Inc.).

- 3. Special Waiver:** Examinations are waived if a person, in the regular course of business, engaged in investment advisory activity from a New York place of business continuously and permissibly for at least two (2) years prior to February 1, 2021. Persons must apply to the Department for this special waiver on a Form NY-IASW. This waiver is **not available** to persons (i) who submit their applications after August 31, 2021; (ii) whose investment advisory activities for two (2) years before December 2, 2020 were limited to acting as a solicitor; (iii) who, for two (2) or more continuous years in the four (4) years prior to filing a Form U4, had ceased acting as an investment adviser in the regular course of business from a New York place of business; and (iv) who have been subject to any regulatory or civil actions, proceedings, or arbitrations in the ten (10) years prior to the application and which would require disclosure on Form U4.

Takeaways

The Amendments primarily affect investment adviser representatives associated with investment advisers and solicitors who must register with the state of New York under normal circumstances (i.e., those with more than six (6) clients in New York). In the case of personnel of SEC-registered investment advisers, the Amendments apply only if they are supervised persons of investment advisers with more than five (5) natural person clients or a client base of which more than ten percent (10%) is made up of natural persons. Thus, supervised persons of private fund managers and investment advisers specializing in institutional managed accounts are largely unaffected.

Personnel for SEC-registered investment advisers may continue to conduct business from and within the state of New York with no new examination requirements so long as their firms do not take on more than five (5) natural person clients from New York. For some SEC-registered investment advisers who primarily advise private funds and institutions, this may warrant revising their compliance policies and procedures if they have previously advised or are planning to advise natural persons. Exempt Reporting Advisers should closely monitor their client pools to ensure that they are below the

New York State threshold for more than six (6) clients. As the state of New York's investment adviser definition counts both natural person and institutional clients (but excludes financial institutions and institutional buyers), the personnel of some Exempt Reporting Advisers may fall under the new registration and examination requirements at a later time.

Next Steps

The registration period for affected investment adviser representatives is between February 1, 2021 and August 31, 2021. The approval deadline for existing investment adviser representatives is on December 2, 2021.

Please contact one of the listed authors of this Client Alert or your usual Lowenstein Sandler contact if you have any questions with respect to the Amendments.

For additional information regarding the Amendments, please see the following links:

- [The Amendments](#)
- [Registration Guidance](#)
- [Form U4](#)
- [Form U4 Instructions](#)

Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

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