

CHAPTER 47A

BUREAU OF SECURITIES

Authority

N.J.S.A. 49:3-47 et seq., specifically 49:3-67(a).

Source and Effective Date

R.1997 d.451, effective September 26, 1997.
See: 29 N.J.R. 3119(a), 29 N.J.R. 4463(a).

Executive Order No. 66(1978) Expiration Date

Chapter 47A, Bureau of Securities, expires on September 26, 2002.

Chapter Historical Note

Rules of the Bureau of Securities were originally filed and became effective as N.J.A.C. 13:13 on July 29, 1969. N.J.A.C. 13:13 was recodified as 13:47A when the Bureau of Securities became part of the Division of Consumer Affairs. Subchapter 25, Corporation Takeover Bid Disclosure Law, was adopted as R.1978 d.279, effective August 14, 1978. See: 10 N.J.R. 119(b), 10 N.J.R. 405(a). Pursuant to Executive Order No. 66(1978), Subchapter 25 expired on August 14, 1983. Pursuant to Executive Order No. 66(1978), Chapter 47A expired on September 6, 1987.

Chapter 47A, Bureau of Securities, was adopted as R.1987 d.390, effective October 5, 1987. See: 19 N.J.R. 1417(a), 19 N.J.R. 1824(a). Subchapter 9, Intrastate Offerings, and Subchapters 15 through 20, concerning real estate syndications, were allowed to lapse and were not adopted as a part of R.1987 d.390. Subchapter 10, Registration of Securities, was adopted as R.1990 d.241, effective May 21, 1990. See: 21 N.J.R. 2903(a), 22 N.J.R. 1617(a).

Pursuant to Executive Order No. 66(1978), Chapter 47A was re-adopted as R.1992 d.435, effective October 2, 1992. See: 24 N.J.R. 2524(a), 24 N.J.R. 4060(a). Subchapter 12, Exemptions for Securities Transactions and Securities Offerings; Employee Benefit Plans; Accredited Investors, was adopted as R.1995 d.270, effective June 5, 1995. See: 27 N.J.R. 303(a), 27 N.J.R. 2241(a). Subchapter 13, General Rules of Practice; and Subchapter 14, Rules of Practice Relating to Investigations, were adopted as R.1995 d.540, effective October 16, 1995. See: 26 N.J.R. 3814(a), 26 N.J.R. 4337(a), 27 N.J.R. 3964(b).

Pursuant to Executive Order No. 66(1978), Chapter 47A was re-adopted as R.1997 d.451, effective September 26, 1997. See: Source and Effective Date. As part of R.1997 d.451, effective October 20, 1997, Subchapter 6, Issuers, was repealed. See, also, section annotations.

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SUBCHAPTER 1. BROKER-DEALERS

13:47A-1.1 Application for registration for NASD members

(a) Any person who is a member of the National Association of Securities Dealers, Incorporated (NASD), desiring to transact business in the State of New Jersey as a broker-dealer shall file an application with the Bureau of Securities by filing the application with the NASAA/NASD Central Registration Depository (CRD) on the form designated as Form BD, Uniform Application for Broker-Dealer Registration, or any successor form to the Form BD prescribed by the CRD for filing a broker-dealer application. The requisite registration fee shall be submitted with the application filed with the CRD in the amount of \$250.00 for a one year registration term. Failure to pay the registration fee as above, within the billing time limits established by the Bureau or by the CRD, shall be a ground for immediate revocation of the registration. The applicant shall supplement the application filed with the CRD by directly filing with the Bureau of Securities any additional information which the Bureau Chief requires. The 30-day time period for review of an application will not commence until the applicant files all documents or material facts specified and required. The following additional information shall be required to be filed with the Bureau of Securities for all broker-dealer applications and no application shall be deemed complete until all of the following are properly submitted, unless the requirements are waived by the Bureau Chief:

1. A consent to service of process executed by the applicant as set forth in N.J.A.C. 13:47A-7.1. A fully completed and executed page 1 (Execution Page of the Form BD Uniform Application for Broker-Dealer Registration or a successor form as prescribed by the CRD shall satisfy this requirement;

2. A consent to service of process executed by each officer, director, general partner or limited partner of the applicant who is to act as an agent in the State of New Jersey, as set forth in N.J.A.C. 13:47A-7.1. A fully completed and executed Form U-2 Uniform Consent to Service of Process for each person shall satisfy this requirement;

3. Certified financial statements as set forth in N.J.A.C. 13:47A-1.3 and 1.5;

4. A statement of minimum net capital as set forth in N.J.A.C. 13:47A-1.6;

5. A statement of the nature and location of each business in which the applicant has engaged during the preceding five years; and

6. Any additional information requested by the Bureau Chief.

(b) The applicant shall submit to the Bureau of Securities as part of the application an identification photograph of each partner, officer or director, unless the applicant is a member of the NASD or is a member of and has current photographs on file with the New York Stock Exchange, American Stock Exchange, or another major stock exchange, and has granted written permission to the Bureau Chief, or his or her duly designated representative, to examine without notice any filings made by the applicant with such exchange or association.

(c) If the applicant is a natural person and is not a member of the NASD, the New York Stock Exchange or the American Stock Exchange, he or she shall submit to the Bureau of Securities as part of the application, two (non-criminal) fingerprint cards (one State Police card and one Federal Bureau of Investigation card) with impressions taken by a recognized law enforcement agency.

(d) If the applicant is a corporation or partnership and is not a member of the NASD, the New York Stock Exchange or the American Stock Exchange, it shall submit to the Bureau of Securities as part of the application, two applicant (noncriminal) fingerprint cards (one State Police card and one Federal Bureau of Investigation card) for each officer, director, controlling person or partner with all of the impressions taken by a recognized law enforcement agency.

(e) If, during the pendency of the application, it appears to the Bureau Chief that the application may contain a misrepresentation, may omit a document or material fact, or contains any statement which may be, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect, the Bureau Chief, in his or her discretion, may notify the applicant of the deficiency by letter. A deficiency letter shall require the applicant to perfect the application by amending or supplementing the information previously submitted within 21 days after the issuance of the deficiency letter; withdraw the application; or subject itself to further action of the Bureau Chief by Order or otherwise. If the applicant elects to perfect the application within 21 days, the amendment or supplement by the applicant shall postpone the effectiveness of the application for 30 days after the applicant perfects the application. The Bureau Chief may elect, in his or her discretion, to act without issuing a deficiency letter.

Amended by R.1970 d.60, effective May 29, 1970.

See: 2 N.J.R. 34(f), 2 N.J.R. 55(d).

Amended by R.1974 d.333, effective December 3, 1974.

See: 7 N.J.R. 12(b).

Amended by R.1987 d.390, effective October 5, 1987.

See: 19 N.J.R. 1417(a), 19 N.J.R. 1824(a).

Cost raised from \$125.00 plus \$5.00 to \$500.00 plus \$10.00.

Amended by R.1992 d.435, effective November 2, 1992.

See: 24 N.J.R. 2524(a), 24 N.J.R. 4060(a).

Revised (a)-(e); added new (f).

Amended by R.1997 d.451, effective October 20, 1997.

See: 29 N.J.R. 3119(a), 29 N.J.R. 4463(a).

In (a), rewrote the fourth sentence; in (a)1, added the second sentence; in (a)2, added the second sentence; rewrote (c) and (d); deleted (e); and recodified existing (f) as (e).

Case Notes

Powers of Bureau Chief. In re Information Resources, 126 N.J.Super. 42, 50, 312 A.2d 671 (1973).

Regulatory powers of Bureau. Mayflower Securities v. Bureau of Securities, 64 N.J. 85, 312 A.2d 497 (1973).

13:47A-1.2 Application for registration for persons not eligible for registration via CRD

Any person desiring to transact business in the State of New Jersey who is not a member of the NASD or who is not otherwise eligible to register via the CRD pursuant to N.J.A.C. 13:47A-1.1, shall file all of the information required by N.J.A.C. 13:47A-1.1 and in the same form required by that section directly with the Bureau of Securities at its current office address. The application shall be accompanied by a check or money order payable to the State of New Jersey, Bureau of Securities, in the amount of \$250.00.

New Rule, R.1992 d.435, effective November 2, 1992.

See: 24 N.J.R. 2524(a), 24 N.J.R. 4060(a).

Old 13:47A-1.2 Financial reports to accompany application recodified to 13:47A-1.3.

Amended by R.1997 d.451, effective October 20, 1997.

See: 29 N.J.R. 3119(a), 29 N.J.R. 4463(a).

Changed application fee from \$500 to \$250.

13:47A-1.3 Financial reports to supplement application

(a) Subject to the limitations of § 15 of the Securities Exchange Act of 1934 (15 U.S.C. § 78), an application for registration as a broker-dealer must be supplemented by a concurrent filing directly with the Bureau of Securities of a certified statement of the applicant's financial condition as of a date within 60 days of the application; provided, however, if the applicant has been engaged in business for one year or more preceding the date of the application, a certified financial statement as of the end of its last fiscal period, along with an unaudited balance sheet as of a date within 60 days of the application may be submitted directly to the Bureau concurrently with the filing of the application for registration. The concurrent filing will be considered to be a necessary part of the registration application, whether the application is filed via the CRD for NASD members, or directly with the Bureau for non-NASD members.

(b) The balance sheet must be signed by a principal or officer of the applicant and must be notarized.

Amended by R.1992 d.435, effective November 2, 1992.

See: 24 N.J.R. 2524(a), 24 N.J.R. 4060(a).

Recodified from 13:47A-1.2, stylistic revisions. Old 13:47A-1.3 Annual financial report recodified to 13:47A-1.4.

Amended by R.1997 d.451, effective October 20, 1997.

See: 29 N.J.R. 3119(a), 29 N.J.R. 4463(a).

Made this section subject to the limitations of § 15 of the Securities Exchange Act of 1934 (15 U.S.C. § 78).

13:47A-1.4 Annual financial report

Subject to the limitations of § 15 of the Securities Exchange Act of 1934 (15 U.S.C. § 78), every registered broker-dealer must file with the Bureau Chief an annual

certified report of financial condition during each calendar year. Said report will be due not later than 60 days after the termination date of each report; provided that reports for any two consecutive years shall not be as of termination dates within four months of each other. Requests for extensions of time for the filing of the report must be made in writing to the Bureau Chief in advance of the due date.

Amended by R.1992 d.435, effective November 2, 1992.

See: 24 N.J.R. 2524(a), 24 N.J.R. 4060(a).

Recodified from 13:47A-1.3; revised (a). Old 13:47A-1.4 Preparation and contents of financial statement recodified to 13:47A-1.5.

Amended by R.1997 d.451, effective October 20, 1997.

See: 29 N.J.R. 3119(a), 29 N.J.R. 4463(a).

Made this section subject to the limitations of § 15 of the Securities Exchange Act of 1934 (15 U.S.C. § 78).

13:47A-1.5 Preparation and contents of financial statements

(a) Subject to the limitations of § 15 of the Securities Exchange Act of 1934 (15 U.S.C. § 78), financial statements and reports required of registered broker-dealers under N.J.S.A. 49:3-47 et seq., including the financial statement filed with the application for initial registration, shall consist of a balance sheet supported by an analysis of the trading and investment inventories and shall be prepared by a certified public accountant or a public accountant who shall be in fact independent.

(b) Subject to the limitations of § 15 of the Securities Exchange Act of 1934 (15 U.S.C. § 78), complete copies of Form X-17A-5, as filed with the Securities and Exchange Commission, or copies of the New York Stock Exchange Financial Questionnaire may be filed to comply with the requirements of this section.

(c) Subject to the limitations of § 15 of the Securities Exchange Act of 1934 (15 U.S.C. § 78), the analysis of the trading and investment inventories required by (a) above shall have attached thereto, and made a part thereof, a statement under oath by the broker-dealer which shall set forth those securities within said trading and investment inventories which have not been registered under the Securities Act of 1933 (1933 Act), or which are not subject to, or are exempted from the registration requirements of the 1933 Act and the rules and regulations promulgated thereunder other than by reason of section 3(a) of the 1933 Act and the rules and regulations promulgated under section 3(a) of the 1933 Act.

Amended by R.1970 d.85, effective July 13, 1970.

See: 2 N.J.R. 50(c), 2 N.J.R. 67(b).

Amended by R.1992 d.435, effective November 2, 1992.

See: 24 N.J.R. 2524(a), 24 N.J.R. 4060(a).

Recodified from 13:47A-1.4 with stylistic revisions. Old 13:47A-1.5 Minimum capital recodified to 13:47A-1.6.

Amended by R.1997 d.451, effective October 20, 1997.

See: 29 N.J.R. 3119(a), 29 N.J.R. 4463(a).

Made this section subject to the limitations of § 15 of the Securities Exchange Act of 1934 (15 U.S.C. § 78).

13:47A-1.6 Minimum net capital

(a) No registration as a broker-dealer shall be issued unless the applicant therefor has a minimum net capital or has posted with the Bureau of Securities a surety bond in the amount of the minimum net capital. The minimum net capital shall be as required by § 15 of the Securities Exchange Act of 1934 (15 U.S.C. § 78) and rules promulgated thereunder.

(b) Computation of net capital shall be in accordance with rules promulgated by the Securities and Exchange Commission, unless the Bureau Chief prescribes otherwise by rule or order.

(c) Reporting of net capital by a broker-dealer shall be made as part of the application for registration with the CRD in the case of broker-dealers eligible for such registration. If the CRD registration form does not provide for reporting of net capital as set forth in this section, or if the registration is filed directly with the Bureau of Securities because CRD registration is not available to the applicant, then the reporting of net capital shall be made by a supplemental filing made directly to the Bureau of Securities concurrently with the broker-dealer application.

Amended by R.1992 d.435, effective November 2, 1992.

See: 24 N.J.R. 2524(a), 24 N.J.R. 4060(a).

Revised (a)-(c); added (d)-(e). Recodified from 13:47A-1.5. Old 13:47A-1.6 Bonds recodified to 13:47A-1.7.

Amended by R.1997 d.451, effective October 20, 1997.

See: 29 N.J.R. 3119(a), 29 N.J.R. 4463(a).

Rewrote (a); deleted existing (b) and (c); and recodified existing (d) and (e) as (b) and (c).

Case Notes

Rule upheld. *Kenneth Marshall and Co. v. State*, 119 N.J. Super. 588, 293 A.2d 200 (App.Div.1972).

Intent of minimum net capital requirement. *In re Ridgway*, 116 N.J. Super. 172, 281 A.2d 390 (App.Div.1971).

13:47A-1.7 Bonds

(a) Subject to the limitations of § 15 of the Securities Exchange Act of 1934 (15 U.S.C. § 78) and rules promulgated thereunder, the bonds required to be filed under N.J.A.C. 13:47A-1.6 (Minimum net capital) shall provide for suit thereon by third parties for any cause of action under N.J.S.A. 49:3-71, for loss and damages, and shall be in the form designated U-SB as set forth in N.J.A.C. 13:47A-11.5. The bond shall be for a term of two years, but the right to bring an action under the bond for losses sustained while it was in force shall continue for two years from the date of the sale upon which the action is based.

(b) The bond may provide for termination provided, however, that 90 days' notice thereof is served in writing upon the Bureau Chief; and provided further, that the right to bring an action for losses sustained while it was in force shall continue for two years from the date of the sale upon which the action is based.