

# SENATE, No. 735

## STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

**Sponsored by:**

**Senator PATRICK J. DIEGNAN, JR.**

**District 18 (Middlesex)**

**SYNOPSIS**

Requires certain disclosures by non-fiduciary investment advisors.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning non-fiduciary investment advisors and  
2 supplementing Title 56 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. As used in this act, “non-fiduciary investment advisor”  
8 means any individual or institution that advertises or uses in self-  
9 identification any term that is suggestive of investment, financial  
10 planning, or retirement planning knowledge or expertise, including,  
11 but not limited to, broker, dealer, investment advisor, financial  
12 advisor, financial planner, financial consultant, retirement planner,  
13 retirement broker, or retirement consultant. “Non-fiduciary  
14 investment advisor” shall not include investment advisors that are  
15 subject to a fiduciary duty under existing State or federal law or  
16 regulation or by applicable standards of professional conduct,  
17 except as provided in subsection b. of section 2 of this act.

18

19 2. a. A non-fiduciary investment advisor shall:

20 (1) make a plain language disclosure to clients orally and in  
21 writing at the outset of the relationship that ensures that individual  
22 investors are aware of potential conflicts of interest. The required  
23 disclosure shall state the following: “I am not a fiduciary.  
24 Therefore, I am not required to act in your best interests, and am  
25 allowed to recommend investments that may earn higher fees for  
26 me or my firm, even if those investments may not have the best  
27 combination of fees, risks, and expected returns for you.”;

28 (2) maintain alongside any written client agreement an  
29 acknowledgement signed by the client that the written disclosure  
30 required by paragraph (1) of this subsection was provided to the  
31 client; and

32 (3) accompany any investment brochures, advertising materials,  
33 or other related printed information, or any subsequent oral  
34 investment advice, provided to clients with the written disclosure  
35 required by paragraph (1) of this subsection.

36 b. Any investment advisor that is subject to a fiduciary duty  
37 under law or applicable standards of professional conduct with  
38 respect to certain types of investment advice, but not others, shall:

39 (1) make a plain language disclosure to clients orally and in  
40 writing at the outset of the relationship that ensures the individual  
41 investors are aware of the extent to which the fiduciary duty does  
42 and does not apply; and

43 (2) comply with the other requirements of this section in any  
44 investment advice situation in which a fiduciary duty does not  
45 apply.

46

47 3. Violations of this act shall be punishable by a fine of up to  
48 \$5,000, which shall be collected and enforced by the Attorney

1 General in a summary proceeding pursuant to the "Penalty  
2 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

3

4 4. This act shall take effect on the 60th day next following  
5 enactment.

6

7

8

STATEMENT

9

10 This bill requires non-fiduciary investment advisors to disclose  
11 to clients that they do not have a fiduciary relationship with the  
12 client, and are not required to act in the client's best interests.

13 As used in the bill, "non-fiduciary investment advisor" means  
14 any individual or institution that advertises or uses in self-  
15 identification any term that is suggestive of investment, financial  
16 planning, or retirement planning knowledge or expertise, including,  
17 but not limited to, broker, dealer, investment advisor, financial  
18 advisor, financial planner, financial consultant, retirement planner,  
19 retirement broker, or retirement consultant. The bill does not apply  
20 to investment advisors that are subject to a fiduciary standard under  
21 existing State or federal law or regulation or by applicable standards  
22 of professional conduct, except that investment advisors who are  
23 subject to a fiduciary duty with respect to certain types of  
24 investment advice, but not to others, are required to disclose the  
25 extent of that fiduciary duty to individual investors.

26 The bill requires non-fiduciary investment advisors to make a  
27 plain language disclosure to clients orally and in writing at the  
28 outset of the relationship that ensures that individual investors are  
29 aware of the potential conflicts of interest. The required disclosure  
30 must state the following: "I am not a fiduciary. Therefore, I am not  
31 required to act in your best interests, and am allowed to recommend  
32 investments that may earn higher fees for me or my firm, even if  
33 those investments may not have the best combination of fees, risks,  
34 and expected returns for you."

35 The bill requires non-fiduciary investment advisors to maintain  
36 alongside any written client agreement an acknowledgement signed  
37 by the client that the written disclosure was provided to the client,  
38 and to accompany any investment brochures, advertising materials,  
39 or other related printed information, or any subsequent oral  
40 investment advice, provided to clients with the written disclosure.

41 Violations of the bill are punishable by a fine of up to \$5,000  
42 which shall be collected and enforced by the Attorney General in a  
43 summary proceeding.