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NEW YORK ADOPTS NEW REGULATIONS REQUIRING REGISTRATION AND EXAMINATION FOR CERTAIN INVESTMENT ADVISER PERSONNEL AND SOLICITORSBy [Shelley Rosensweig](#) and [Timothy Piscatelli](#)

The New York State Department of Law recently adopted new regulations, effective February 1, 2021, governing registration and examination requirements of natural persons representing New York registered investment advisers, including investment adviser representatives, principals, supervisors, solicitors, and certain investment adviser representatives of federally covered investment advisers (such regulations, the "**New Regulations**").

GENERAL PROVISIONS

Under the New Regulations, all (i) covered "investment adviser representatives," "principals" and "supervisors" of a New York registered investment adviser, (ii) covered "solicitors" and (iii) "investment adviser representatives" of a federally covered investment adviser, must apply for registration in New York. The New Regulations define "investment adviser representative" generally as a natural person who represents: (a) an investment adviser or solicitor in performing any of the acts that define an investment adviser under New York General Business Law (GBL) § 359-eee(1)(a), or (b) a federally covered investment adviser from a place of business in the State of New York and who satisfies the requirements of Rule 203A-3 under the Investment Advisers Act of 1940, as amended (the "**Advisers Act**"); "principal" as every person or entity directly or indirectly controlling an investment adviser or solicitor; "supervisor" as a natural person who as part of their duties as an investment adviser representative directly supervises one or more natural persons associated with an investment adviser; and "solicitor" as a person who as part of a regular business, engages in the business of providing investment advice to the limited extent that such person receives compensation for introducing a prospective investor or investors to a New York registered investment adviser or a federally covered investment adviser, unless such person would be excluded from the definition of investment adviser under an enumerated exception.

Investment advisers should take note that the definition of "investment adviser representative" under the New Regulations is differentiated from the Advisers Act definition of "investment adviser representative."¹ Under the New Regulations, "any individual who represents a New York registered investment adviser, for compensation, that engages in the business of advising members of the public, either directly or through publications or writings within or from the State of New York, as to the value of securities or as to the advisability of investing in, purchasing, or selling or holding securities, or who, for compensation and as a part of a regular business issues or promulgates analyses or reports concerning securities to members of the public within or from the State of New York" would be deemed an "investment adviser representative." This definition is substantially broader than the Advisers Act definition, which is limited to natural person clients. Federally covered investment advisers should also take note that because personnel must have natural person clients to meet the definition of "investment adviser representative" under the Advisers Act and by extension the New Regulations, the New Regulations'

¹ The Advisers Act defines "investment adviser representative" generally as a supervised person of the investment adviser: (i) who has more than 5 clients who are natural persons; and (ii) more than 10% of whose clients are natural persons; provided that "qualified clients", as defined in Rule 205-3(d)(1) under the Advisers Act, are specifically excluded from being counted toward the 5-client/10% thresholds.



registration and examination requirements will not apply to personnel of federally covered investment advisers that only manage private funds and/or managed accounts of institutional clients.

FILING REQUIREMENTS

As of February 1, 2021, all investment adviser representative, principal, supervisor and solicitor applications, amendments, reports, notices, related filings and fees required to be filed with the New York Attorney General must be filed electronically with and transmitted to the Central Registration Depository (“**CRD**”) / Investment Adviser Registration Depository (“**IARD**”). Covered investment adviser representatives, principals and supervisors must apply for such registration through CRD / IARD by submitting Form U4 and paying the required \$200 filing fee. Covered solicitors must apply for such registration through CRD / IARD by submitting Form ADV. In order for covered individuals to be able to file Form U4, such individual’s associated firm must first notice file with New York through Form ADV. Following such filing, the covered individual may submit a Form U4 requesting registration in New York. Covered individuals required to register in New York must do so by August 31, 2021.

EXAMINATION REQUIREMENTS

The New Regulations require that every investment adviser representative, principal and supervisor required to register and who does not qualify for a waiver, must take and receive a passing grade within 2 years prior to the date of filing registration information either: (i) the Uniform Investment Adviser Law Examination (Series 65 examination); or (ii) the Securities Industry Essentials Examination, the General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).

WAIVERS

The New Regulations provide for both a prior registration waiver and a special waiver. The prior registration waiver under the New Regulations notes that a waiver may be obtained upon application to, and approval by, the New York State Department of Law, provided that such person: (i) has been continuously registered to provide investment advice in any jurisdiction for a period of at least 2 years prior to the date of filing for registration; (ii) has not had any lapse in registration exceeding 2 years; and (iii) is not, and has not been, subject to any regulatory or civil action, proceeding or arbitration, either pending or in the preceding 10 years from the date of such application, that would require disclosure on Form U4. The special waiver under the New Regulations provides that an investment adviser representative who, in the regular course of business, acted as an investment adviser representative from a place of business in the New York continuously and permissibly for at least 2 years prior to February 1, 2021 and who is not eligible for any other waiver, may be exempted from the examination requirements upon application to, and approval by, the New York State Department of Law, provided that such person is not subject to certain disqualifying events. Individuals holding certain professional designations in good standing may be also be exempt from the New Regulations examination requirements.

RECORD KEEPING REQUIREMENTS

Under the New Regulations, a New York registered investment adviser is required to maintain and preserve certain books and records, including, among others, documentation of each client’s financial assets and income that support any designation made or acknowledged by the investment adviser of such client as an “accredited investor” or “qualified client” as those terms are defined under federal law. To comply with such provision of the New Regulations, New York registered investment advisers must make and maintain documents evidencing the reasonable steps taken to verify any designation as “accredited investor” or “qualified client” and maintain all documents reviewed in the course of such verification.

CONCLUSION

New York registered investment advisers should take note that each covered “investment adviser representative,” “principal” and “supervisor” must now be registered in the State. While historically there were examination requirements solely for personnel who were the equivalent of an investment adviser representative under New York law, no such requirements previously existed for principals or supervisors. Both New York registered investment advisers and federally covered investment advisers should review their portfolio management and investment advisory services offered to natural person and retail investors, such as separately managed accounts or wrap programs, and consider whether such services would require registration of investment adviser representatives in New York under the New Regulations.

For more information, please contact one of the following Haynes and Boone attorneys.

[Madelyn Calabrese](#)

[Kellie Bobo](#)

[Ricardo W. Davidovich](#)

[Daren R. Domina](#)

[Evan Hall](#)

[Vicki L. Odette](#)

[Shelley J. Rosensweig](#)

[Taylor H. Wilson](#)