

SUMMARY OF REVISED REGULATIONS

The public is imperiled when investment professionals are allowed to peddle investment schemes in the shadows and the Attorney General seeks to illuminate such persons and transactions. At the same time, the Attorney General understands that business interests may be impeded when state registration procedures become confusing and antiquated. The proposed revisions represent a balancing of these interests in light of the well-established federal securities registration regime.

The Investor Protection Bureau of the Department of Law (“Department”) proposes revisions to its current regulations in order modernize its registration function, to better conform to the federal securities registration regime, to cure industry confusion as to certain registration requirements and to better track exam requirement compliance of thousands of investment adviser representatives providing investment advice to New Yorkers. The Attorney General believes that these revisions will help protect the public from fraudulent exploitation in the offering and sale of securities and the provision of investment advice.

The proposed revisions to 13 NYCRR 10¹ amend regulations to require certain notice filings for federal “covered securities” being sold in New York and allow for such filings along federally set timelines, and effectuate such filing through the North American Association of Securities Administrators’ (“NASAA”) electronic filing depository system (“EFD”). New York law has always required securities dealers, among others, to file information deemed pertinent by the Attorney General with the Investor Protection Bureau. The current version of the regulations were designed to adhere to past technology capabilities. Because of the passage of time and the evolution of national registration processes and technology, and due to some confusion within the industry, these Regulations require updating.

In the revised Part 10, the Attorney General classifies securities and dealers for the purpose of directing filing of forms to New York through EFD and to further harmonize New York and federal registration laws. Most critically, the policies and practices of the Department have not kept pace with all of the developments in state and federal securities regulation since the enactment of the National Securities Markets Improvement Act in 1996. In particular, the Department recognizes that clarity is required regarding classification of certain securities and investment professionals and the filings required thereof. Accordingly, through these revisions the Attorney General classifies Federal Covered Investment Company Securities, Federal Regulation D Covered Securities and Federal Tier 2 Securities and the dealers thereof. Under the revised regulations, the Department will require that such dealers file Form NF, Form D and the uniform notice filing for Tier 2 securities with the Department of Law. The filings will provide New York direct notice of persons offering securities from its soil and to its residents and will complement federal registration law in line with its explicit carve outs for state notice filings.

¹ Official Compilation of Codes, Rules and Regulations of the State of New York (“NYCRR”), Title 13, Chapter II Part 10 (13 NYCRR §10).

The proposed revisions to 13 NYCRR 11² will fully implement GBL § 359-eee by registering investment adviser representatives through the Central Registration Depository/Investment Adviser Registration Depository (collectively “CRD/IARD”). The authority to register such individuals has always been available under the law. When the CRD/IARD system was first implemented, technological and practical limitations made such registration untenable. Now that improvements have made electronic filing feasible, however, New York is the only state in the Union that does not register these important investment professionals. Such registration will close gaps in nationwide regulation efforts which in certain cases, fail to connect investment adviser representatives with their past record in the securities industry. The complete record of these individual’s records is necessary to protect the public and is maintained in every other state. The Attorney General, by these revisions, now provides notice that investment adviser representatives – including principals and supervisors, as well as solicitors, will upon adoption and implementation of these regulations be explicitly required to meet exam requirements and register with the State.

The proposed revisions to 13 NYCRR 11 also delineate the Department’s authority to deny, suspend, condition, or revoke any registration statement or application of any investment adviser or investment adviser representative in the public interest for good cause. The Department has always held the implicit authority to deny investment adviser applications in the public interest. The new provision codifies this authority and details the specific categories of actions that the Department may take. It is anticipated that guidance will be promulgated to further detail this authority. These revisions also include changes to investment adviser bookkeeping requirements.

The proposed revisions to 13 NYCRR 11 also include a new bookkeeping requirement for investment advisers. The revision requires that State-registered investment advisers take reasonable steps to verify the “accredited investor” and “qualified client” status of any client so designated, including making and maintaining documents used in the course of verification. Such revisions codify the requirement that investment advisers take due care in making such designations, which, if used to recommend investment in certain securities, can expose New Yorkers to increased investment risk.

The proposed revisions to both 13 NYCRR 10 and 13 NYCRR 11, seek to clarify the registration and exam requirements for certain currently-undefined subclassifications of broker-dealers and investment advisers that are paid to match up investors with securities industry participants. The proposals define and classify “Finders” and “Solicitors” and explicitly require registration and exam requirements for both.

Finally, the revisions to 13 NYCRR 10 and 13 NYCRR 11 update numerous outdated terms, past fee requirements and correct other *de minimus* errata.

These changes provide a number of immediate benefits to the State and its citizens, including: (i) giving the Department more ready access to information about securities issuers in

² NYCRR, Title 13, Chapter II Part 11(13 NYCRR §11).

the State; (ii) giving the public, for the first time, detailed information about many investment adviser representatives in the State; (iii) modernizing the State's registration processes; (iv) increasing harmonization with federal registration laws; (v) reducing industry confusion; and (vi) giving effect to the spirit and an ultimate aim of Article 23-A's registration laws by facilitating central and simultaneous registration of investment professionals.