

## New York Proposes New Rules to Modernize Securities Filings Affecting Private Funds and Significant Exam and Registration Requirements on “Finders”

May 8, 2020

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### KEY POINTS

- New York’s Investor Protection Bureau of the Department of Law (the “Department”) proposed changes to notice filing requirements for private funds offered under Regulation D.
- The proposal also would require “finders” to register and comply with broker-dealer registration and exam requirements.
- The Department will accept comments on its proposal through June 15, 2020.

Recent proposed changes to New York’s securities regulations would require private funds offered under Regulation D to make notice filings consistent with federally set timelines and impose licensing requirements for the first time on “finders”.

Specifically, on April 6, 2020, the “Department proposed sweeping revisions (“Proposed Regulations”) that would, among other things:

- modify notice filing requirements for covered securities. Under the Proposed Regulations, SEC Form D would satisfy New York’s blue sky filing requirements for private funds offered under Rule 506 of the Securities Act of 1933 (the “1933 Act”); and
- require “finders” to register. The proposed regulations would define “finders” (i.e., persons that are paid to match up investors with broker-dealers) and require finders to comply with broker-dealer registration and exam requirements.

According to the Department, the Proposed Regulations would modernize the Department’s registration function, conform New York’s regulations to the federal securities registration regime and cure industry confusion. New York’s rules have not kept pace with developments in state and federal securities regulation since the enactment of the National Securities Markets Improvement Act in 1996 (NSMIA). (NSMIA limits the authority of states to regulate securities offered, and prohibits states from requiring the registration or qualification of securities issued in Rule 506 offerings. NSMIA allows states to impose notice filing requirements.)

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## Regulation D Offerings

Most private funds rely on Regulation D under the 1933 Act to offer and sell interests to investors without registering the offer and sale. Under the Proposed Regulations:

- a private fund making an offering pursuant to Rule 506 under Regulation D would satisfy its New York State blue sky filing requirements by filing a Form D with the Department;
- the deadline for Form D filings with New York would be the same deadline provided in SEC Regulation D (i.e., within 15 days after the first sale to any New York investor);
- Form D filings would be effective for four years. However, amended Form Ds would be required whenever the private fund files an other than annual amendment to Form D with the SEC (i.e., an amendment reflecting a material change);
- a Form D (and any associated fees) would be filed through the North American Securities Administrators Association's (NASAA's) electronic filing depository system. Initial and renewal filings fees would be \$1,200 (for offering amounts over \$500,000) and \$300 (for offering amounts of \$500,000 or less). Paper filings and payments of fees would be accepted "until such time as the Department of Law designates a system for exclusive electronic filings and payments"; and
- issuers that are not incorporated or organized in New York would still need to continue to file a Form U-2 Uniform Consent to Service of Process Form with the Department.

Currently, the Department requires issuers conducting a private placement in New York to file a registration of the issuer on the Form 99, which is valid for four years. However, a number of practitioners have taken the view that New York's filing requirements for Rule 506 offerings were inconsistent with, and preempted by, NSMIA. When the Proposed Regulations were published in the New York State Register, the New York Attorney General seemingly disagreed with this interpretation. The published notice stated that "[u]nder the proposed regulatory revisions, certain securities issuers qualifying as dealers, that may have misinterpreted the existing regulations as inapplicable, will now be explicitly compelled to file with the State and pay filing fees."

## Registration of "Finders"

New York's broker-dealer regulation does not currently have a provision regulating finders. Under the Proposed Regulations, persons that act as finders in New York would be prohibited from receiving any compensation unless the person was registered as a broker-dealer or sales person, as appropriate. The stated purpose of this proposal is to "seek to clarify the registration and exam requirements for certain currently-undefined subclassifications of broker-dealers and investment advisers" who introduce investors to broker-dealers for compensation.

Specifically, a "finder" would be defined as "a person, firm, association, or corporation who as a part of a regular business, engages in the business of effecting transactions in securities for the account of others within or from this state, to the limited extent that such person, firm, association or corporation, receives compensation for introducing a prospective investor or investors to any broker, dealer or salesperson." There does not appear to be any exception from this definition, which would apply to persons even if they do not have a principal place of business in New York.

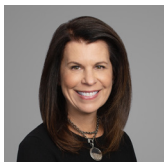
Finders not associated with a registered broker-dealer would register by filing Form M-1. Finders associated with a non-FINRA member broker-dealer would be required to register by filing Form M-2. Registration for finders associated with a FINRA member broker-dealer would be effectuated by filing a Form U4. Finders would also be subject to all of the current New York exam requirements applicable to brokers, broker-dealers, and salespersons.

## Next Steps

The Proposed Regulations were published in the New York State Register on April 15, 2020, available [here](#). The Department will accept comments on its proposal through June 15, 2020.

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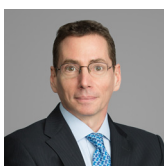
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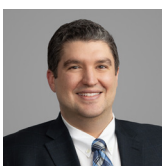
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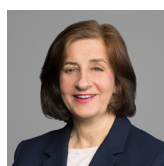
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