STATE OF NEW YORK

2476--A

2019-2020 Regular Sessions

IN ASSEMBLY

January 22, 2019
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Introduced by M. of A. DINOWITZ, GOTTFRIED, ORTIZ, STECK, PICHARDO, MOSLEY, BLAKE, SEAWRIGHT, BICHOTTE, COOK, COLTON, GALEF, BUCHWALD -- Multi-Sponsored by -- M. of A. DAVILA, GLICK, SIMON -- read once and referred to the Committee on Judiciary -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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   **§ 6-101. Application. The provisions of this article are applicable to**
9 **non-fiduciary investment advisors. Non-fiduciary investment advisors**
10 **are investment advisors not subject to a fiduciary standard under state**
11 **or federal laws or regulations or by any applicable standards of profes-**
12 **sional conduct, and may include, but not be limited to individuals and**
13 **institutions that identify themselves to consumers as "brokers," "deal-**
14 **ers," "investment advisors," "financial advisors," "financial planners,"**
15 **"financial consultants," "retirement planners," "retirement brokers,"**
16 **"retirement consultants," or by any other term that is suggestive of**
17 **investment, financial planning, or retirement planning knowledge or**
18 **expertise.**
19   **§ 6-102. Required disclosure. 1. Non-fiduciary investment advisors**
20 **shall make a plain language disclosure to potential clients orally and**

1 in writing prior to entering into any contract with such potential
2 client that ensures the potential client is aware that the fiduciary
3 standard does not apply to the non-fiduciary investment advisor. Such
4 required disclosure shall state the following: "A non-fiduciary invest-
5 ment advisor is not required by law to act solely in the client's best
6 interest. Federal law, state law, and standards of professional conduct
7 do not apply a fiduciary standard to my investment recommendations,
8 although other standards may apply. You may ask any advisor to explain
9 to you the standards that apply to their investment recommendations."
10 The non-fiduciary investment advisor shall provide a copy of the disclo-
11 sure form to their client.
12   2. A written client agreement must include a separately signed
13 acknowledgement by the client that this plain language disclosure was
14 provided. The non-fiduciary investment advisor shall maintain the signed
15 acknowledgement alongside the written client agreement.
16   3. Investment brochures, advertising materials, or other related
17 printed information provided to potential clients must also include such
18 disclosure set forth in a clear and conspicuous manner.
19   4. Investment advisors that are subject to a fiduciary standard under
20 state or federal law or regulation or applicable standards of profes-
21 sional conduct with respect to certain types of investment advice but
22 not others, must disclose in plain language in writing the extent to
23 which the fiduciary standard applies in the context of each client
24 relationship.
25   § 6-103. Enforcement. Whenever the attorney general finds that there
26 has been a violation of this article, he or she may proceed as provided
27 in subdivision twelve of section sixty-three of the executive law. Civil
28 penalties up to five thousand dollars may be imposed for each violation
29 of this article.
30   § 2. This act shall take effect on the first of January next succeed-
31 ing the date on which it shall have become a law.