

Locke Lord QuickStudy: Limited Time to Obtain Special Exam Waiver – IARs in New York Must Now Register

FUNDamentals™ Series

WRITTEN BY

Michael K. Renetzky | Tom Bohac

The New York State Department of Law recently adopted regulations (“NY IAR Regs”) that, starting February 1, 2021, require Investment Adviser Representatives (“IAR”) representing a New York state registered investment adviser or solicitor, or representing an SEC registered investment adviser conducting advisory activities from a place of business in New York, to meet certain examination and registration requirements under New York’s Investment Advisory Act. The NY IAR Regs also require IARs to register through the Central Registration Depository/Investment Adviser Registration Depository (“CRD/IARD”) and, in many cases, pass an [examination](#).

IAR Registration Requirement, generally.

Although the new rules became effective on February 1, 2021, the implementation period allows IARs who are already engaged in an advising business to continue to provide services until December 2, 2021 so long as they submit a Form U4 by August 31, 2021 and [pass any required examinations by December 2, 2021](#).

This registration requirement applies to natural persons representing either an investment adviser or a solicitor in performing any of the acts that define an investment adviser under GBL § 359-eee(1)(a) as well as to natural persons who represent a federally covered investment adviser from a place of business in the state of New York and who satisfy the requirements of Rule 203A-3 (17 CFR § 275.203A-3), adopted under the Investment Advisers Act of 1940. Rule 203A-3 defines an investment adviser representative as a supervised person of an investment adviser who, other than qualified clients, has more than five clients who are natural persons and more than ten percent of whose clients are natural persons.

Investment Adviser Registration or Notice Requirements.

An investment adviser is required to register or make a notice filing in New York when an investment adviser or solicitor has 6 or more clients domiciled in New York. New York defines a single client as a natural person, a corporation, general partnership, limited partnership, limited liability company, trust, or other legal organization. However, entities domiciled in New York that qualify as institutional buyers or financial institutions under 11.12(e) are not counted as New York clients for this purpose.¹

Waivers, generally.

Under the NY IAR Regs, unless IARs qualify for a waiver, within two years of the date of filing registration information, registration applicants must either:

1. Pass the Series 65 Uniform Investment Adviser Law Examination or
2. Pass the Series 7 Securities Industry Essentials Examination, the General Securities Representative Examination and pass the Series 66 Uniform Combined State Law examination.²

If an applicant has a passing exam score that is more than two years old, the applicant may request a waiver of this requirement.

Examination Waivers.

IARs are eligible for an examination waiver if: (1) they have been registered to provide investment advice in any jurisdiction for two years prior to February 1, 2021, with no lapse in registration and (2) they have not been subject to any regulatory or civil action, proceeding or arbitration in the prior 10 years that would require disclosure on Form U4.³

Special waivers for the examination requirement will also be issued to those 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 February 1, 2021. To obtain a special waiver, an IAR:

- Must submit a registration application before August 31, 2021;
- Cannot have acted only as a solicitor in the 2 years preceding December 2, 2020;
- Cannot have ceased performing IAR acts in the regular course of business from a place of business in New York for two or more continuous years in the four years preceding the filing of registration information and
- Cannot have been subject to any regulatory or civil action, proceeding or arbitration, in the prior 10 years that would require disclosure on Form U4.⁴

IAR's who do not qualify for an examination waiver must pass the examination by December 2, 2021.

Books and Records.

Finally, the rule changes include a new books and records requirement. IARs are now required to maintain records supporting designating a client as an "accredited investor" or "qualified client" as defined under federal law. The records should evidence reasonable steps taken to verify an "accredited investor" or "qualified client" designation as well as include all documents reviewed in the course of verification.⁵

As we have in the past, we will continue to monitor these issues and will provide future client updates. This QuickStudy is for guidance only and is not intended to be a substitute for specific legal advice.

—

1. See N.Y. Comp. Codes ?R. & Regs. tit. 13, § 11.12(a)(2)
2. 13 N.Y.C.R.R. Part 11, Section 6
3. 13 N.Y.C.R.R. Part 11, Section 11.7 (a)
4. 13 N.Y.C.R.R. Part 11, Section 11.7 (b)
5. 13 N.Y.C.R.R. Part 11, Section 9

RELATED INDUSTRIES + PRACTICES

- [Investment Funds + Investment Management Services](#)