



July 12, 2024

Mr. Michael Salerno
NPPG PEP Professionals, LLC
494 Sycamore Avenue
Shrewsbury, New Jersey 07702

Re: NPPG PEP Professionals, LLC – Denial of No-Action Request

Mr. Salerno:

On or around May 22, 2023, NPPG PEP Professionals, LLC (“NPPG”), an entity expected to register and act as a Pooled Plan Provider (“PPP”) under the Setting Every Community Up for Retirement Enhancement Act (the “SECURE Act”), submitted a No-Action Letter request (the “NAL”) to the United States Securities and Exchange Commission (the “SEC”), requesting relief from registration requirements under the Investment Advisers Act of 1940 (the “Advisers Act”). The NAL acknowledged that nearly, if not all, PPPs discharge some level of investment advice functions, including when retaining other investment advisers or investment managers for a PEP, but argued that various practical and policy considerations warranted relief from Advisers Act registration for such providers. The NAL was denied by the SEC on or around June 18, 2024.

In issuing its denial, the SEC stated: “Whether [NPPG] is required to register with the [SEC] as an investment adviser is a facts and circumstances determination. Accordingly, we do not believe it is appropriate to issue no-action relief in this context.”

This denial provides useful insight of the SEC, and we believe a basic conclusion can be drawn from it. In short, the SEC was made aware that, at the time of NAL submission, NPPG would become a PPP and would provide PPP services, including the retention of one or more independent third party 3(38) investment managers to select and monitor the PEP’s investment line-up, and that NPPG would do so for compensation. No other investment advisory services to be provided by NPPG, aside from those in NPPG’s capacity as PPP, were discussed or acknowledged as existing in the NAL and, accordingly, the SEC’s denial of relief was based exclusively on NPPG’s stated PPP function.

As such, it can be concluded that the SEC does not view PPPs as being categorically excluded from Advisers Act registration requirements, based on PPP status alone. Specifically, the SEC, on being informed that NPPG would perform PPP services, and would not otherwise provide investment advice or conduct investment advisory activities, elected not to grant registration relief to NPPG, thereby recognizing that NPPG’s status as a PPP would not suffice to exempt the firm from investment adviser registration.

Based on this conclusion, it becomes apparent the SEC recognizes that PPPs can, and often do, perform some level of investment advisory functions, and that this view would generally cause PPPs to be subject to state or federal investment adviser registration and oversight requirements, absent an available and applicable registration exemption.

Very Truly Yours,

Ryan Walter

Ryan Walter, Esq.
(732) 996-8918
ryan@rialawyers.com

Legal services through RIA Lawyers LLC are provided by Cary Kvitka, Esq. (admitted in NJ and PA), Max Schatzow, Esq. (admitted in NJ and NY), Ryan Walter, Esq. (admitted in NJ), and Jessica Carpenter, Esq. (admitted in OH). For more information, please visit our website at www.rialawyers.com.