S T A T E O F N E W Y O R K

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:

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

ARTICLE 6

INVESTMENT TRANSPARENCY ACT

SECTION 6-101. APPLICATION.
6-102. REQUIRED DISCLOSURE.
6-103. ENFORCEMENT.

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

S 6-102. REQUIRED DISCLOSURE. 1. NON-FIDUCIARY INVESTMENT ADVISORS SHALL MAKE A PLAIN LANGUAGE DISCLOSURE TO CLIENTS ORALLY AND IN WRITING AT THE OUTSET OF THE RELATIONSHIP THAT ENSURES THAT INDIVIDUAL INVESTORS ARE AWARE OF POTENTIAL CONFLICTS OF INTEREST. SUCH REQUIRED DISCLOSURE 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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REQUIRED TO ACT IN YOUR BEST INTERESTS, AND AM ALLOWED TO RECOMMEND INVESTMENTS THAT MAY EARN HIGHER FEES FOR ME OR MY FIRM, EVEN IF THOSE INVESTMENTS MAY NOT HAVE THE BEST COMBINATION OF FEES, RISKS, AND EXPECTED RETURNS FOR YOU." THE NON-FIDUCIARY INVESTMENT ADVISOR SHALL PROVIDE A COPY OF THE DISCLOSURE FORM TO THEIR CLIENT.

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

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

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

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

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