



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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DIVISION OF ECONOMIC JUSTICE
INVESTOR PROTECTION BUREAU

February 8, 2021

**GUIDANCE ON MANDATORY REGISTRATION FOR INVESTMENT ADVISER
REPRESENTATIVES (13 NYCRR 11.4, 11.6 AND 11.7)
EFFECTIVE FEBRUARY 1, 2021.**

UPDATED

The implementation period runs through December 2, 2021 with an application submission deadline of August 31, 2021. The Department encourages applicants to submit Form U4 applications as soon as possible, or if requesting a waiver after February 27, 2021, as we anticipate a longer than usual review process through the implementation period.

OPEN EXAM WINDOWS ON CRD. Applicants requesting an exam waiver should apply after February 27, 2021 in order to avoid opening an exam window on CRD and being charged an examination fee unnecessarily. Beginning February 27, 2021, FINRA will temporarily modify CRD for NY only RA registration requests to allow the applicants who qualify for an exam waiver to avoid opening a window.

The New York State Department of Law (the “Department”) recently adopted new regulations, that go into effect February 1, 2021, governing registration and examination requirements of 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. Specifically, the adopted rule provides for (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 apply for registration by August 31, 2021, (ii) a new examination special waiver category and new Form NY-IASW, for persons currently serving permissibly 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 examination waiver. The text of the new regulations can be found [here](#) and in the NYCRR.

The rule becomes effective on February 1, 2021, but provides for an implementation period through December 2, 2021 to persons already permissibly engaged in the investment advisory business. Eligible persons may continue to provide investment advisory services during the implementation period without an approved registration. Eligibility under the implementation period is limited to

those applicants who submit their Form U4 to New York on or before August 31, 2021. The implementation period may also be limited for applicants who are notified of certain deficiencies and who fail to correct those deficiencies.

Generally, investment adviser representatives (RAs) must meet examination requirement deadlines under 11.6, or obtain a waiver under 11.7. In addition to the implementation period, industry participants who currently are permissibly engaged in the investment advisory business, who do not qualify for a waiver have until December 2, 2021 to pass the required examinations (apply by August 31st, see 11.6(b)). Alternatively, investment adviser representatives who satisfy minimum service and experience qualifications and who have no disciplinary history may apply for a new special waiver exempting them from the examination requirements (see 11.7(b)). Waivers for persons who satisfy prior registration requirements in other jurisdictions (11.7(a)), or who possess certain specified certifications (11.7(c)) also remain available under the new regulations.

Persons seeking an exam waiver should wait until February 27, 2021 to apply in order to avoid opening an unnecessary exam window and being charged an exam fee. See OPEN EXAM WINDOWS ON CRD, above.

State Registered Investment Adviser and Solicitor personnel:

All principals, supervisors and investment adviser representatives of any investment adviser registered with the state before February 1, 2021 should have already satisfied the preexisting examination and/or waiver requirements of 13 NYCRR 11. Compliance with examination requirements was documented through a manual process using the form NY-IAQ.

- I. Persons associated with firms registered on IARD before February 1, 2021.
 - A. Persons who previously received an approval or waiver through an NY-IAQ submission with your current firm should:
 1. Submit a Form U4 requesting RA registration in New York by August 31, 2021. Fill out [Form U4](#) in accordance with [form instructions](#) and pay the required \$200 fee through CRD.
 2. Send an email to IPBIAR@ag.ny.gov with your name and CRD number in the header. You will receive an automatic acknowledgement email response, **but questions will not be responded to through this email address.**
 - i. If the Department's records reflect prior approval through the NY-IAQ process, your application will be approved through CRD.
 - ii. If no such prior approval exists, your application will remain deficient. See section B.
 - B. Persons who did not receive an approval or waiver through an NY-IAQ submission with their current firm should:
 1. Submit a Form U4 requesting RA registration in New York by August 31, 2021. Fill out Form U4 in accordance with [form instructions](#) and pay the required \$200 fee through [CRD](#).

2. Send an email to IPBIAR@ag.ny.gov with your name and CRD number in the header. You will receive an automatic acknowledgement email response, but **questions will not be responded to through this email address.**
 - i. Your email should explain the duties you performed for the investment adviser prior to February 1, 2021 and the reason you did not previously submit a form NY-IAQ to the Department.
 - ii. If you were previously denied a waiver by the Department and did not subsequently meet the examination requirements in effect at the time of such denial your request for any exam waiver will not be reconsidered.
- II. Persons that become associated with registered firms on or after February 1, 2021 or that become associated with new firms submitting a Form ADV on or after February 1, 2021.
1. Ensure that the firm you are associated with either is registered as an investment adviser in New York or is in the process of registering by submitting a Form ADV through IARD.
 2. Submit a Form U4 requesting RA registration in New York by August 31, 2021. Fill out Form U4 in accordance with [form instructions](#) and pay the required \$200 fee through CRD.
 - a. If you have not met the exam requirements of 11.6(a) and do not qualify for a waiver under 11.7, you must pass the required exams before your application for registration can be approved. If you do not qualify for a waiver because you have been the subject of a regulatory action, arbitration or other proceeding as noted in 11.7, you are required to pass an examination. Provision of investment advisory services between February 1, 2021 and December 2, 2021 is permitted only if you apply for registration as an RA or continue to satisfy the requirements of 11.4(i). **DO NOT WAIT FOR A DEFICIENCY NOTICE FROM THE DEPARTMENT BEFORE MEETING THE EXAMINATION REQUIREMENTS.**
 - b. If you are seeking a special waiver under 11.7(b), you must complete the [Form NY-IASW](#) and send it by email to IASW@ag.ny.gov. You will receive an automatic acknowledgement email response, but **questions will not be responded to through this email address.** Your application and any deficiency notices will be processed through [CRD](#).
 - c. Virtual notarization will be accepted in lieu of traditional notarization as long as it is permitted by New York Executive Order 202.

Federally Covered Investment Adviser personnel:

- III. All natural persons that represent a federally covered investment adviser from a place of business in the State and who satisfy the requirements of Rule 203A-3 adopted under the Investment Advisers Act of 1940 must register as an RA in New York.
1. Ensure that the firm you are associated with has Notice Filed with New York through IARD.
 2. Submit a Form U4 requesting RA registration in New York by August 31, 2021. Fill out Form U4 in accordance with [form instructions](#) and pay the required \$200 fee through [CRD](#).
 - a. If you have not met the exam requirements of 11.6(a) and do not qualify for a waiver under 11.7, you must pass the required exams before your application for registration can be approved. If you do not qualify for a waiver because you have been the subject of a regulatory action, arbitration or other proceeding as noted in 11.7, you are required to pass an examination. Provision of investment advisory services between February 1, 2021 and December 2, 2021 is permitted only if you apply for registration as an RA or continue to satisfy the requirements of 11.4(i). **DO NOT WAIT FOR A DEFICIENCY NOTICE FROM THE DEPARTMENT BEFORE MEETING THE EXAM REQUIREMENTS.**
 - b. If you are seeking a special waiver under 11.7(b), you must complete the [Form NY-IASW](#) and send it by email to IASW@ag.ny.gov. Virtual notarization will be accepted in lieu of traditional notarization as long as it is permitted by New York Executive Order 202. You will receive an automatic acknowledgement email response, but **questions will not be responded to through this email address**. Your application and any deficiency notices will be processed through CRD.
 3. **Principals and supervisors of federally covered investment advisers are not a defined category under the adopted rule. If such persons otherwise satisfy the definition of IAR under 11.12(g), they would be required to register.**

Solicitors:

- IV. Solicitors must register and meet exam requirements.
1. A Solicitor firm that is a federally covered investment adviser shall notice file in New York and ensure their representatives register and meet the examination requirements pursuant to the instructions for persons associated with federally covered investment advisers, above.
 2. A Solicitor firm that is *not* a federally covered investment adviser shall register as an investment adviser in New York and ensure their representatives, supervisors and principals register and meet the examination requirements for persons associated with state registered investment advisers, above.

Visit <https://ag.ny.gov/ipb-rule-proposal> and <https://ag.ny.gov/investor-protection/resource-center> periodically for updates to this guidance and answers to frequently asked questions. Visit <https://ag.ny.gov/forms> for forms, including [NY-IASW](#).

You should also visit OAG's investment adviser FAQs.