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NY Adopts AG James' Rule Changes to Investment Professional Oversight

"It is more important than ever for New Yorkers to know who they are dealing with when making an investment, and these rules will do exactly that by expanding the registration and tracking of individual investment advisers," James said Tuesday.

By Jason Grant | December 02, 2020



Attorney General Letitia James speaks during a Law Day ceremony at the Court of Appeals in Albany on May 1, 2019. (Photo by David Handschuh/NYLJ)

New York Attorney General Letitia James on Tuesday announced that final rules have been adopted, some of which go into effect Wednesday, that strengthen state oversight of the investment advisory industry, marking "a significant step forward in our efforts to protect New York investors and oversee securities sales practices."

"By moving to standardized [investment] electronic filings and payments, our systems will be more resilient to disruption in the future and will be better equipped to protect investors from frauds, especially critical as we have seen an exponential rise in these types of scams as a result of COVID-19," said James in a news

release Tuesday.

"It is more important than ever for New Yorkers to know who they are dealing with when making an investment, and these rules will do exactly that by expanding the registration and tracking of individual investment advisers."

The new rules, which the state Attorney General's Office said it expects will be published in the State Register on Wednesday, in part strengthen oversight of the investment advisory and securities industries by conforming adviser registration procedures to a more modernized federal regime, according to the office.

Other "beneficial effects" of the regulatory revisions, as detailed by the office in an April 6 news release about the proposed regulatory, include eradicating industry confusion when it comes to certain adviser registration requirements; and better tracking investment adviser exam requirement compliance and disciplinary disclosures for thousands of advisers who provide investment advice to New York residents.

Both state statute 13 NYCRR 10, which regulates brokers, dealers and salespeople dealing in securities transactions, and state statute 13 NYCRR 11, which outlines rules for investment advisory services, would be affected by the revisions, the office has said.

The "proposed revisions to 13 NYCRR 10 amend regulations to require certain notice filings for federal 'covered securities' being sold in New York and to effectuate such filings through the North American Association of Securities Administrators' (NASAA) electronic filing depository system," explained James' office in April.

Those adopted 13 NYCRR 10 rules, which go into effect Wednesday, said James in the news release Tuesday, "clarify that these filings are mandatory and should be filed on the NASAA website (<https://lnks.gd/l/eyJhbGciOiJIUzI1NiJ9.eyJidWxsZXRpbl9saW5rX2lkjoxMDMsInVyaSI6ImJwMjpbGjJaylslmJ1bG9l>) beginning on December 2, 2020."

Certain changes to 13 NYCRR 11, meanwhile, will fully implement GBL Section 359-eee, which provides registration requirements for investment advisers. The effect is that adviser professionals will have to register through the national Central Registration Depository/Investment Adviser Registration Depository, rather than through the Attorney General's Office's Investor Protection Bureau.

The new rule or revisions pertaining to 13 NYCRR 11 will go into effect Feb. 21, 2021, James' office said Tuesday. It added that "to accommodate this change, the rule contains a significant implementation period, which allows those currently engaged in business covered by the new regulations to continue their business without an approved registration until December 2, 2021, so long as certain criteria are met."

"The adopted rule also creates a new exam special waiver category for people who have been serving as IARs for at least two years," the office added.

In an interview in April (<https://www.law.com/newyorklawjournal/2020/04/17/ag-james-cites-covid-19-scams-in-proposing-stronger-investment-adviser-oversight/>), Mark Zauderer, a veteran Manhattan securities lawyer who has represented Wall Street investment professionals, said that the regulations represent "an important step in bringing some order to a confusing regulatory scheme."

"Overlapping regulations imposed by federal regulators and the states not only make it difficult for honest participants to operate in the [securities] industry, but facilitate dishonest behavior," said Mark Zauderer, a name partner at Ganfer Shore Leeds & Zauderer in Manhattan, and a trial and appellate business and securities litigator for decades.

He added, "Often, the lack of coordination among different regulatory authorities allows advisers who have been sanctioned in one jurisdiction to operate with impunity in other jurisdictions."