

Insights: Alerts

The New York AG Estimates Rule Proposals Would Impact up to 14,000 IARs, 5,500 Issuers

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On April 15, 2020, the Investor Protection Bureau of the New York Department of Law (a division of the attorney general's office) (the "*Bureau*") published proposed amendments to regulations governing state-registered investment advisers ("*IAs*"), investment adviser representatives ("*IARs*") of state-registered and federally-covered IAs doing business in the State (including supervisors and solicitors), and dealers (including finders and issuers) offering certain securities in the State (the "*Proposal*").¹

If the Proposal is enacted as is, then New York will:

1. Create new registration requirements for IARs, IAR supervisors, and solicitors, including annual fee assessments and testing requirements;
2. Create new recordkeeping obligations for state-registered IAs;
3. Create (or, clarify) notice filing obligations relative to securities offered in the State.

The comment period for the Proposal has ended. The Bureau is in the process of reviewing and preparing an assessment of the comment letters received. The Bureau could publish a revised Proposal for comment, or could revise and adopt amendments without seeking further comment. The Proposal anticipated an implementation date of 60 days after the final amendments' publication in the NYS Register for the amendments impacting IAs and IARs, and immediately upon publication for amendments relating to notice filings.

A summary of the Proposal, and possible changes sought by commenters, is provided below:

Investment Advisers

- **Registration of IARs.** Currently, New York is the only state that does not require investment adviser representatives ("*IARs*") to register with the State. Under the Proposal, IARs² with six or more clients in the State and a place of business in the State, including IARs of federally-covered IAs, will be required to register no less than 10 days prior to engaging in investment advisory activities in the State using Form U4 and to submit an annual registration renewal thereafter. The registration and renewal fees would be among the highest in the country at \$200.³ The Bureau estimates that up to 14,000 IARs would be required to register under the Proposal.

- **Examination Requirements for IARs.** Under the Proposal, an IAR must have received a passing grade within two years prior to the date of filing for registration on either: (i) the Series 65 Exam; or (ii) the SIE Exam, the revised Series 7 Exam and the Series 66 Exam.⁴ IARs that have been continuously registered as an IAR in any jurisdiction for at least two years without any regulatory action or arbitrations are exempt from these examination requirements.⁵ Individuals with certain professional designations are also exempt from the examination requirements.⁶
 - In its comment letter, SIFMA suggested that the State expand the examination exemptions and grandfather IARs currently working exclusively in the State; SIFMA cites to other states that provided similar relief when implementing examination requirements for IARs.
- **Registration Requirement for IAR Supervisors, Principals, and Solicitors.** Under the Proposal, the following persons are also subject to registration and examination requirements: supervisors of IARs,⁷ principals of IAs, solicitors,⁸ and principals and representatives of a solicitor.
 - In its comment letter, SIFMA asked the State to reconsider the breadth of its definition, citing to other states with definitions that limit registration requirements for supervisors to only those persons directly responsible for supervising an IAR,⁹ and to federal rules governing solicitors that SIFMA argued would obviate the need for any additional requirements for solicitors in the State.
- **New Recordkeeping Requirement.** The Proposal would require that state-registered IAs take reasonable steps to verify a client's *accredited investor* or *qualified client* status and maintain documents evidencing the actions taken to verify the client's status and the documents reviewed in verifying the client's status as part of the IAs regulatory books and records.¹⁰

Issuers

- **Definitions.** The Proposal adds a definition section to New York's broker-dealer regulations which defines new terms, including *Federal Covered Investment Company Dealer*,¹¹ *Federal Regulation D Covered Securities Dealer*,¹² and *Federal Tier 2 Dealer*.¹³
- **Notice Filing Requirements.** In connection with the new definitions, the Proposal requires dealers to notice file the sale of certain securities through the North American Association of Securities Administrators' electronic filing depository system:
 - Federal Regulation D Covered Securities Dealers must file a Form D within 15 days of first sale of securities.¹⁴
 - Federal Tier 2 Dealers must file a Uniform Notice Filing of Regulation A – Tier 2 Offering Form not less than 21 days prior to qualification by the SEC of securities issued or to be issued.¹⁵
 - Federal Covered Investment Company Dealers are still required to file a Form NF for each fund.¹⁶
 - Any dealer required to notice file that is not incorporated or organized in New York must also file a Uniform Consent to Service Form with its initial filing.¹⁷
- **Finders.** The Proposal requires Finders¹⁸ to file with New York and Finders associated with a FINRA member broker-dealer must register with New York as a broker-dealer would.¹⁹

IAs and broker-dealers should carefully review their business activities in light of the significant changes set forth in the Proposal and regularly check the [Bureau's webpage](#) for updates regarding revisions to and/or final implementation of the Proposal.

If you have any questions about regulation of IAs or BDs, please feel free to contact us.

Footnotes

¹New York State Register, Department of Law Proposed Rule Making at 8 – 13 (April 15, 2020), available at <https://www.dos.ny.gov/info/register/2020/041520.pdf>. Text of the IAs Proposal available at <https://ag.ny.gov/sites/default/files/full-text-13nycrr11.pdf>. Text of the BDs Proposal available at <https://ag.ny.gov/sites/default/files/full-text-13nycrr11.pdf>.

²The Proposal defines an IAR as “a natural person representing an investment advisor, solicitor or federally covered investment adviser in doing any of the acts that define an investment adviser under GBL § 359-eee(1) (a), including such acts for a federally covered adviser, except for natural persons who represent a federally covered investment adviser and do not have a place of business within the state.” 13 NYCRR 11.12(i).

³13 NYCRR 11.4(b), (d).

⁴13 NYCRR 11.6(a).

⁵13 NYCRR 11.7(a).

⁶13 NYCRR 11.7(b).

⁷Persons supervising IARs are deemed to be an IAR. 13 NYCRR 11.12(i).

⁸The Proposal defines *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 an investment adviser or a federally covered investment adviser, unless such person would be excluded from the definition of investment adviser.” 13 NYCRR 11.12(j).

⁹SIFMA expressed concern that by defining a supervisor as an IAR, the definition as proposed would trigger a cascading effect where the supervisor of each supervisor would in turn meet the definition of an IAR, requiring registration and compliance with examination requirements.

¹⁰13 NYCRR 11.9(a)(13)(xvi).

¹¹The Proposal defines *Federal Covered Investment Company Dealer* as “any person, firm, association, or corporation satisfying the definition of dealer under GBL 359-e(1)(a) that offers for sale or sells Federal Covered Investment Securities.” The Proposal defines *Federal Covered Investment Securities* as “any security or securities that meet the definition of covered securities, or that will meet such definition upon completion of the transaction, under Section 18(b)(2) of the Securities Act of 1933.” 13 NYCRR 10.10(a)(3), 10.10(a)(2).

¹²The Proposal defines *Federal Regulation D Covered Securities Dealer* as “any person, firm, association, or corporation satisfying the definition of dealer under GBL 359-e(1)(a) that offers or sells Federal Regulation D Covered Securities. The Proposal defines *Federal Regulation D Covered Securities* as “any security or securities that meet the definition of covered securities or that will meet the definition upon completion of the transaction, under Sections 18(b)(4)(F) and 18(b)(4)(G) of the Securities Act.” 13 NYCRR 10.10(a)(5), 10.10(a)

(4).

¹³The Proposal defines *Federal Tier 2 Dealer* as “any person, firm, association, or corporation satisfying the definition of dealer under GBL 359-e(1)(a) that offers or sells Federal Tier 2 Securities.” The Proposal defines *Federal Tier 2 Securities* as “any security or securities that meet the definition of covered securities, or will meet such definition upon completion of the transaction, under Section 18(b)(3) or (b)(4)(D)(ii) of the Securities Act of 1933.” 13 NYCRR 10.10(a)(7), 10.10(a)(6).

¹⁴13 NYCRR 10.1(a)(3) and 10.11(b).

¹⁵13 NYCRR 10.1(a)(4) and 10.11(c).

¹⁶13 NYCRR 10.1(a)(5) and 10.11(a).

¹⁷13 NYCRR 10.11(d).

¹⁸The Proposal defines *Finder* as “a person, firm, association, or corporation who as part of a regular business, engages in the business of effecting transactions in securities for the account of others within or from this state, to the limited extent that such person, firm, association, or corporation, receives compensation for introducing a prospective investor or investors to any broker, dealer, or salesperson.” 13 NYCRR 10.10(a)(8).

¹⁹13 NYCRR 10.1(a)(6).

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