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DIVISION OF ECONOMIC JUSTICE
INVESTOR PROTECTION BUREAU

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**GUIDANCE ON EXAMINATION REQUIREMENTS AND WAIVERS FOR
INVESTMENT ADVISER REPRESENTATIVES UNDER 13 NYCRR 11.6 AND 11.7**

New York’s investment adviser rules require any investment adviser representative (“IAR”) applying for “RA” registration on CRD in New York to pass one or more prescribed examinations within two years prior to the registration application before such registration may be granted. The rules also provide limited examination waivers, as set forth under Title 13 of the New York Codes, Rules and Regulations, Part 11 (“13 NYCRR 11”), sections 11.6 and 11.7. The Department of Law (“DOL”) issues this guidance interpreting 11.6 and 11.7 to assist filers in understanding how the rules will generally be applied to RA applications.

First, New York’s examination requirements under 11.6(a) will be read consistently with IARD’s standard qualifications one through four.¹ Under this reading, a “valid” Series 7, or SIE and S7TO, as indicated in CRD will satisfy the Series 7 examination requirement under 11.6(a)(2), regardless of the date of the examination. New York requires IARs to have passed the Series 65 or Series 66 within the two years preceding the IAR’s application for registration in New York, or while such application is pending, in order to satisfy the examination requirements of 11.6(a). A Series 65 or Series 66 score designated as “valid” on CRD alone does not necessarily indicate that the applicant has met examination requirements in New York.

Second, examination waivers available in 11.7(a) and 11.7(b) are limited to applicants who, among other things, are not “subject to any regulatory or civil action, proceeding or arbitration, either pending or in the preceding ten (10) years from the date of such application, that would require disclosure on Form U4.” In evaluating disclosure history for examination waiver requests, the DOL focuses primarily on civil and regulatory actions, proceedings and arbitrations listed in the applicant’s CRD disclosures and requiring a “Yes” response to Disclosure Questions 14C-14I on Form U4.² Applicants generally will not trigger this exclusion where (1) the civil or regulatory action, proceeding or arbitration was denied or dismissed entirely by an impartial tribunal without settlement of any kind, or (2) the date of the action, proceeding or arbitration on the IAR’s CRD

¹ See https://www.iard.com/faqs_form_ra#Qualifications.

² Customer complaints that do not become arbitrations or civil litigations are generally not considered for purpose of exam waiver determinations. Nothing in this guidance in any way limits DOL’s consideration of an IAR’s entire disclosure history in determining whether to deny, suspend, condition or revoke a person’s registration.

record—as determined solely by the DOL—occurred *before* the applicant passed the Series 65 or Series 66 examination. Further, disclosures existing on the applicant’s CRD record at the time NY RA registration is granted to such applicant generally will not trigger an exclusion for examination waiver purposes in subsequent applications by such applicant.

Third, the phrase “continuously registered” under 11.7(a) allows for aggregation of consecutive time periods of RA registration with different firms regardless of the state where the RA was registered. Similarly, an IAR applicant who “acted as an investment adviser representative from a place of business in the State continuously...” under 11.7(b), may aggregate consecutive time periods spent at multiple firms (if any) to meet the requirements for the special waiver. No single time period may be counted twice. Until December 2, 2023, IARs who have obtained a NY RA registration through an 11.7(b) special waiver and who subsequently request a NY RA registration with a new employer but who do not have two years of registration in any jurisdiction will be deemed to have been “continuously registered” under 11.7(a).

Fourth, the special waiver under 11.7(b) is available subject to its stated criteria – i.e. working as a compensated investment adviser representative from a place of business in New York. In addition to submitting a completed NY-IASW form, an applicant’s CRD record must reflect compensated affiliation with either a state registered investment adviser, a federally covered investment adviser or a dual-registered firm for the duration of the time period required under the rule. If an applicant cannot demonstrate such affiliation, for instance where they were employed only by a broker-dealer that was not registered as an investment adviser, they are ineligible for a waiver under 11.7(b) and must pass a required examination in order to register in New York. This applies equally to applicants who passed a required examination, but did so more than two years prior to their application for registration.

General IARD Processing of IAR Applications and Waiver Requests

All registration applications that do not meet the requirements of 11.6 or 11.7 will be set to “Deficient” for the S65 exam in CRD. Deficiency notices will be communicated through the status change from “Pending” to “Deficient” on CRD applications. Common reasons for a deficiency, and appropriate actions in response, are:

1. The applicant has never met the exam requirements under 11.6(a) and does not qualify for any waiver.

Applicant Action: Pass the examinations listed in 11.6(a)(1) or (2). Once the required exams are passed, email the DOL at IPBIAR@ag.ny.gov with the applicant’s CRD number and explain that the record is marked “Deficient” but that the applicant has now passed the examinations.

2. The applicant does not have, in aggregate, two continuous years of RA registration without a subsequent two year gap in registration and is ineligible for an exam waiver under 11.7(a) and 11.7(b).

Applicant Action: (i) Pass the qualifying exams in 11.6(a)(1) or (2), or (ii) withdraw the application and reapply when you have two years of continuous prior registration. There are no refunds for withdrawn applications. Once the required examinations are passed,

email the DOL at IPBIAR@ag.ny.gov with the applicant's CRD number and explain that the applicant's record is marked "Deficient" but that the applicant has now passed the examinations.

3. The applicant's disclosure history disqualifies the applicant from waivers under either 11.7(a) or 11.7(b).

Applicant Action: Pass the qualifying exams in 11.6(a)(1) or (2). Once 11.6(a) is met, email the DOL at IPBIAR@ag.ny.gov with the applicant's CRD number and explain that the applicant's record should no longer be marked "Deficient."

4. The applicant qualifies for 11.7(b) but has not submitted an NY-IASW form.³

Applicant Action: Submit a completed NY-IASW form to IASW@ag.ny.gov and ensure that CRD employment history shows a place of business in New York and a compensated affiliation with either a state registered investment adviser, a federally covered investment adviser or a dual-registered firm during the time period required under the rule. If the applicant cannot truthfully complete the NY-IASW, the applicant must pass a required exam in order to register in New York.

5. The applicant has applied for RA registration in their home state and that application is pending.

Applicant Action: Once the pending home state registration is resolved, send an email to the DOL at IPBIAR@ag.ny.gov with the applicant's CRD number and explaining that the home state registration that was pending is resolved and the application will be re-reviewed.

If the DOL does not require additional information with respect to the requests described above that it receives, the DOL will record the appropriate status changes in CRD without further response to the requestor's emails.

The above is not intended to, and does not, confer any additional substantive or procedural rights beyond the underlying statutes, regulations, and case law.

³ The DOL's [mass registration process](#) does not require submission of individual Form NY-IASW.