

NEW YORK STREAMLINES AND MODERNIZES REGULATION D FILING PROCEDURES

Dec 21, 2020

New York recently adopted new [rules](#) to, among other things, eliminate its cumbersome and confusing Form 99 blue sky notification filing requirement for many Regulation D offerings and instead require electronic notice filings on Form D for those offerings. New York's Martin Act previously required companies to manually file an originally-signed Form 99 *before* offering or selling private placement securities to New York investors.

Effective December 2, 2020, New York's new Regulation D filing procedures are now generally consistent with the 1996 National Securities Market Improvement Act and with procedures in other states, which allow companies selling "covered securities" under Rule 506 of Regulation D to provide notice to the state through the North American Association of Securities Administrators ("NASAA") Electronic Filing Depository ("EFD"). The Form D now is required to be filed with New York on the same schedule as federal and other state filings—within 15 days of the first sale of any securities to an investor in New York.

In a [press release](#) announcing the change, New York Attorney General Letitia James stated, "By moving to standardized electronic filings and payments, our systems will be more resilient to disruption in the future and will be better equipped to protect investors from frauds, especially critical as we have seen an exponential rise in these types of scams as a result of COVID-19." The press release also provides that the new rules are the "latest step in Attorney General James' ongoing efforts to streamline and enhance the oversight of the securities industry in New York by moving filings and payments to standardized federal and multi-state systems."

For consent to service of process, EFD filers are no longer required to submit a separate manually signed and notarized Form U2 filing to the New York Department of State as was required in connection with Form 99 filings. The Department now will accept the agreement by the securities issuer on a Form D and through EFD that such issuer has consented to service of process in New York State on any of New York's officers, including the Secretary of State.

Generally, no new Form 99's or Form 99 renewals will be accepted by New York's Investor Protection Bureau after February 1, 2021. Amended Form 99's for companies that have received a registration number for a Form 99 submitted to New York that have not yet filed through EFD will be accepted

until December 2, 2024. After December 2, 2024, all active Regulation D covered securities issuers, other than certain theatrical and real estate securities issuers, must have a notice filing record on EFD. Issuers of real estate securities must continue to file Form 99 and issuers of theatrical securities may choose between filing through EFD or filing the Form 99.

RELATED PRACTICE AREAS

- Securities & Corporate Governance

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