

New York Adopts New Regulations Requiring Registration and Examination for Certain Investment Adviser Personnel and Solicitors

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PRACTICES Investment Management, Fund Formation and Management, Private Equity

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.” 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’ 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.

[Read the full alert here.](#)