STATE OF NEW YORK

2872--A

2019-2020 Regular Sessions

IN SENATE

January 30, 2019

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- 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:

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.

§ 6-101. Application. The provisions of this article are applicable to non-fiduciary investment advisors. Non-fiduciary investment advisors are investment advisors not subject to a fiduciary standard under state or federal laws or regulations or by any applicable standards of professional conduct, and may 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.

§ 6-102. Required disclosure. 1. Non-fiduciary investment advisors shall make a plain language disclosure to potential clients orally and in writing prior to entering into any contract with such potential client that ensures the potential client is aware that the fiduciary

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

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standard does not apply to the non-fiduciary investment advisor. Such required disclosure shall state the following: "A non-fiduciary investment advisor is not required by law to act solely in the client's best interest. Federal law, state law, and standards of professional conduct do not apply a fiduciary standard to my investment recommendations, although other standards may apply. You may ask any advisor to explain to you the standards that apply to their investment recommendations." The non-fiduciary investment advisor shall provide a copy of the disclosure form to their client.

2. A written client agreement must include a separately signed acknowledgement by the client that this plain language disclosure was provided. The non-fiduciary investment advisor shall maintain the signed acknowledgement alongside the written client agreement.

3. Investment brochures, advertising materials, or other related printed information provided to potential clients must also include such disclosure set forth in a clear and conspicuous manner.

4. Investment advisors that are subject to a fiduciary standard under state or federal law or regulation or applicable standards of professional conduct with respect to certain types of investment advice but not others, must disclose in plain language in writing the extent to which the fiduciary standard applies in the context of each client relationship.

§ 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.

§ 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.