



Special Alert

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New York Investment Adviser Representative Registration



Historically, New York State has not required the registration of investment adviser representatives (IARs). New York has adopted regulations providing registration and examination requirements for IARS. This article focuses upon the examination and registration requirements applicable to IARs of federally covered investment advisers. The newly adopted regulations became effective Feb. 1, 2021. However, see below for information regarding the applicable compliance and waiver filing dates.

Investment Adviser Representative Definition

Pursuant to the new regulations, an IAR of a federally covered investment adviser is defined as a natural person who represents the federally covered investment adviser from a place of business in New York and meets the definition of IAR as set forth in Rule 203A-3 of the Investment Advisers Act of 1940 (the Advisers Act). Rule 203A-3 provides that an IAR is a supervised person of an investment adviser:

- Who has more than five clients who are natural persons; and
- More than 10 percent of whose clients are natural persons.

In addition, Rule 203A-3 provides that a supervised person of an investment adviser is not an IAR if the supervised person:

- Does not on a regular basis solicit, meet with, or otherwise communicate with clients of the investment adviser; or
- Provides only impersonal investment advice, which is defined as investment advisory services provided by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts.

Examination Requirements

The revised regulations provide IARs must take and receive a passing grade on the Series 65 examination or the Series 7 and Series 66 examination within two years prior to the date of filing for registration.

Implementation Period

Any person who prior to Feb. 1, 2021 was serving continuously as an IAR, and is now subject to the registration requirements, may continue to serve in an IAR capacity without an approved registration until Dec. 2, 2021 as long as a Form U4 is submitted for IAR registration on or before Aug. 31, 2021. If a waiver is not available to that IAR, the IAR must meet the above described examination requirements. Therefore, unless a waiver is available to the IAR (as described below), the IAR must meet the examination requirements on or before Dec. 2, 2021.

Waiver of Examination Requirements

As further described below, the regulations provide three examination requirement waivers: (i) waivers for persons registered in another jurisdiction; (ii) waivers for persons holding various certifications; and (iii) waivers for persons acting as IARs in New York prior to the effective date of the regulations.

Prior Registration Waiver

An IAR who would otherwise be required to meet the examination requirements will be exempt from the requirements, upon approval of the New York State Department of Law (the Department of Law), provided that the person:

- Has been continuously registered in any jurisdiction to provide investment advice for a period of at least two years prior to the date of filing for registration as an IAR;
- Has not had any lapse in registration exceeding two years; and
- Is not, and has not been, subject to any regulatory or civil action in the preceding 10 years from the date of application that would require disclosure on Form U4.

Waiver eligibility under this prior registration provision will be automatically directed to the Department of Law for review and approval through the Form U4 submission process through the IARD system.

Certification Waiver

The examination requirement is waived for any person who current holds one of the following professional designations in good standing:

- Certified Financial Planner (CFP);
- Chartered Financial Consultant (ChFC);
- Personal Financial Specialist (PFS);
- Chartered Financial Analyst (CFA); or
- Chartered Investment Counselor (CIC).

Waiver eligibility under this certification provision will be automatically directed to the Department of Law for review and approval through the Form U4 submission process through the IARD system.

Special Waiver

An IAR who would otherwise be required to meet the examination requirements and who in the regular course of business acted as an IAR from a place of business in New York continuously and permissibly for at least two years prior to Feb. 1, 2021, and who is not eligible for another waiver under the new regulations, may be exempted from the examination requirement upon the approval of the Department of Law. A person will not qualify for the special waiver if:

- The person submits an application for registration after Aug. 31, 2021;
- That person's investment advisory activities during the two years preceding Dec. 2, 2020 were limited to serving as a solicitor;
- That person, for two or more continuous years in the four years preceding filing for registration, had ceased performing investment advisory activities in the regular course of business from a place of business in New York; or
- That person currently is or has been subject to any regulatory or civil action, either pending or in the preceding ten years from the date of such application, that would require disclosure on Form U4, or that person has been notified or has reason to believe that they are currently or remain the subject of a regulatory or law enforcement investigation related to investment activities.

Any request for a special waiver must be submitted directly to the Department of Law on Form NY-IASW at the time of submission of the Form U4.

Solicitors

Under the new registration regulations, all solicitors with more than five clients in the State of New York must register as an investment adviser, unless the solicitor is a federally covered investment adviser. The revised regulations define a 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 federally covered investment adviser, unless such person is excluded from the definition of investment adviser under the New York General Business Law or is excluded pursuant to the provisions of the new regulations. The new regulations exclude a federally covered investment adviser from the definition of investment adviser.

Therefore, under the new regulations, a solicitor firm that is a federally covered investment adviser must notice file in New York and ensure that its representatives meet the newly instituted examination and registration requirements. If a solicitor firm is not a federally covered investment adviser, it is required to register as an investment adviser in New York and ensure that its representatives, supervisors and principals meet the examination and registration requirements for persons associated with state registered investment advisers.

Questions? Contact the DCS Team

Dinsmore Compliance Services (DCS), an affiliate of Dinsmore & Shohl LLP, offers compliance solutions for investment managers and municipal advisers. DCS will help you develop and maintain high-quality compliance programs customized to your particular business demands and operational realities. We offer these services, all as an affiliate of a coast-to-coast, full-service law firm.

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