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. These rule 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 revisions to 13 NYCRR 10[1] 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, respectively, 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 revisions to 13 NYCRR 11[2] 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. By adopting these revisions, the Attorney General is notifying investment advisers that that natural persons representing investment advisers including principals, supervisors and representatives thereof, solicitors and representatives thereof and certain investment adviser representatives of federally covered investment advisers will, upon implementation of these regulations, be explicitly required to meet exam requirements and register with the State.

The final revisions to the part 11 proposal with respect to registration include (i) an implementation period allowing persons who permissibly operated under the rules in existence prior to this revision to continue to do so until December 2, 2021, so long as they submit an application for registration by August 31, 2021, (ii) a new exam special waiver category, and new Form NY-IASW, for persons currently serving as investment adviser representatives and having two (2) years of experience in that capacity prior to rule's effective date, excluding those previously acting solely as solicitors or those with disciplinary history, and (iii) an extended period to comply with the examination requirement for those persons permissibly operating under the rules in existence prior to this revision, but who do not qualify for an exam waiver.

The 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.

The 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.

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

The revisions to 13 NYCRR 11 seek to clarify the registration and exam requirements for certain currently-undefined subclassifications of investment advisers that are paid to match up investors with securities industry participants. The part 11 proposal defines and classifies these investment advisers as "Solicitors" and sets out explicit registration and exam requirements for them.

Finally, the revisions to 13 NYCRR 10 and 13 NYCRR 11 update numerous outdated terms, past fee requirements and correct other *de minimus* errata. The revisions also include updated information regarding forms and form instructions. All forms can be viewed at https://ag.ny.gov/forms.

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 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.

This summary has been updated to include the non-substantive changes that were made to the proposal during the comment assessment period prior to the Notice of Adoption.