

August 27, 2009

Power of Attorney Law Changes in New York on September 1, 2009

New York State has amended its power of attorney statute which will affect powers of attorney executed by individuals on and after September 1, 2009, while in the State of New York.

The new law, among other things, imposes on the agent certain fiduciary and other duties and a “prudent man” standard of care. In addition, the new law requires that the short-form power of attorney contain verbatim certain specified risk disclosures (click [here](#) for a copy), be of clear type of no less than 12 point in size, and be signed and notarized by both the principal and the agent in order to be effective.¹ The new law will not affect powers of attorney executed prior to September 1, 2009, or powers of attorney executed by entities. However, powers of attorney executed by an individual on and after September 1, 2009, will have the effect of revoking all prior powers (including unrelated powers of attorney) granted by that individual, unless specifically stated otherwise in the power itself.

To avoid the burdensome effect of this new law, we are advising our investment fund clients to amend their subscription documents and limited liability and limited partnership agreements to eliminate the use of powers of attorney. However, brokerage firms, investment managers and advisors who receive powers of attorneys from individuals in connection with managed accounts or otherwise will need to make changes in their forms of power of attorney in order for them to be effective. We have been advised that the New York Legislature is considering technical amendments to the new law to address various anomalies caused by its general application. If and when such amendments are adopted we will apprise you of their effect. Until such time, however, the requirements of the new law will apply to all powers of attorney executed by individuals on and after September 1, 2009, while in the State of New York regardless of the context in which such powers are granted.

¹ Powers given to an attorney-in-fact to make gifts in excess of \$500, including, but not limited to, change in joint tenancy or beneficiary designations, must be made in a separately executed “statutory major gifts rider” that is (i) executed simultaneously with the execution of the short-form power of attorney; (ii) acknowledged in the same manner as a deed conveying real property; and (iii) executed in the presence of two witnesses who are not potential gift recipients.

For more information, or if you would like us to make the necessary changes to your investment fund documents and/or review modifications to your form of power of attorney, please contact one of the Katten Muchin Rosenman LLP attorneys listed below:

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