

6933

2015-2016 Regular Sessions

I N A S S E M B L Y

April 10, 2015

Introduced by M. of A. DINOWITZ, GOTTFRIED, ORTIZ, STECK, PICHARDO, MOSLEY, BROOK-KRASNY, BLAKE, SEAWRIGHT, BICHOTTE, SILVER, COOK, COLTON, GALEF -- Multi-Sponsored by -- M. of A. BRENNAN, GLICK, SIMON, TITONE -- read once and referred to the Committee on Judiciary

AN ACT to amend the general obligations law, in relation to mandating greater levels of disclosure by non-fiduciaries that provide investment advice

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The general obligations law is amended by adding a new  
2 article 6 to read as follows:

3 ARTICLE 6

4 INVESTMENT TRANSPARENCY ACT

5 SECTION 6-101. APPLICATION.

6 6-102. REQUIRED DISCLOSURE.

7 6-103. ENFORCEMENT.

8 S 6-101. APPLICATION. THE PROVISIONS OF THIS ARTICLE ARE APPLICABLE TO  
9 INVESTMENT ADVISORS CURRENTLY NOT SUBJECT TO A FIDUCIARY STANDARD UNDER  
10 EXISTING STATE AND FEDERAL LAWS OR REGULATIONS OR BY ANY APPLICABLE  
11 STANDARDS OF PROFESSIONAL CONDUCT. "NON-FIDUCIARY INVESTMENT ADVISORS"  
12 SHALL INCLUDE, BUT NOT BE LIMITED TO INDIVIDUALS AND INSTITUTIONS THAT  
13 IDENTIFY THEMSELVES TO CONSUMERS AS "BROKERS," "DEALERS," "INVESTMENT  
14 ADVISORS," "FINANCIAL ADVISORS," "FINANCIAL PLANNERS," "FINANCIAL  
15 CONSULTANTS," "RETIREMENT PLANNERS," "RETIREMENT BROKERS," "RETIREMENT  
16 CONSULTANTS," OR BY ANY OTHER TERM THAT IS SUGGESTIVE OF INVESTMENT,  
17 FINANCIAL PLANNING, OR RETIREMENT PLANNING KNOWLEDGE OR EXPERTISE.

18 S 6-102. REQUIRED DISCLOSURE. 1. NON-FIDUCIARY INVESTMENT ADVISORS  
19 SHALL MAKE A PLAIN LANGUAGE DISCLOSURE TO CLIENTS ORALLY AND IN WRITING  
20 AT THE OUTSET OF THE RELATIONSHIP THAT ENSURES THAT INDIVIDUAL INVESTORS  
21 ARE AWARE OF POTENTIAL CONFLICTS OF INTEREST. SUCH REQUIRED DISCLOSURE  
22 SHALL STATE THE FOLLOWING: "I AM NOT A FIDUCIARY. THEREFORE, I AM NOT

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 REQUIRED TO ACT IN YOUR BEST INTERESTS, AND AM ALLOWED TO RECOMMEND  
2 INVESTMENTS THAT MAY EARN HIGHER FEES FOR ME OR MY FIRM, EVEN IF THOSE  
3 INVESTMENTS MAY NOT HAVE THE BEST COMBINATION OF FEES, RISKS, AND  
4 EXPECTED RETURNS FOR YOU." THE NON-FIDUCIARY INVESTMENT ADVISOR SHALL  
5 PROVIDE A COPY OF THE DISCLOSURE FORM TO THEIR CLIENT.

6 2. A SIGNED ACKNOWLEDGEMENT BY THE CLIENT THAT THIS PLAIN LANGUAGE  
7 DISCLOSURE WAS PROVIDED MUST BE MAINTAINED BY THE NON-FIDUCIARY INVEST-  
8 MENT ADVISOR ALONGSIDE ANY WRITTEN CLIENT AGREEMENT.

9 3. ANY INVESTMENT BROCHURES, ADVERTISING MATERIALS, OR OTHER RELATED  
10 PRINTED INFORMATION PROVIDED TO CLIENTS, OR ANY SUBSEQUENT ORAL INVEST-  
11 MENT ADVICE TO THEM, MUST ALSO INCLUDE SUCH DISCLOSURE SET FORTH IN A  
12 CLEAR AND CONSPICUOUS MANNER. THE NON-FIDUCIARY INVESTMENT ADVISOR SHALL  
13 PROVIDE A COPY OF THE DISCLOSURE FORM TO THEIR CLIENT.

14 4. INVESTMENT ADVISORS THAT ARE SUBJECT TO THE FIDUCIARY DUTY UNDER  
15 LAW OR APPLICABLE STANDARDS OF PROFESSIONAL CONDUCT WITH RESPECT TO  
16 CERTAIN TYPES OF INVESTMENT ADVICE BUT NOT OTHERS, MUST DISCLOSE IN  
17 PLAIN LANGUAGE THE EXTENT TO WHICH THE FIDUCIARY DUTY DOES AND DOES NOT  
18 APPLY.

19 S 6-103. ENFORCEMENT. WHENEVER THE ATTORNEY GENERAL FINDS THAT THERE  
20 HAS BEEN A VIOLATION OF THIS ARTICLE, HE OR SHE MAY PROCEED AS PROVIDED  
21 IN SUBDIVISION TWELVE OF SECTION SIXTY-THREE OF THE EXECUTIVE LAW. CIVIL  
22 PENALTIES UP TO FIVE THOUSAND DOLLARS MAY BE IMPOSED FOR EACH VIOLATION  
23 OF THIS ARTICLE.

24 S 2. This act shall take effect January 1, 2016.