

(c) Nothing in this section shall prevent the renegotiation, for the purposes of changing the method of compensation in compliance with this section, of an investment advisory contract between a registered investment advisor and the client of such investment advisor provided both parties agree to the new or additional terms.

(d) Nothing in this section relieves a client's representative from any of the obligations under N.J.S.A. 49:3-47 et seq. including, but not limited to, the obligation to register with the Bureau pursuant to N.J.S.A. 49:3-56(a) and the obligation to comply with N.J.S.A. 49:3-52 and 49:3-53.

(e) For purposes of this section, a business development company, as defined by section 2(a)(48) of the Investment Company Act of 1940, 15 U.S.C. § 80a shall not be prohibited by N.J.S.A. 49:3-53(b)(1) or by this section from paying or receiving performance based fee compensation, provided the business development company is allowed to pay or receive performance based fee compensation pursuant to Federal law and SEC regulations.

New Rule, R.1989 d.319, effective June 19, 1989.

See: 21 N.J.R. 12(a), 21 N.J.R. 1741(a).

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

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

Added (e).

SUBCHAPTER 3. AGENTS

13:47A-3.1 Agents of broker-dealers

(a) Any person desiring to act in the State of New Jersey as an agent of a non-NASD member broker-dealer registered in New Jersey directly with the Bureau of Securities or as an agent of an issuer shall file an application with the Bureau of Securities on a form designated U-4, as set forth in N.J.A.C. 13:47A-11.3. Such application shall be accompanied by:

1. A consent to service of process executed by the applicant;
2. Two applicant non-criminal fingerprint cards (one State Police card and one FBI card) with impressions taken by a recognized law enforcement agency; and
3. A check or money order made payable to the State of New Jersey, Bureau of Securities, in the amount of \$30.00. Issuers of securities under N.J.S.A. 49:3-60(b) need not register as agents or qualify as issuers. However, a pattern of N.J.S.A. 49:3-60(b) offerings by the same person or group of persons may raise a presumption that the person or persons are acting as an unregistered broker-dealer requiring broker-dealer registration of the issuer and its agents.

(b) Any person desiring to act in the State of New Jersey as an agent of a broker-dealer registered in New Jersey via

the NASAA/NASD CRD shall file an application for registration as an agent with the CRD on the Form U-4 Uniform Application for Securities Industry Registration or Transfer or its successor agent application form prescribed by the NASAA/NASD CRD. The agent application shall be accompanied by a consent to service of process executed by the applicant; fingerprint cards as required by the NASAA/NASD CRD; and payment in the form prescribed by the CRD of \$30.00 for each year of the registration period.

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

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

Amended by R.1982 d.304, effective September 7, 1982.

See: 14 N.J.R. 550(a), 14 N.J.R. 981(c).

Added (b)3.

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

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

Amount raised from \$30.00 to \$60.00.

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

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

Revised section.

Amended by R.1995 d.270, effective June 5, 1995.

See: 27 N.J.R. 303(a), 27 N.J.R. 2241(a).

Inserted "non-NASD member broker-dealer registered in New Jersey directly with the Bureau of Securities or as an agent of a".

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)3, added the last two sentences.

Case Notes

Agent registration would be revoked and civil monetary penalty imposed. In the Matter of Elliot Lloyd Bellen, 92 N.J.A.R.2d (BOS) 1.

13:47A-3.2 Change of status; agents; submission of form

(a) A registered agent shall file an amendment with the CRD, by filing or updating a Form U-4 Uniform Application for Securities Industry Registration or Transfer, or its successor form, along with the fee, if any, prescribed by the CRD, whenever the agent changes his or her name or home address, and whenever a change in the answers on his or her original application for registration occurs, as to arrests, convictions of any crime, disciplinary actions by any administrative body, restraints, injunctions, suspensions, revocations, denials, or judgments based on fraud or to any other information contained in answers to Item 22 and the Disclosure Reporting Page of the Form U-4. The amendment(s) must be filed within 20 days of the occurrence named therein. Whenever an agent terminates or commences employment with a broker-dealer or issuer, the agent must file the amendment within five days of the termination or commencement. For agents of non-NASD member broker-dealers, the amendments shall be filed directly with the Bureau of Securities.

(b) Whenever an agent terminates employment with a broker-dealer registered in New Jersey via the CRD, the broker-dealer must file with the CRD or Bureau, as appropriate, the Form U-5 Uniform Termination Notice for Securities Industries Registration within five days of the termination.

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

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

Amended by R.1997 d.451, effective October 20, 1997.
See: 29 N.J.R. 3119(a), 29 N.J.R. 4463(a).

13:47A-3.3 Issuer-agent registration

(a) All issuers which are effecting or attempting to effect purchases or sales of securities other than through a registered broker-dealer shall register someone as an "agent," unless an exemption or exclusion from agent registration is available under the Act. Only a natural person can be registered as an agent.

(b) Agent registration is not required for an individual who represents an issuer in effecting transactions exempted by N.J.S.A. 49:3-50(a)(1) (securities issued or guaranteed by the United States, a State, or political subdivision thereof); N.J.S.A. 49:3-50(a)(2) (Canadian and other foreign government securities); N.J.S.A. 49:3-50(a)(3) (bank securities); N.J.S.A. 49:3-50(a)(11) (employee benefit plans); and all of the transactional exemptions under N.J.S.A. 49:3-50(b).

(c) For the purposes of the exclusion from the definition of "agent" in N.J.S.A. 49:3-49(b)3, the phrase "existing employees, partners or directors of the issuer," shall include persons occupying those positions with subsidiaries of which the parent issuer owns at least 80 percent of the stock of the subsidiary.

New Rule, R.1995 d.270, effective June 5, 1995.
See: 27 N.J.R. 303(a), 27 N.J.R. 2241(a).

13:47A-3.4 General partners

A natural person acting on behalf of the general partner of a partnership in connection with the offer or sale of the partnership's securities, which general partner is a corporation, partnership or other entity, shall be deemed to be an individual representing the issuer within the meaning of N.J.S.A. 49:3-49(b).

New Rule, R.1995 d.270, effective June 5, 1995.
See: 27 N.J.R. 303(a), 27 N.J.R. 2241(a).

SUBCHAPTER 4. EXAMINATIONS

13:47A-4.1 Examinations for broker-dealers and investment advisors

No officer, director, partner or individual affiliated with a broker-dealer or investment advisor applying for registration in this State who will participate in management either as investment advisor or in the offering or selling of securities either within or from this State, shall be so registered unless he or she has taken and successfully passed a securities examination approved by the Chief of the Bureau of Securities and offered by an independent self-regulatory organization of the securities industry registered with the Securities and Exchange Commission, or taken and successfully passed a securities examination given by a state whose examination is recognized by the Bureau of Securities of the State of New Jersey.

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

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

Deleted text in last sentence.

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

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

13:47A-4.2 Examination for agents

No person may apply for registration as an agent in the offering or selling of securities, either within or from this State, unless he or she shall have taken and successfully passed a securities examination approved by the Chief of the Bureau of Securities and offered by an independent self-regulatory organization of the securities industry registered with the Securities and Exchange Commission, or taken and successfully passed a securities examination given by a state whose examination is recognized by the Bureau of Securities of the State of New Jersey.

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

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

Deleted text in last sentence.

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

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

13:47A-4.3 Requests for waiver

(a) Requests for waiver of examination requirements will be considered only on the basis of knowledge, training and experience in the securities field. Any person requesting waiver must have been continuously active in the securities field for a period of at least two full years prior to the filing of the application.

(b) Requests for waiver must be submitted in writing directly to the Bureau Chief and requested simultaneously with the application for registration filed with the CRD or the Bureau, as appropriate.

(c) In connection with an exempt transaction or a securities offering under N.J.S.A. 49:3-50 and 49:3-60(b), the Bureau generally will consider favorably an application for waiver of the agent examination requirement and the agent fingerprinting requirement for applicants meeting the requirements of (a) above who represent the issuer. An application for waiver shall be made at least five business days prior to the commencement of the offering by the agent. The waiver application shall include an application for agent registration and certification that no executive officer of the issuer would disqualify the issuer from selling stock pursuant to Regulation A as provided for in Rule 262 promulgated by the U.S. Securities and Exchange Commission and that the agent, assuming the individual was an underwriter within the meaning of that Rule, would not be disqualified from selling securities pursuant to Regulation A.

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-4.4 with revisions to (b). Repealed old section 13:47A-4.3, Application for examination.

Amended by R.1995 d.270, effective June 5, 1995.

See: 27 N.J.R. 303(a), 27 N.J.R. 2241(a).

Instruction Sheet for FORM ADV-W
**NOTICE OF WITHDRAWAL FROM REGISTRATION AS INVESTMENT ADVISER PURSUANT
TO RULE 17 CFR 275.203-2**
General Instructions for Preparing and Filing Form ADV-W

1. This Form is required by Rule 203-2 under the Investment Advisers Act of 1940 (17 CFR 275.203-2), which states:
Rule 203-2. Withdrawal from Registration
 - (a) Notice of withdrawal from registration as an investment adviser pursuant to Section 203(h) shall be filed on Form ADV-W in accordance with the instructions contained therein.
 - (b) Except as hereinafter provided, a notice to withdraw from registration filed by an investment adviser pursuant to Section 203(h) shall become effective on the 60th day after the filing thereof with the Commission or within such shorter period of time as the Commission may determine. If, prior to the effective date of a notice of withdrawal from registration, the Commission has instituted a proceeding pursuant to Section 203(e) to suspend or revoke registration, or a proceeding pursuant to Section 203(h) to impose terms or conditions upon withdrawal, the notice of withdrawal shall not become effective except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors.
 - (c) Every notice of withdrawal filed pursuant to this section shall constitute a "report" within the meaning of Sections 204 and 207 and other applicable provisions of the Act.
2. This Form must be executed and filed in duplicate with the Securities and Exchange Commission, Washington, D.C. 20549. An exact copy should be retained by the registrant.
3. If the space provided for any answer is insufficient, the complete answer shall be prepared on a separate sheet which shall be identified as "Answer to Item . . ." and attached to the Form and reference thereto shall be made under the item on the Form.
4. Individuals' names shall be given in full, and all other items must be answered in full.
5. All copies of this Form filed with the Commission shall be executed with a manual signature in Item 12. If the Form is filed by a sole proprietor, it shall be signed by the proprietor; if it is filed by a partnership, it shall be signed in the name of the partnership by a general partner; if filed by an unincorporated organization or association which is not a partnership, it shall be signed in the name of such organization or association by the managing agent — i.e., a duly authorized person who directs or manages or who participates in the directing or managing of its affairs; if filed by a corporation, it shall be signed in the name of the corporation by a principal officer duly authorized. If signed by an officer of a corporation, organization or association, his title must be given.
6. A Form which is not prepared and executed in compliance with applicable requirements may be returned as not acceptable for filing. However, acceptance of this Form shall not constitute any finding that it has been filed as required or that the information submitted is true, correct or complete.
7. Unless the context clearly indicates otherwise, all terms used in the Form have the same meaning as in the Investment Advisers Act of 1940 and in the General Rules and Regulations of the Commission thereunder (17 Code of Federal Regulations 275).

Repeal and New Rule, R.1997 d.451, effective October 20, 1997.

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

Section was "Designation of Chief of Bureau of Securities as agent for service of process (SB-6I)".

13:47A-11.10 Form for Declaring Eligibility for SEC Registration After Effective Date of Amendments to Investment Advisers Act of 1940 (ADV-T)

(a) The Form for Declaring Eligibility for SEC Registration After Effective Date of Amendments to Investment Advisers Act of 1940 (Form ADV-T) follows:

FORM ADV-T

Form for Declaring Eligibility for SEC Registration After Effective Date Of Amendments to Investment Advisers Act of 1940

When completing this form: Print in ALL CAPS. Use Blue or Black Ink.

OMB APPROVAL
OMB Number: 3234-0483
Expires: 3/31/00
Estimated average burden hours per response: 53 minutes

This is an <input type="checkbox"/> Initial Filing of Form ADV-T <input type="checkbox"/> Amendment to Previously Filed Form ADV-T	Registrant's investment adviser SEC file number: 801- <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
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PART I General Information About Registrant

REGISTRANT LABEL AREA (Attach Registrant Label if Available OR Print in Boxes Provided. See Instruction 1(c))

(a) Full Name of registrant (if individual, state last, first, and middle name):

<input type="text"/>
<input type="text"/>

(b) Mailing address:

<input type="text"/>
<input type="text"/>
(city) <input type="text"/>
(state) <input type="text"/> (zip code) <input type="text"/> (country) <input type="text"/>

(c) Telephone number:

(d) Name under which business is conducted, if different:

<input type="text"/>
<input type="text"/>

(e) If name is being amended, give previous name:

<input type="text"/>
<input type="text"/>

(f) Address of principal office and place of business: (See Instruction 2)

[Grid of 25 empty boxes for address line 1]

[Grid of 25 empty boxes for address line 2]

(city) [Grid of 25 empty boxes]

(state) [2 boxes] (zip code) [5 boxes] (country) [5 boxes]

Name of Registrant:	SEC File Number: 801- [5 boxes]
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(g) If mailing address on label is incorrect, print correct mailing address here:

[Grid of 25 empty boxes for mailing address line 1]

[Grid of 25 empty boxes for mailing address line 2]

(city) [Grid of 25 empty boxes]

(state) [2 boxes] (zip code) [5 boxes] (country) [5 boxes]

(h) Are either of the addresses in items (b) or (f) being amended in this filing? Yes No

(i) Person to contact for further information about this Form:

(name) [Grid of 25 empty boxes]

[Grid of 25 empty boxes for name continuation]

((title) [Grid of 25 empty boxes]

(telephone number) [Grid of 15 empty boxes]

If registrant is	Form ADV-T should be signed by
• a sole proprietor	the proprietor
• a partnership	a general partner of the partnership
• a corporation	an authorized principal officer for the corporation
• any other organization	the managing agent (an authorized person that participates in managing or directing registrant's affairs)

(c) *Labels.* The SEC has mailed to each registrant a copy of this Form and a letter containing two labels: a "Registrant Label" and a "Return Label." After completing the Form, attach the Registrant Label to the area of the Form marked "Registrant Label Area." Use the Return Label to address registrant's return envelope to the SEC. If using an overnight express mail delivery service, place the Return Label on an envelope *inside* the delivery service's packaging materials.

If address on label is incorrect, provide the correct address on item (g) of Part I.

If registrant has not received these labels from the Commission, print the information in the Registrant Label Area and mail to:

ATTN: FORM ADV-T
U.S. Securities and Exchange Commission
450 Fifth Street, N.W., Mail Stop A-2
Washington, D.C. 20549

(d) *Amendments.* When amending this Form, complete the entire document and circle the number or letter of any items being amended (*i.e.*, if a box is no longer being checked, circle the box to indicate that it previously had been checked).

(e) *Submission of Incomplete Form.* A Form that is not prepared and executed in compliance with applicable requirements may be returned as not acceptable for filing. Acceptance of this Form, however, does not constitute any finding that it has been filed as required or that the information submitted is true, correct, or complete.

(f) *Failure to File Form.* Failure to file this Form is a violation of rule 203A-5(a) under the Advisers Act. Additionally, failure to file this form will result in the Commission taking steps to determine whether a registrant is still in existence and is still engaged in business as an investment adviser. If the Commission finds that the registrant is no longer in existence or is not engaged in business as an investment adviser, it may, by order, cancel the registration of such registrant pursuant to section 203(h) of the Advisers Act.

(g) *SEC's Collection of Information.* An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Sections 203(c)(1) and 204 of the Advisers Act authorize the Commission to collect the information on this Form from registrants. See 15 U.S.C. §§ 80b-3(c)(1) and 80b-4. Filing of this Form is mandatory. The principal purpose of this collection of information is to enable the Commission to determine which investment advisers are eligible to maintain their registration with the Commission, and to provide for the withdrawal from Commission registration for advisers that are no longer eligible. The Commission will maintain files of the information on this Form and will make the information publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on page ADV-T-A of this Form, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. § 3507. The applicable Privacy Act system of records is SEC-2, and the routine uses of the records are set forth at 40 Federal Register 39255 (Aug. 27, 1975) and 41 FR 5318 (Feb. 5, 1976).

(h) *Terms.* Unless the context clearly indicates otherwise, all terms used in this Form have the same meaning as in the Advisers Act and in the General Rules and Regulations of the Commission thereunder.

(i) *Current and Pending State Registration.* In item (k) of Part I, check the boxes of all States in

which registrant is currently registered as an investment adviser. In item (i) of Part I, check the boxes of all States in which registrant's registration as an investment adviser is pending.

(j) *For Further Information.* Additional information about the rules referred to in this Form is found in the Commission's adopting release, *Rules Implementing Amendments to the Investment Advisers Act of 1940*, Investment Advisers Act Rel. No. 1633 (May 15, 1997), which may be obtained at the Commission's web site: www.sec.gov. The Commission has prepared a "FAQ" (list of frequently asked questions and answers), which is located at the Commission's web site at <http://www.sec.gov/rules/other/advfaq.htm>. For assistance in completing this Form, call the Commission's Form ADV-T Hotline at (202) 942-0691. Registrants with access to the World Wide Web are urged to review the FAQ before calling.

Instruction 2. Principal Office and Place of Business

Registrant's principal office and place of business is the executive office from which the officers, partners, or managers of the registrant direct, control, and coordinate registrant's activities. See rule 203A-3(c).

Instruction 3. Advisers in Colorado, Iowa, Ohio, or Wyoming; Foreign Advisers

Under the Advisers Act, a registrant whose principal office and place of business (see Instruction 2) is in a State that does not register investment advisers is required to maintain its registration with the Commission, even if none of the criteria for SEC registration (e.g., \$25 million of assets under management) is met. Currently, these States are Colorado, Iowa, Ohio, and Wyoming. Registrants that have their principal office and place of business in one of these States should check the box in item (a)(ii) of Part II.

A registrant whose principal office and place of business is located in a country other than the United States (i.e., not in the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States) also is required to maintain its registration with the Commission. Such a registrant should check the box in item (a)(iii) of Part II.

Instruction 4. Advisers to Investment Companies

A registrant should not check item (a)(iv) of Part II unless registrant currently provides advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940. The investment company must be operational, i.e., have assets and shareholders (other than just the organizing shareholders).

Instruction 5. Exemptions

(a) *Effective Date of Rule 203A-2.* Rule 203A-2, the exemptive rule, will not become effective until sometime shortly after July 8, 1997. In completing Form ADV-T, a registrant should indicate its eligibility for an exemption as though rule 203A-2 was effective on the date the registrant completes the Form. During the period between July 8, 1997 and the effective date of rule 203A-2, the Commission will not cancel the registration of any adviser that will be eligible for an exemption.

(b) *Affiliated Advisers.* A registrant that controls, is controlled by, or is under common control with, an investment adviser that is eligible to maintain its registration with the Commission after July 8, 1997 (the "eligible adviser") is itself eligible to maintain its registration with the Commission if the principal office and place of business of the registrant is the same as that of the eligible adviser. See rule 203A-2(c).

(c) *Advisers With SEC Exemptive Order.* If a copy of the exemptive order is not available, the "803-" application number and date of the Commission's order may be submitted in lieu of a copy of the actual order.

Instruction 6. Withdrawal Under Part II, Item (b)

If item (b) of Part II is checked, registrant's investment adviser registration with the SEC will be withdrawn effective as of the later of (i) July 8, 1997 or (ii) the date the registrant first files this Form or any amendment to the Form that indicates that registrant withdraws its registration. Registrants checking item (b) of Part II should not separately file Form ADV-W.

Instruction 7. Advisers in \$25 Million-\$30 Million "Window"

Under rule 203A-1(b), certain investment advisers that have assets under management of not less than \$25 million but not more than \$30 million may (but are not required to) register with the Commission. Such an adviser that chooses not to register with the Commission should check item (c) of Part II. The option not to register is *not* available to an adviser that is required to be registered with the Commission regardless of the amount of its assets under management, *i.e.*, an adviser (i) to a registered investment company, (ii) that is not regulated (or required to be regulated) as an investment adviser in the State in which it maintains its principal office and place of business (see Instruction 2), or (iii) that is exempted by rule 203A-2 from the prohibition on registering with the Commission (NRSROs, pension consultants, and certain advisers controlling, controlled by, or under common control with SEC-registered advisers).

If item (c) of Part II is checked, registrant's investment adviser registration with the SEC will be withdrawn effective as of the later of (i) July 8, 1997 or (ii) the date registrant first files this Form or any amendment to this Form that indicates that registrant withdraws its registration.

Instruction 8. Determining Assets Under Management

Not all registrants are required to provide the amount of their assets under management. A registrant must complete the Assets Under Management Worksheet in Part III only if:

- item II(a)(i) is checked yes "(x)" and the amount of assets registrant has under management is the sole basis for registrant's eligibility for SEC registration (*i.e.*, registrant has not checked any of items II(a)(ii) through (viii)), or
- item II(c) is checked yes "(x)."

In determining the amount of assets registrant has under management, include the total value of "securities portfolios" (or portions thereof) for which registrant provides "continuous and regular supervisory or management services" as of the date of filing this Form.

(a) *Securities Portfolios.* An account is a securities portfolio if at least 50% of the total value of the account consists of securities. For purpose of this 50% test, registrant may treat cash and cash equivalents (*i.e.*, bank deposits, certificates of deposit, bankers acceptances, and similar bank instruments) as securities.

Registrants may include securities portfolios that are: (i) family or proprietary accounts of the registrant (unless registrant is a sole proprietor, in which case the personal assets of the sole proprietor must be excluded); (ii) accounts for which registrant receives no compensation for its services; and (iii) accounts of clients who are not U.S. residents.

(b) *Value of Portfolio.* Include the entire value of each securities portfolio (or portion thereof) for which registrant provides "continuous and regular supervisory or management services." If registrant provides continuous and regular supervisory or management services for only a portion of a securities portfolio, include as assets under management only the portion of the securities portfolio that receives such services. Exclude, for example, a portion of an account:

- (1) under management by another person; or
- (2) that consists of real estate or businesses the operations of which are "managed" on behalf of a client but not as an investment.

No deductions is required for securities purchased on margin.

(c) *Continuous and Regular Supervisory or Management Services.*

General Criteria. A registrant provides continuous and regular supervisory or management services with respect to a securities portfolio if the registrant either—

- (1) has discretionary authority over and provides ongoing supervisory or management services with respect to the account; or
- (2) does not have discretionary authority over the account, but has an ongoing responsibility to select or make recommendations, based upon the needs of the client, as to specific securities or

other investments the account may purchase or sell and, if such recommendations are accepted by the client, is responsible for arranging or effecting the purchase or sale.

Factors. Registrants should consider the following factors in evaluating whether continuous and regular supervisory or management services are being provided.

(1) *Terms of the advisory contract.* A provision in an advisory contract by which the registrant agrees to provide ongoing management services suggests that the account receives such services. Other provisions in the contract, or the actual management of the registrant, however, may rebut such a suggestion.

(2) *Form of compensation.* A form of compensation based on the average value of assets under management over a specified period of time would suggest that the registrant provides continuous and regular supervisory or management services. On the other hand, a form of compensation based upon time the registrant spends with a client during a client visit would suggest otherwise. A retainer based upon a percentage of assets covered by a financial plan would not suggest that the registrant provides continuous and regular supervisory or management services.

(3) *The management practice of the registrant.* The extent to which the registrant is actively managing assets or providing advice bears on whether the services are continuous and regular supervisory or management services. However, infrequent trades (e.g., based on a "buy and hold" strategy) should not alone form the basis for a determination that the services are not provided on a continuous and regular basis.

Examples. To assist registrants, the Commission is providing examples of accounts that may receive continuous and regular supervisory or management services, based upon the criteria and factors discussed above. These examples are not exclusive.

Accounts that may receive continuous and regular supervisory or management services:

(1) Accounts for which the registrant allocates assets of a client among mutual funds (even if it does so without a grant of discretionary authority, but only if the general criteria for non-discretionary accounts is satisfied and the factors suggest that the account receives continuous and regular supervisory or management services); and

(2) Accounts for which the registrant allocates assets among other managers—but only under a grant of discretionary authority by which it may hire and fire managers and reallocate assets among them.

Accounts that do not receive continuous and regular supervisory or management services:

(1) Accounts for which the registrant provides market timing recommendations (to buy or sell) but has no ongoing management responsibilities;

(2) Accounts for which the registrant provides only impersonal advice, e.g., market newsletters;

(3) Accounts for which the registrant provides an initial asset allocation, without continuous and regular monitoring and reallocation; and

(4) Accounts for which the registrant provides advice only on an intermittent or periodic basis, upon the request of the client, or in response to some market events, e.g., an account that is reviewed and adjusted on a quarterly basis.

(d) *Value of Assets Under Management.* Determine the total amount of assets under management based on the current market value of the assets as determined within 90 business days prior to the date of the filing this Form. Current market value should be determined using the same method as that used to determine the account value reported to clients or fees for investment advisory services.

(e) *Example.* To assist registrants, the Commission is providing an example of the method of determining whether a client account may be included as "assets under management."

Example:

A client's portfolio consists of the following:

\$ 6,000,000 stocks and bonds
 \$ 1,000,000 cash and cash equivalents
\$ 3,000,000 non-securities (collectibles, commodities, real estate, etc.)
\$10,000,000 Total Assets

First, is the account a "securities portfolio?" The account is a securities portfolio because securities as well as cash and cash equivalents (which the registrant has chosen to include as securities) (\$6,000,000 + \$1,000,000 = 7,000,000) comprise at least 50% of the value of the account (here, 70%). (See Instruction 8(a))

Second, does the account receive "continuous and regular supervisory or management services?" The entire account is managed on a discretionary basis and is provided ongoing supervisory and management services, and therefore receives continuous and regular supervisory or management services. (See Instruction 8(c))

Third, what is the entire value of the account? The entire value of the account (\$10,000,000) is included in the calculation of the adviser's total assets under management.

Instruction 9. Reliance on Non-Discretionary Assets

If, but for the inclusion of client accounts that registrant manages on a non-discretionary basis, registrant would not have \$25 million of assets under management (and has no other basis of eligibility for Commission registration), registrant must attach to this Form ADV-T a typed statement describing the nature of the supervisory or management services provided to such non-discretionary accounts. For example, a registrant that has \$30 million of discretionary and \$5 million of non-discretionary assets under management would not be required to attach the statement. A registrant that has \$20 million of discretionary and \$5 million of non-discretionary assets under management would attach a statement, but the statement would only describe the nature of the supervisory or management services provided to the \$5 million of non-discretionary assets. A registrant that has \$20 million of discretionary and \$5 million of non-discretionary assets under management, but that is an adviser to a registered investment company (and therefore has an additional basis of eligibility for SEC registration) would not be required to attach the statement.

Repeal and New Rule, R.1997 d.451, effective October 20, 1997.
See: 29 N.J.R. 3119(a), 29 N.J.R. 4463(a).
Section was "Broker dealer bond (SB 7)".

13:47A-11.11 (Reserved)

Repealed by R.1997 d.451, effective October 20, 1997.
See: 29 N.J.R. 3119(a), 29 N.J.R. 4463(a).
Section was "Investment advisor bond (SB-8)".

13:47A-11.12 (Reserved)

Repealed by R.1997 d.451, effective October 20, 1997.
See: 29 N.J.R. 3119(a), 29 N.J.R. 4463(a).
Section was "Issuer qualification application (SB-9)".

13:47A-11.13 (Reserved)

Repealed by R.1997 d.451, effective October 20, 1997.
See: 29 N.J.R. 3119(a), 29 N.J.R. 4463(a).
Section was "Request for withdrawal of broker-dealer registration (SB-10)".

13:47A-11.14 (Reserved)

Repealed by R.1997 d.451, effective October 20, 1997.
See: 29 N.J.R. 3119(a), 29 N.J.R. 4463(a).
Section was "Renewal application (R-1)".

13:47A-11.15 (Reserved)

Repealed by R.1997 d.451, effective October 20, 1997.
See: 29 N.J.R. 3119(a), 29 N.J.R. 4463(a).
Section was "Renewal application, investment advisor (R-1A)".

13:47A-11.16 (Reserved)

Repealed by R.1997 d.451, effective October 20, 1997.
See: 29 N.J.R. 3119(a), 29 N.J.R. 4463(a).
Section was "Renewal application, agent (R-2)".

13:47A-11.17 (Reserved)

Repealed by R.1997 d.451, effective October 20, 1997.
See: 29 N.J.R. 3119(a), 29 N.J.R. 4463(a).
Section was "Filing fee transmittal".

13:47A-11.18 (Reserved)

Repealed by R.1997 d.451, effective October 20, 1997.
See: 29 N.J.R. 3119(a), 29 N.J.R. 4463(a).
Section was "Application for New Jersey securities examination".

13:47A-11.19 (Reserved)

Repealed by R.1997 d.451, effective October 20, 1997.
See: 29 N.J.R. 3119(a), 29 N.J.R. 4463(a).
Section was "Guide for preparation of registration statement".

13:47A-11.20 (Reserved)

New Rule, R.1970 d.85, effective July 13, 1970.
See: 2 N.J.R. 50(c), 2 N.J.R. 67(b).
Repealed by R.1997 d.451, effective October 20, 1997.
See: 29 N.J.R. 3119(a), 29 N.J.R. 4463(a).
Section was "Customer acknowledgement of unsolicited sale of stock".

SUBCHAPTER 12. EXEMPTIONS FOR SECURITIES TRANSACTIONS AND SECURITIES OFFERINGS; EMPLOYEE BENEFIT PLANS; ACCREDITED INVESTORS

13:47A-12.1 Exemptions for securities transactions and securities offerings

(a) For purposes of the Report Form required to be filed with Bureau of Securities under N.J.S.A. 49:3-50(b)(12) or 49:3-60(b), the issuer shall include only the names and addresses of New Jersey resident purchasers of the offering, along with the number and amount of the securities each purchased.

(b) Non-New Jersey resident purchasers will not be counted when determining whether there are 35 non-accredited purchasers of the offering for the N.J.S.A. 49:3-50(b)(12) exemption.

(c) Non-New Jersey resident offerees will not be counted when determining whether there are 10 offerees in an exempt offering under N.J.S.A. 49:3-50(b)(9).

13:47A-12.2 Employee benefit plans

(a) N.J.S.A. 49:3-50(a)(11) provides an exemption from registration for, "[a]ny investment contract issued in connection with an employees' or professional stock purchase, savings, pension, profit-sharing, retirement or similar benefit plan if the bureau chief is notified in writing 30 days before the inception of the plan. . . ." N.J.S.A. 49:3-50(a)(11) requires a 30-day notification and exempts the agreement between the employer and employee insofar as it may be deemed to be an investment contract. With respect to employee benefit plans which are qualified under Section 401 of the Internal Revenue Code, subject to the provisions of Part 4 of Subtitle B of Title I of ERISA, or administered by a national or state bank acting in a fiduciary capacity, N.J.S.A. 49:3-50(a)(11) shall be construed to provide a transactional exemption for all securities underlying the investment contract.

(b) Interests in the plan or securities underlying the investment contract in employee benefit plans which are exempt from Federal securities registration pursuant to SEC Rule 701, promulgated under the Securities Act of 1933, shall also be exempt from registration in New Jersey if offered or sold pursuant to N.J.S.A. 49:3-50(a)(11).

(c) The 30-day notification requirement of N.J.S.A. 49:3-50(a)(11) may be fulfilled by filing a letter with the Bureau of Securities setting forth pertinent information, which shall include the name and address of the issuer, the name and address of participating employers and the approximate number of New Jersey employees eligible to participate in the plan. The letter filing will be deemed to constitute full compliance with the notice requirement of

N.J.S.A. 49:3-50(a)(11). The Bureau Chief may request additional information on a case-by-case basis.

(d) If a plan otherwise exempt under this section contemplates distribution in kind of restricted stock to plan members upon withdrawal of the members from the plan, resale of the underlying securities by the members may require registration of the securities under Federal law. If Federal law requires registration of the securities being resold, State registration may be required, unless the security or transaction is otherwise exempt from State registration.

(e) The definition of "agent" in N.J.S.A. 49:3-49(b) specifically excludes an individual who represents an issuer in effecting transactions in a security exempted by N.J.S.A. 49:3-50(a)(11); therefore, no agent registration is required for such an individual to effect transactions with respect to the employee benefit plans or the securities underlying the employee benefit plans described in (a) and (b) above.

13:47A-12.3 Accredited investors

Pursuant to the last paragraph of N.J.S.A. 49:3-49(p), in addition to the persons described in N.J.S.A. 49:3-49(p)(1) through (7), any person who is an "accredited investor" within the meaning of Securities Act of 1933, section 2(15) and SEC Rules 215 and 501, promulgated by the Securities and Exchange Commission, effective as of (the effective date of this rule) or as thereafter amended or superseded, shall be deemed an "accredited investor" within the meaning of N.J.S.A. 49:3-49(p).

SUBCHAPTER 13. GENERAL RULES OF PRACTICE

13:47A-13.1 Scope of Rules of Practice

These Rules of Practice are generally applicable to administrative proceedings before the Bureau under the Uniform Securities Law (1967), N.J.S.A. 49:3-47 et seq., as amended, prior to a matter having been determined to be a contested case pursuant to N.J.A.C. 1:1-3.1, and transmitted by the Bureau to the Office of Administrative Law pursuant to N.J.A.C. 1:1-3.2. In connection with such contested cases, reference should be made to any procedural requirements that may be contained in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., or the regulations and forms adopted thereunder, which requirements are controlling. These Rules of Practice do not apply to routine filings to perfect exemptions, register broker-dealers, agents, and investment advisors, register securities, or seek no-action or interpretive opinions from the Bureau. Nor do these Rules of Practice apply to private investigations conducted by the Bureau pursuant to N.J.S.A. 49:3-68, except where specifically made applicable by N.J.A.C. 13:47A-14, Rules of Practice Relating to Investigations.

13:47A-13.2 Bureau address and business hours

The office of the Bureau, at 153 Halsey Street, Newark, New Jersey 07102; mailing address, P.O. Box 47029, Newark, New Jersey 07101, is open each day, except Saturdays, Sundays and legal holidays, from 9:00 A.M. to 5:00 P.M., Eastern Standard Time or Eastern Daylight Time, whichever is currently in effect in New Jersey. Legal holidays consist of any day appointed as a holiday or day off in New Jersey by the Governor or Legislature of New Jersey.

13:47A-13.3 Appearance and practice before the Bureau by non-lawyers

Except as required by the New Jersey Court Rules, an individual may appear in his or her own behalf and, where authorized by law and with the consent of the Attorney General, an officer or employee of a department, agency or political subdivision of the State may appear on behalf of the department, agency or political subdivision of the State. A business entity other than a sole proprietor must be represented by an attorney. No representation of a third party before the Bureau shall be undertaken by any suspended or disbarred attorney.

13:47A-13.4 Appearance and practice before the Bureau; by lawyers

A person may be represented in any proceeding by an attorney at law admitted to practice before the Supreme Court of the State of New Jersey or by an attorney in good standing in any other jurisdiction within the United States. The Bureau Chief may prohibit multiple representations by counsel where the Bureau Chief determines, in the reasonable exercise of his or her discretion, that such representation may result in a conflict of interest or otherwise threaten the integrity of an investigation.

13:47A-13.5 (Reserved)

13:47A-13.6 Notice of appearance; designation for service; power of attorney

(a) An applicant or registrant appearing on his or her own behalf before the Bureau shall file with the Bureau or otherwise state on the record an address at which any notice or other written communication required to be served upon or furnished to the applicant or registrant may be sent, and a telephone number at which the applicant or registrant can be reached during the business day. If the individual's address or telephone number changes before the conclusion of the matter in which the individual appeared, the individual shall notify the Bureau in writing no later than 10 days following the change.