

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.2003 d.154, effective March 17, 2003.
See: 34 N.J.R. 3691(a), 35 N.J.R. 1563(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 47A, Bureau of Securities, expires on September 13, 2008. See: 40 N.J.R. 2061(a).

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 re-codified 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, Corporation Takeover Bid Disclosure Law, expired on August 14, 1983.

Pursuant to Executive Order No. 66(1978), Chapter 47A, Bureau of Securities Rules, 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, Bureau of Securities, was readopted 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, Bureau of Securities Rules, was readopted as R.1997 d.451, effective September 26, 1997. See: 29 N.J.R. 3119(a), 29 N.J.R. 4463(a). As part of R.1997 d.451, effective October 20, 1997, Subchapter 6, Issuers, was repealed.

Subchapter 3A, Investment Adviser Representatives, was adopted as new rule by R.2002, d.3 effective January 7, 2002 (operative July 7, 2002). See 32 N.J.R. 4232(a), 34 N.J.R. 300(b).

Chapter 47A, Bureau of Securities Rules, was readopted as R.2003 d.154, effective March 17, 2003. As a part of d.154, Subchapter 11, Forms, was repealed and adopted as new rules, effective April 7, 2003. See: Source and Effective Date. 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, or a fully completed and executed page 1 of Form U-4, Uniform Application for Securities Industry Registration or Transfer, or a successor form, shall satisfy this requirement;

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

4. 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, one (noncriminal) fingerprint 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, one applicant (noncriminal) fingerprint 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).

Amended by R.2003 d.154, effective April 7, 2003.

See: 34 N.J.R. 3691(a), 35 N.J.R. 1563(b).

In (a), added “, or a fully completed and executed page 1 of Form U-4, Uniform Application for Securities Industry Registration” in 2, deleted (4) and (5) and recodified former (6) as (4); rewrote (c) and (d).

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).

As a matter of law, where registrant had been the subject of three regulatory actions, the totality and repetition of the registrant's misconduct supported the conclusion that the registrant was unable to meet the high standards required of those who deal in the securities business, and thus denial of registration was in the public interest under N.J.S.A. 49:3-58(a)(1); in any event, as the registrant was no longer associated with a registered broker-dealer, the registrant would have to restart the agent application process. In re Shah, OAL Dkt. No. BOS 01867-06, 2006 N.J. AGEN LEXIS 957, Initial Decision (November 14, 2006).

Refusal to abide by SEC and Federal Court orders warranted revocation of broker-dealer and agent registrations. In the Matter of Stratton Oakmont, Inc., and Daniel Mark Porush, 96 N.J.A.R.2d (BOS) 1.

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 (Reserved)

Repealed by R.2003 d.154, effective April 7, 2003.

See: 34 N.J.R. 3691(a), 35 N.J.R. 1563(b).

Section was "Annual financial report."

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.

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-1.6 with stylistic revisions. Old 13:47A-1.7 Cash or securities in lieu of bond recodified to 13:47A-1.8.

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), made the section subject to the limitations of § 15 of the Securities Exchange Act of 1934 (15 U.S.C. § 78), and amended N.J.A.C. references.

13:47A-1.8 Cash or securities in lieu of bond

In lieu of the bonds required by N.J.A.C. 13:47A-1.6 (Minimum net capital), the applicant may deposit cash or securities with the Bureau Chief, and the amount thereof shall be determined by the Bureau Chief having due regard for the amount of the bond required and the nature of the securities furnished. No securities other than those listed on the New York Stock Exchange or the American Stock Exchange or designated or approved for designation upon notice of issuance as a National Market System security on the National Association of Securities Dealers' Automated Quotation System will be accepted, except that mutual funds may be accepted in certain cases, in the discretion of the Bureau Chief.

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-1.7; revised text. Old 13:47A-1.8 Change of status; submission of form recodified to 13:47A-1.9.

13:47A-1.9 Change of status; submission of form

(a) A registered broker-dealer who is registered with New Jersey via the NASAA/NASD CRD shall file an amendment with the CRD on the amendment form prescribed by the NASAA/NASD CRD whenever any of the following events occur:

1. Its firm name is changed;
2. Its principal office address is changed;
3. The address of a branch office within the State of New Jersey is changed;
4. A new officer, director or partner is elected or admitted to the firm. The amendment filing shall include the home address and 10 year business history of the officer, director or partner;
5. It commences the employment of an agent currently effectively registered in the State of New Jersey. This amendment shall be filed no later than five days after the commencement of such employment;
6. A partner, officer or director of the registered broker-dealer resigns, retires or otherwise terminates his or her affiliation with the broker-dealer. No filing fee is required for this type of amendment, unless the NASAA/NASD CRD prescribes otherwise;

7. The registered broker-dealer terminates the employment of an agent. This amendment shall be filed within 30 days of the termination. No filing fee is required for this type of amendment, unless the NASAA/NASD CRD prescribes otherwise;

8. Subsections (d) and (e) below require an amendment to be filed; or

9. Any other event has occurred that would require an amendment to the Form BD Uniform Application for Broker-Dealer Registration or its successor form.

(b) On or after January 1, 1998, a registered broker-dealer that is registered pursuant to N.J.A.C. 13:47A-1.2 (registrants not eligible for registration via the CRD and therefore registered directly with the Bureau of Securities) shall file directly with the Bureau at its current office address, a complete and updated Form BD or the amended pages, if a complete Form BD is already on file at the Bureau, whenever it changes any of the information set forth in (a) above.

(c) Any amendment shall be filed no later than 20 days after the occurrence named therein, unless otherwise specified in (a) above. The amendment filed with the CRD shall be accompanied by the fee, if any, prescribed by the NASAA/NASD CRD for amendments. There shall be no fee for those amendments required to be filed directly with the Bureau of Securities.

(d) For a registered broker-dealer that has had any changes occur regarding the answers in its original or amended Form BD application as to arrests, convictions of any crime, disciplinary actions by any administrative body, restraints, injunctions, suspension, revocations, denials, judgments based on fraud, as to the registrant or any partner, officer or director shall file an amendment with the CRD; or if not a member of the NASD, shall file the amendment directly with the Bureau of Securities fully disclosing the details of the changes within 20 days of the occurrence named in the amendment. Such amendment shall be accompanied by the fee, if any, prescribed by the NASAA/NASD CRD or the Bureau of Securities for amendments. In the event that the CRD amendment form does not allow for full detailed disclosure of the details of the changes, as required by the Uniform Securities Law (1967), N.J.S.A. 49:3-47 et seq. and these rules, the registrant shall make full detailed disclosure of the changes by a supplemental filing directly to the Bureau of Securities at its current office address.

(e) A registered broker-dealer, if a corporation or partnership, shall file with the Bureau of Securities or the CRD, whichever is applicable, one applicant (noncriminal) fingerprint card with all of the impressions taken by a recognized law enforcement agency, for each officer, director, controlling person or partner who commences any employment or affiliation with said registered broker-dealer no later than five days after the commencement of such employment or affiliation. Those persons exempt from filing a fingerprint card with the Securities and Exchange Commission pursuant to

Rule 17f-2 promulgated under the Securities Exchange Act of 1934 or its successor rule shall be exempt from filing fingerprint cards with the Bureau pursuant to this subsection.

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.1987 d.390, effective October 5, 1987.

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

Business history raised from five to 10 years.

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 13:47-1.8. Revised text. Old 13:47A-1.9 Maintenance of books and records recodified to 13:47-1.10.

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

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

Substantially amended (a) and (b); in (c), eliminated the filing fee; deleted (d); and recodified existing (e) and (f) as (d) and (e).

Amended by R.2003 d.154, effective April 7, 2003.

See: 34 N.J.R. 3691(a), 35 N.J.R. 1563(b).

In a(7), substituted "30" for "five"; in (e), substituted "one" for "two" following "whichever is applicable" and deleted "s (one State Police card and one Federal Bureau of Investigation card)" following "noncriminal fingerprint card".

13:47A-1.10 Maintenance of books and records

All broker-dealers shall keep at their principal place of business, open to inspection of the Bureau of Securities of the State of New Jersey, all books and records required to be kept by the Securities and Exchange Commission or by the Bureau of Securities.

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

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

Added the Bureau of Securities. Recodified from 13:47A-1.9. Old 13:47A-1.10 Withdrawal of broker-dealer registration recodified to 13:47A-1.11.

13:47A-1.10A Maintenance of sales and advertising material (broker-dealers)

Subject to the limitations of § 15 of the Securities Exchange Act of 1934 (15 U.S.C. § 78), all broker-dealers shall keep on file, in each branch and sales office, for a period of three years, copies of any prospectus, circular, form letter, advertisement, sales script, or prepared text used in that branch or sales office in the course of soliciting prospective investors, and any other sales or advertising material intended for distribution or communication to prospective investors by mail, telephone, or any other medium, or for the use or training of persons making such communications. Any material required to be maintained pursuant to this section may be maintained in electronic form, either at the branch or sales office or at a central location, provided that such electronically stored material can, upon demand, be retrieved and provided to the Bureau within two working days.

New Rule, 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).

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

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

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

13:47A-1.11 Withdrawal of broker-dealer registration

(a) A broker-dealer registered in New Jersey via the CRD shall file a Form BDW or any successor form to the Form BDW prescribed by the CRD when it desires to withdraw its registration as a broker-dealer in the State of New Jersey. Such request for withdrawal will become effective 30 days after filing with the CRD.

(b) A broker-dealer registered in New Jersey by direct filing with the Bureau of Securities because it is not eligible for registration via the CRD shall file directly with the Bureau a Form BDW, when it desires to withdraw its registration as a broker-dealer in the State of New Jersey. Such request will become effective 30 days after filing with the Bureau.

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-1.10. Revised text; added (b). Old 13:47A-1.11 Display of name recodified to 13:47A-1.12.

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

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

Amended by R.2003 d.154, effective April 7, 2003.

See: 34 N.J.R. 3691(a), 35 N.J.R. 1563(b).

In (b), deleted "if its initial application was filed on a Form BD" following "Form BDW".

13:47A-1.12 Display of name

The name of the registered broker-dealer shall appear on the door or window of any branch or sales office being operated within the State of New Jersey.

Recodified from 13:47A-1.11 by R.1992 d.435, effective November 2, 1992.

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

Old 13:47A-1.12 Application for successor recodified to 13:47A-1.13.

13:47A-1.13 Application for successor

(a) A broker-dealer registered in New Jersey via the CRD shall file the forms or amendments as required by the CRD to effectuate registration in New Jersey of a successor to the registered broker-dealer. The filing shall be accompanied by the fee, if any, prescribed by the CRD for such filings.

(b) A broker-dealer registered in New Jersey by direct filing with the Bureau of Securities because it is not eligible for registration via the CRD may file directly with the Bureau an application on a Form BD, Uniform Application for Broker-Dealer Registration, accompanied by all of the information required by N.J.A.C. 13:47A-1.1 and in the same form as required by that section to effectuate the registration of a successor. Such application shall be marked "SUCCESSOR APPLICATION" in the upper right-hand corner by the registrant, and shall be accompanied by a consent to service of process executed by the applicant. There shall be no filing fee for the successor 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 text and added (a). Recodified from 13:47A-1.12.

SUBCHAPTER 2. INVESTMENT ADVISORS

13:47A-2.1 Application for investment adviser registration

(a) Any person desiring to act as an investment advisor, as defined in N.J.S.A. 49:3-49(g), within or from the State of New Jersey, shall file an application with the Bureau of Securities on the Form ADV Uniform Application for Investment Adviser Registration, together with all relevant schedules, unless that person is registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940, as amended, or is not so registered because that person is excepted from the definition of investment adviser under Section 202(a)(11). The Form ADV may be filed with the Bureau by filing it with the Central Registration Depository (CRD)/Investment Adviser Registration Depository (IARD) or its successor and by designating in the Form ADV that the applicant intends to apply for registration in New Jersey. The Form ADV shall contain an original notarized signature, unless the Form ADV is filed with the Bureau by electronically filing it with the CRD/IARD. If the Form ADV is filed with the Bureau by electronically filing it with the CRD/IARD, the signature requirements required by the Bureau shall conform to the electronic signature requirements in place for filing with the CRD/IARD.

(b) Such Form ADV shall be accompanied by:

1. A consent to service of process executed by the applicant. A fully completed and executed Part I, page 1 (Execution Page) of the Form ADV shall satisfy this requirement;

2. A certified statement of the applicant's most current financial condition as of a date within 60 days of the application; or provided 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. An applicant with its principal place of business outside this State may file with the Bureau its statement of most current financial condition, as defined under the law of the state in which the applicant has its principal place of business, to satisfy this requirement, provided that the applicant is registered or licensed in the state that is its principal place of business and the applicant is in compliance with the applicable books and records requirements of the state in which the applicant maintains its principal place of business;

3. A copy of a sample investment advisory contract;

4. A sample of any business card, letterhead, brochure, circular, advisory newsletter, form letter, advertisement or other sales literature or advertising communication, addressed or intended for distribution to clients or prospective clients;

5. Form ADV-W, as filed with the U.S. Securities and Exchange Commission, if the investment adviser has withdrawn or is withdrawing from SEC registration;

6. A check or money order payable to the State of New Jersey, Bureau of Securities, in the amount of \$100.00; and

7. If the applicant is registered in another state and has its principal place of business in another state, but has a place of business in New Jersey, the applicant shall also file a certification that it is in compliance with the requirements of the state in which it has its principal place of business with respect to that state's books and records, net capital and bonding requirements, if any.

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

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

Check raised to \$100.00 from \$50.00.

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).

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

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

In (b)1 and (b)2, added the second sentences.

Amended by R.2002 d.3, effective January 7, 2002 (operative July 1, 2002).

See: 32 N.J.R. 4232(a), 34 N.J.R. 300(b).

Rewrote the section.

13:47A-2.2 Capital requirements

Subject to the limitations of § 222 of the Investment Advisors Act of 1940 (15 U.S.C. § 80b-18a), no registration as an investment advisor shall be granted to a person who has custody of clients' funds or securities unless the applicant has a minimum capital of \$25,000 or has posted a surety bond in the amount of \$25,000.

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-2.3 Bonds

(a) Subject to the limitations of § 222 of the Investment Advisors Act of 1940 (15 U.S.C. § 80b-18a), the bond required to be filed under N.J.A.C. 13:47A-2.2 (Capital requirements) shall provide for suit thereon by third parties for damage sustained as a result of misuse or misapplication of clients' funds or securities 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 file claims thereunder for losses sustained while it was in force shall continue for two years from the time the aggrieved party knew or should have known of the existence of his or her cause of action.

(b) Such bond shall provide for termination; provided, however, that 90 days notice thereof is served in writing upon the Chief of the Bureau of Securities 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 time the aggrieved party knew or should have known of the existence of his cause of action.

(c) Such bond may be written by any surety company licensed to do business in the State of New Jersey.

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-2.4 Cash or securities in lieu of bond

(a) Subject to the limitations of § 222 of the Investment Advisors Act of 1940 (15 U.S.C. § 80b-18a), in lieu of the bond required by N.J.A.C. 13:47A-2.2 (Capital requirements), the applicant may deposit cash or securities with the Chief of the Bureau of Securities, and the amount thereof shall be determined by the Bureau Chief having due regard for the amount of the bond required and the nature of the securities furnished.

(b) No securities other than those listed on the New York Stock Exchange or the American Stock Exchange or designated or approved for designation upon notice of issuance as a NASDAQ National Market security will be accepted, except that mutual funds may be accepted in certain cases, in the discretion of the Bureau Chief.

Amended by R.1992 d.435, effective November 2, 1992.
See: 24 N.J.R. 2524(a), 24 N.J.R. 4060(a).

Revised text.

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-2.5 Change of status; submission of form

(a) A registered investment advisor shall file with the Bureau of Securities a revised and updated Form ADV, so as to have a complete and current Form ADV on file with the Bureau of Securities, whenever it changes:

1. Its firm name;
2. Its principal office address;
3. The address of a branch office within the State of New Jersey.

(b) Such form shall be filed no later than 20 days after the occurrence named therein.

(c) A registered investment advisor shall file with the Bureau of Securities amended pages of the Form ADV together with an amended Schedule D to Form ADV on such person to update its Form ADV on file with the Bureau of Securities whenever there is a change to the information reported on Schedule A, B, or C to Form ADV, as applicable. The form shall be filed no later than 20 days after the occurrence named therein.

(d) A registered investment advisor shall file with the Bureau of Securities amended pages of the Form ADV together with an amended Schedule D or E, as applicable to update its Form ADV on file with the Bureau of Securities whenever any changes occur regarding the answers on its investment advisor application to the Disciplinary questions in Item 11 of Form ADV or its successor, within 20 days of the occurrence named therein.

(e) A registered investment advisor shall file with the Bureau of Securities amended pages of the Form ADV to update its Form ADV on file with the Bureau of Securities, whenever any changes occur as to the resignation, retirement or termination of the affiliation of any partner, officer or director, within 20 days of the occurrence named therein. No filing fee is required.

(f) Effective January 1, 1998, all investment advisors registered in this State shall have a complete updated Form ADV Uniform Application for Investment Adviser Registration on file with the Bureau. If a Form ADV is already on file with the Bureau, the applicant shall only be required to file a copy of any amendments to Form ADV that have not been previously filed with the Bureau together with the investment adviser's Form ADV-T or Schedule I, as applicable.

Amended by R.1992 d.435, effective November 2, 1992.
See: 24 N.J.R. 2524(a), 24 N.J.R. 4060(a).

Added (f).

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-2.6 Maintenance of books and records

All investment advisors shall keep at their principal place of business, open to inspection for the Bureau of Securities of the State of New Jersey, all books and records required to be kept by the Securities and Exchange Commission.

13:47A-2.6A Maintenance of sales and advertising material (investment advisors)

Subject to the limitations of § 222 of the Investment Advisors Act of 1940 (15 U.S.C. § 80b-18a), all investment advisors shall keep on file, in each branch and sales office, for a period of three years, copies of any prospectus, circular, form letter, advertisement, sales script, or prepared text used in the course of soliciting prospective investors, and any other sales or advertising material intended for distribution or communication to prospective investors by mail, telephone or any other medium, or for the use or training of persons making such communications. Any material required to be maintained pursuant to this section may be maintained in electronic form, either at the branch or sales office or at a central location, provided that such electronically stored material can, upon demand, be retrieved and provided to the Bureau within two working days.

New Rule, 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).
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-2.7 Withdrawal of investment advisor registration

A registered investment advisor shall file with the Bureau of Securities a Form ADV-W Notice of Withdrawal from Registration as Investment Advisor, as set forth in N.J.A.C. 13:47A-11.9, when it desires to withdraw its registration as an investment advisor in the State of New Jersey. Such request for withdrawal will become effective 30 days after filing with the Bureau of Securities.

Amended by R.1992 d.435, effective November 2, 1992.
See: 24 N.J.R. 2524(a), 24 N.J.R. 4060(a).

Added text.

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

Deleted the last sentence.

13:47A-2.8 Application for successor

A registered investment advisor may file an application with the Bureau of Securities on a Form ADV, as set forth in N.J.A.C. 13:47A-11.2, for the registration of a successor. Such application shall be marked "SUCCESSOR APPLICATION" in the upper right-hand corner by the registrant. There is no filing fee for the successor application.

Amended by R.1992 d.435, effective November 2, 1992.
See: 24 N.J.R. 2524(a), 24 N.J.R. 4060(a).

Added text.

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

Deleted the last sentence.

13:47A-2.9 "Investment supervisory services" defined

"Investment supervisory services" is defined as the giving of continuous advice to clients as to the investment of funds on the basis of individual needs of each client, as distinguished from continuous advice of any nature which is not based on consideration of all relevant factors; for example, the nature and amount of other assets, investment and insurance, and the nature and extent of the personal and family obligations of each client. For interpretive purposes, the Bureau of Securities follows SEC Release No. IA-770 and SEC Release No. IA-1092.

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

Added the second sentence.

13:47A-2.10 Performance fee compensation

(a) The provisions of N.J.S.A. 49:3-53(b)(1) shall not prohibit any investment advisor registered as an investment advisor pursuant to N.J.S.A. 49:3-56(a) from entering into, performing, renewing or extending an investment advisory contract which provides for compensation to the investment advisor on the basis of a share of the capital gains upon, or the capital appreciation of, the funds or any portion of the funds of a client, provided that the conditions of this section are met and all conditions of Rule 205-3 (17 CFR 275.205-3) under the Investment Advisors Act of 1940, 15 U.S.C. 80b-1 et seq., which are not in conflict with the conditions set forth in this section are satisfied.

(b) The client entering into the contract subject to this regulation must be a natural person or a company as defined in Rule 205-3, who the registered investment advisor (and any person acting on the investment advisor's behalf) entering into the contract reasonably believes, immediately prior to entering into the contract, is a natural person or a company as defined in Rule 205-3, whose net worth at the time the contract is entered into exceeds \$1,000,000. The net worth of a natural person shall be as

defined by Rule 205-3 of the Investment Advisors Act of 1940.

(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).

13:47A-2.11 Notice filing of Federally registered investment advisers

(a) Any person doing business in New Jersey who is registered or required to be registered as an investment adviser under Section 203 of the Investment Advisors Act of 1940, as amended, or is not exempted from making a notice filing by N.J.S.A. 49:3-56(g), shall file the following items with the Bureau, unless such person is not within the State definition of "investment adviser" set forth in N.J.S.A. 49:3-49(g):

1. In connection with an initial notice filing with the Bureau by the applicant, the applicant shall make a written notice filing in the form of the current Form ADV, as filed with the Securities and Exchange Commission, and file with the Bureau a check made payable to the State of New Jersey, Bureau of Securities in the amount of \$100.00;

2. Registration shall be effective from the date of effectiveness until the following December 31;

3. An investment adviser shall file, promptly, any amendments to the Form ADV, in accordance with the timing schedule set forth in the instructions to the Form ADV; and

4. All filings required by this section shall be filed with the Bureau electronically through the CRD or IARD, unless the applicant has been granted a hardship

exemption by the U.S. Securities and Exchange Commission, in which case, the filings shall be made directly to the Bureau.

New Rule, R.2002 d.3, effective January 7, 2002 (operative July 1, 2002).
See: 32 N.J.R. 4232(a), 34 N.J.R. 300(b).

SUBCHAPTER 3. AGENTS

Law Reviews and Journal Commentaries

Accountants Serving as Securities Industry Professionals: Some Cautionary Notes. Peter D. Hutcheon, 206 N.J.L.J. 25 (2000).

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. A fully executed page one of Form U-4, Uniform Application for Securities Industry Registration or Transfer, will satisfy this requirement;

2. One applicant noncriminal fingerprint 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.

(c) Agents affiliated in a securities related position with more than one employer (for example, with broker-dealers or investment advisors) may be registered in the State of New Jersey provided a letter is submitted with the agent's application on each affiliated firm's letterhead stating that:

1. The employer is aware of the agent's multiple affiliations;
2. The employer accepts the agent's multiple affiliations; and
3. The employer accepts full responsibility for the agent's securities related activities.

(d) Agents whose multiple affiliations are with firms that have an ownership interest of one in the other are not required to submit the letters required by (c) above, provided that the relationships between the firms in question are disclosed on the Form BD.

(e) The Bureau may require an agent to enter into an agreement requiring heightened supervision and other restrictive conditions as a condition of granting that agent's application for registration.

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.

Amended by R.2003 d.154, effective April 7, 2003.
See: 34 N.J.R. 3691(a), 35 N.J.R. 1563(b).

In (a), rewrote 1 and 2; added (c) through (e).

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 23 and the Disclosure Reporting Page of the Form U-4. The amendment(s) must be filed within 20 days of the occurrence identified therein. Whenever an agent commences employment with a broker-dealer or issuer, the agent must file the amendment within five days of the commencement of employment. 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 shall file with the CRD or Bureau, as appropriate, the Form U-5 Uniform Termination Notice for Securities Industries Registration within 30 days of the termination. For agents of non-NASD member broker-dealers, the Form U-5, Uniform Termination Notice for Securities Industries Registration, shall be filed directly with the Bureau of Securities.

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).

Amended by R.2003 d.154, effective April 7, 2003.

See: 34 N.J.R. 3691(a), 35 N.J.R. 1563(b).

In (a), substituted "23" for "22" following "Item", substituted "identified" for "named" following "20 days of the occurrence", deleted references to termination and added "of employment" in the second sentence; rewrote (b).

Case Notes

N.J.S.A. 49:3-59 and N.J.A.C. 13:47A-3.2 require strict enforcement of the requirements for timely reporting of adverse information on the Form U-4 by persons registered to conduct securities activities. Such enforcement must not hinge upon whether there was intent to deceive any one jurisdiction and should be considered a serious matter whenever and wherever it occurs, so that the investing public may be protected by the registration and reporting system as the law intends. In re Palmieri, OAL Dkt. No. BOS 4987-06, 2007 N.J. AGEN LEXIS 335, Final Decision (February 16, 2007).

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 exempted or excluded from agent registration pursuant to (b) below. 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); all of the transactional exemptions under N.J.S.A. 49:3-50(b); effecting transactions with existing employees, partners, or directors of the issuer, if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this State; or for an individual representing a broker-dealer in effecting transactions in this State limited to those transactions described in paragraph (2) of subsection (h) of section 15 of the "Securities Exchange Act of 1934," 15 U.S.C. § 78o(h)2; and such other persons not otherwise within the intent of this subsection (b), as the bureau chief may by rule or order designate.

(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).

Amended by R.2003 d.154, effective April 7, 2003.

See: 34 N.J.R. 3691(a), 35 N.J.R. 1563(b).

In (a), substituted "pursuant to (b) below" for "is available under the Act" in the first sentence; rewrote (b).

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 3A. INVESTMENT ADVISER REPRESENTATIVES

13:47A-3A.1 Registration of State registered investment adviser representatives

(a) Subject to the provisions of Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-3a), any person, who has a place of business located in this State, who desires to act in the State of New Jersey as an investment adviser representative of an investment adviser registered in New Jersey with the Bureau of Securities or registered with the Securities and Exchange Commission, and any person doing business in this State who desires to act in the State of New Jersey as an investment adviser representative of an investment adviser registered in New Jersey with the Bureau of Securities, shall file an application with an original signature, with the Bureau of Securities on Form U-4, as set forth in N.J.A.C. 13:47A-11.3. The Form U-4 may be filed with the Bureau by filing the Form U-4 electronically with the CRD/IARD and designating in the Form U-4 that the applicant intends to apply for registration in New Jersey. For a Form U-4 filed electronically with the Bureau via the CRD/IARD such Form U-4 shall have the requisite electronic signatures as required by the CRD/IARD. An application shall be accompanied by:

1. One applicant non-criminal fingerprint card (one State Police card or one FBI card) with impressions taken by a recognized law enforcement agency. (Applicants registered through the CRD/IARD need not supply fingerprint cards directly to the Bureau if they have been supplied to the NASDR as part of the applicant's filing with the CRD/IARD.); and

2. A fee of \$50.00 shall be assessed for each initial application. The fee maybe paid to the Bureau electronically through the CRD/IARD, or it may be paid by check

or money order made payable to the State of New Jersey, Bureau of Securities if the application was filed directly with the Bureau.

(b) Agents affiliated in a securities related position with more than one employer (for example, with broker-dealers or investment advisors) may be registered in the State of New Jersey, provided a letter is submitted with the agent's application on each affiliated firm's letterhead stating that:

1. The employer is aware of the agent's multiple affiliations;
2. The employer accepts the agent's multiple affiliations; and
3. The employer accepts full responsibility for the agent's securities related activities.

(c) Individuals whose multiple affiliations are with firms that have an ownership interest of one in the other are not required to submit the letters required by (b) above provided that the relationships between the firms in question are disclosed on the Form BD.

(d) The Bureau may require an agent to enter into an agreement requiring heightened supervision and other restrictive conditions as a condition of granting that agent's application for registration.

(e) Registration shall be effective from the date of effectiveness until the following December 31.

Amended by R.2003 d.154, effective April 7, 2003.
Sec: 34 N.J.R. 3691(a), 35 N.J.R. 1563(b).

Added new (b) through (d) and recodified former (b) as (c).

13:47A-3A.2 Change of status; submission of form

(a) A registered investment adviser representative shall file with the Bureau an amendment to Form U-4 within 20 days, whenever there is any change to the information previously reported on the Form U-4.

(b) Whenever a registered investment adviser representative terminates employment with an investment adviser registered in New Jersey, or with the U.S. Securities and Exchange Commission if the investment adviser has a place of business in this State, the investment adviser shall file with the Bureau Form U-5 Uniform Termination Notice for Securities Industries Registration within 30 days of the termination.

(c) A Form U-4 or Form U-5, or amendments thereto, may be filed with the Bureau by electronically filing them with the CRD/IARD, as applicable.

SUBCHAPTER 4. EXAMINATIONS

Law Reviews and Journal Commentaries

Accountants Serving as Securities Industry Professionals: Some Cautionary Notes. Peter D. Hutcheon, 206 N.J.L.J. 25 (2000).

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

13:47A-4.2 Examinations for agents

No person shall be registered as an agent unless he or she has either successfully passed a securities examination or securities examinations approved by the Chief of the Bureau of Securities pursuant to N.J.S.A. 49:3-57(f)(1), the General Securities Representative Examination (Series 7), or its successor, or has been granted a waiver by the Bureau Chief.

Amended by R.1992 d.435, effective November 2, 1992.
Sec: 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.
Sec: 29 N.J.R. 3119(a), 29 N.J.R. 4463(a).

Amended by R.2002 d.3, effective January 7, 2002 (operative July 1, 2002).

Sec: 32 N.J.R. 4232(a), 34 N.J.R. 300(b).

Rewrote the section.

13:47A-4.3 Requests for waiver of agent examinations

(a) Except for requests made pursuant to (c) below, requests for waiver of agent examination requirements will be granted only on the basis of knowledge, training and experience in the securities field. Any person, other than the agent of an issuer registered pursuant to N.J.A.C. 13:47A-3.3, requesting a waiver must have been continuously and lawfully active in the securities field for a period of at least two full years prior to filing the request.

(b) Requests for waiver of the agent examination must be submitted in writing directly to the Bureau Chief and requested no later than the filing of an application for registration with the CRD or the Bureau, as appropriate.

(c) In connection with an exempt transaction under N.J.S.A. 49:3-50, a person may apply for waiver of the agent examination requirement where the applicant is a principal or agent of the issuer and has specific knowledge of the issuer. The waiver application shall include a certification that neither the applicant nor any 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 if the agent is an underwriter within the meaning of that Rule, he or she 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).

Added (c).

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

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

Amended by R.2002 d.3, effective January 7, 2002 (operative July 1, 2002).

See: 32 N.J.R. 4232(a), 34 N.J.R. 300(b).

Rewrote the section.

Amended by R.2003 d.154, effective .

See: 34 N.J.R. 3691(a), 35 N.J.R. 1563(b).

In (a), rewrote the second sentence.

13:47A-4.4 Examination requirements for investment adviser representatives

(a) An individual applying to be registered as an investment adviser or investment adviser representative shall provide the Bureau Chief with proof of having obtained a passing score on one of the following examinations or of having obtained one of the following certifications:

1. The Uniform Investment Adviser Law Examination (Series 65 examination);
2. The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination);
3. The Chartered Financial Planner (CFP) certification awarded by the Certified Financial Planner Board of Standards, Inc.;
4. The Chartered Financial Consultant (ChFC) certification awarded by the American College, Bryn Mawr, Pennsylvania;
5. The Personal Financial Specialist (PFS) certification awarded by the Institute of Chartered Financial Analysts;
6. The Chartered Financial Analyst (CFA) certification awarded by the Institute of Chartered Financial Analysts; or
7. The Chartered Investment Counselor (CIC) certification awarded by the Investment Counsel Association of America, Inc.

(b) Persons applying for registration as an agent, who wish to act as investment adviser representatives, shall pass the Series 7 and Series 66 examinations, and persons applying for registration as investment adviser representatives, without otherwise registering as an agent, shall pass the Series 65 examination. Registered agents who have passed the Series 66 examination can give investment advice as part of their agent activities without registering separately as investment adviser representatives.

(c) For grandfathering purposes, the Bureau may consider other examinations as equivalent to the examinations required by this section.

Recodified to 13:47A-4.3 by R.1992 d.435, effective November 2, 1992.

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

13:47A-4.4 was Requests for waiver.

New Rule, R.2002 d.3, effective January 7, 2002 (operative July 1, 2002).

See: 32 N.J.R. 4232(a), 34 N.J.R. 300(b).

Section was "Reserved".

Amended by R.2003 d.154, effective April 7, 2003.

See: 34 N.J.R. 3691(a), 35 N.J.R. 1563(b).

In (a), inserted "or of having obtained one of the following certifications" following "examinations" in the introductory paragraph and added 3 through 7.

SUBCHAPTER 5. RENEWAL

13:47A-5.1 Expiration date

Registration of a broker-dealer, investment adviser, investment adviser representative or agent shall expire on December 31 of each calendar year, unless revoked or renewed.

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

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

Revised text.

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

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

Amended by R.2002 d.3, effective January 7, 2002 (operative July 1, 2002).

See: 32 N.J.R. 4232(a), 34 N.J.R. 300(b).

Substituted "adviser, investment adviser representative" for "advisor" preceding "or agent" and inserted "ore renewed" following "revoked".

Case Notes

Gross negligence. *Mayflower Securities v. Bureau of Securities*, 64 N.J. 85, 312 A.2d 497 (1973).

13:47A-5.2 Application for renewal

(a) A broker-dealer registered in New Jersey via the CRD may apply to renew its registration by filing the renewal forms prescribed by the CRD accompanied by payment of a \$250.00 renewal fee. Failure to pay the entire fee within the billing time limits established by the Bureau or by the CRD shall result in the broker-dealer registration being terminated as of its date of expiration.

(b) A broker-dealer registered in New Jersey via direct registration with the Bureau of Securities may apply to renew its registration by filing Form BDR issued to the registrant by the Bureau of Securities accompanied by a check or money order for \$250.00 made payable to the State of New Jersey, Bureau of Securities.

(c) A registered investment adviser registered or notice filed in New Jersey via the CRD/IARD may apply to renew its registration by filing the renewal forms prescribed by the CRD/IARD by December 31 of each year, accompanied by payment of a \$100.00 renewal fee.

(d) A registered investment adviser registered in New Jersey via direct registration with the Bureau of Securities may apply to renew its registration by filing Form IAR-(year) by December 31 of each year, as set forth in N.J.A.C. 13:47A-11.8, issued to the registrant by the Bureau of Securities, along with a current copy of the Form ADV, together with a check or money order for \$100.00 made payable to the State of New Jersey, Bureau of Securities.

(e) An agent registered in New Jersey via the CRD may apply to renew his or her registration by filing the renewal prescribed by the CRD accompanied by a \$30.00 renewal fee.

(f) A broker-dealer registered in New Jersey via direct registration with the Bureau of Securities may apply to renew its agents who are registered in New Jersey via direct registration with the Bureau of Securities by filing with the Bureau of Securities a list containing the name and social security number of each such agent together with a check or money order payable to the State of New Jersey, Bureau of Securities, in the amount of \$30.00 per agent per year.

(g) An investment adviser representative registered electronically in New Jersey via the CRD/IARD may apply to renew his or her registration by December 31 of each year by filing the renewal form prescribed by the CRD/IARD accompanied by a \$50.00 renewal fee.

(h) A registered investment adviser representative may apply to renew his or her registration by December 31 of each year by filing N.J. Form IAREp, as set forth in N.J.A.C. 13:47A-11.11 accompanied by a check or money order made payable to the State of New Jersey, Bureau of Securities, in the amount of \$50.00. This requirement may be satisfied by a filing with the Bureau by the investment adviser of a list of the names and social security numbers of each investment adviser representative affiliated with the investment adviser, together any amendments to such investment adviser representatives' Forms U-4 that have not been previously filed with the Bureau, along with a fee equal to \$50.00 for each investment advisor representative included in the filing.

(i) The Bureau may deny, suspend or revoke the renewal application or the registration and due process rights will be afforded to the applicant in accordance with N.J.S.A. 49:3-58 or the Bureau may renew the application.

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.1982 d.265, effective August 16, 1982.

See: 14 N.J.R. 551(a), 14 N.J.R. 919(b).

Deleted (d) and (e).

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

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

Amounts payable raised from \$125.00 to \$500.00; all others doubled.

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

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

Added new (a); redesignated old (a)-(b) to (b)-(c); added new (d); redesignated old (c) to (e).

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) and (b), changed the application fee from \$500 to \$250; in (b) and (c), added the last sentences; and in (d) and (e), changed the application fee from \$60 to \$30.

Amended by R.2002 d.3, effective January 7, 2002 (operative July 1, 2002).

See: 32 N.J.R. 4232(a), 34 N.J.R. 300(b).

Rewrote the section.

13:47A-5.3 Filing for renewal

(a) Applications for renewal will be issued by the Bureau of Securities during the month of October for direct filing investment advisers, investment adviser representatives and for non-NASD member broker-dealers and their agents registered directly with the Bureau of Securities and must be filed with the Bureau of Securities between October 1 and November 30 of the current year.

(b) The registration of any person who fails to apply in a timely manner for the renewal of its registration shall be

terminated by the Bureau effective December 31. Thereafter, to act in any capacity under the Act that requires registration, such person must make, file and have approved an initial application for registration as set forth in these rules.

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); added new (b) and redesignated old (b) to (c) with revisions.

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), deleted the exception.

Amended by R.2002 d.3, effective January 7, 2002 (operative July 1, 2002).

See: 32 N.J.R. 4232(a), 34 N.J.R. 300(b).

Rewrote the section.

SUBCHAPTER 6. (RESERVED)

SUBCHAPTER 7. MISCELLANEOUS

13:47A-7.1 Consent to service of process

(a) The irrevocable consent appointing the Bureau Chief or his or her successor in office as attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or her shall be filed concurrently with the application directly with the Bureau Chief, except as provided by (a)1ii below.

1. The Bureau of Securities accepts the following forms:

i. For agent applications for registration in New Jersey, a fully executed Form U-2 Uniform Consent to Service of Process or a fully executed page 1 of Form U-4, Uniform Application for Securities Industry Registration or Transfer;

ii. For broker-dealer applications for registration in New Jersey filed via the CRD a fully executed page 1 (Execution Page) of the Form BD Uniform Application for Broker-Dealer Applications or a successor form as prescribed by the CRD may be filed with the CRD to fulfill the requirement of (a) above for the broker-dealer;

iii. For investment adviser applications for registration in New Jersey, a fully executed page 1 (Execution Page) of the Form ADV Uniform Application for Investment Advisor Registration or a successor form as prescribed by the Bureau of Securities may be filed with the Bureau to fulfill the requirement of subsection (a) of this section for the investment advisor; and

iv. For investment adviser representatives, a fully executed page 1 of Form U-4, Uniform Application for Securities Industry Registration or Transfer.

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); added new (b)-(c).

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

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

Inserted (a)1; recodified existing (b) as (a)lii; added (a)liii; and deleted existing (c).

Amended by R.2003 d.154, effective April 7, 2003.

See: 34 N.J.R. 3691(a), 35 N.J.R. 1563(b).

In (a)1, rewrote i and added iv.

13:47A-7.2 Custody of clients' funds or securities

The term "custody of clients' funds or securities" as used in Section 49:3-57(e) of the Uniform Securities Law (1967) shall mean the carrying of money or securities for the account of customers or the owing of money or securities to customers except as an incident to transactions with or for customers which are promptly consummated by payment or delivery.

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-7.3 Broker-dealer

The term "broker-dealer" as used in the Uniform Securities Law (1967) shall include underwriters, wholesalers or distributors whether acting for their own account or the account of others.

13:47A-7.4 Prospectus defined

(a) The term "prospectus" as used in the administration of the Uniform Securities Law (1967) shall mean a selling circular distributed to prospective investors which in general shall contain:

1. A description of the issuer's property and business;
2. A description of the significant provisions of the security to be offered and its relationship to the issuer's other capital securities;
3. Information concerning the management of the issuer; and
4. Certified financial statements.

Case Notes

"Prospectus" defined. *Maplewood Vil. Ten. Ass'n v. Maplewood Vil.*, 116 N.J. Super. 372, 282 A.2d 428 (Chanc. Div.1971).

13:47A-7.5 Effective date of applications

Pursuant to Section 49:3-57(a) of the Uniform Securities Law (1967), complete applications become effective on noon on the 30th day after filing with the Bureau of Securities. Complete applications filed with the CRD to effectuate registration in New Jersey will become effective on noon on the 30th day after notice to the Bureau of Securities by the CRD that the application has been filed with the CRD. An application is deemed complete when all requested information is received by the Bureau. Any applicant desiring an earlier effective date must submit a written request to expedite to the Bureau Chief, such request to be made a part of the application and the applicant's permanent file. Acceleration is not automatic, and in no case shall an application become effective in less than five full business

days after having been filed with the Bureau of Securities. The effective date of an applicant's registration may be deferred until the applicant has received an approved status from his or her home state.

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

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

Revised text.

Amended by R.2003 d.154, effective April 7, 2003.

See: 34 N.J.R. 3691(a), 35 N.J.R. 1563(b).

Rewrote the section.

13:47A-7.6 Effectiveness of registrations filed with the CRD

Filing an application for registration with the CRD does not in any way impair the authority of the Bureau of Securities to require that additional information be filed with the Bureau or the CRD, nor does it in any way impair the Bureau's authority to deny, suspend, postpone or revoke any registration in accordance with the provisions of the Uniform Securities Law (1967) and the regulations promulgated under that Law. Allowing registrants to file their applications with the CRD, if they are eligible to do so, is for the convenience of the registrant and the Bureau, but is not intended to impair or substitute any other person's discretion or decision making authority for that of the Bureau of Securities in reviewing and acting upon applications.

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

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

13:47A-7.7 New registrations

(a) Broker-dealer registrants registered with the CRD in other states who wish to include a registration in New Jersey may do so by filing an amendment with the CRD to the Form BD Uniform Application for Broker-Dealer Registration to include New Jersey as one of the states in which it is registered. These registrants must also include in the amendment filing any other information required by N.J.A.C. 13:47A-1.1 or 1.9. The information required by N.J.A.C. 13:47A-1.1 and 1.9 may be filed as a supplement to the amendment filed with the CRD or by a separate supplemental filing made directly to the Bureau of Securities at the same time the amendment is filed with the CRD.

(b) New applicants who are not registered either directly with the Bureau of Securities or via the CRD must file their application for registration with the CRD in accordance with N.J.A.C. 13:47A-1.1, if they are eligible to do so. Only those new applicants who are not eligible for filing with the CRD may file their applications directly with the Bureau of Securities in accordance with N.J.A.C. 13:47A-1.2.

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

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

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

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

Recodified (d) as (b); and deleted (b), (c), (e) and (f).

Amended by R.2003 d.154, effective April 7, 2003.

See: 34 N.J.R. 3691(b), 35 N.J.R. 1563(b).

13:47A-7.8 Filing of information with the CRD

Any information filed by an applicant as part of a registration application that is filed with the NASAA/NASD CRD shall be considered to have been filed with the Bureau of Securities in accordance with N.J.A.C. 13:47-7.6, unless the information is required by these rules to be filed directly with the Bureau of Securities at its current office address. If the information is required to be filed directly with the Bureau of Securities, then filing the information with the CRD will have no effect and the information will be considered as "not filed."

New Rule, R.1992 d.435, effective November 2, 1992.
See: 24 N.J.R. 2524(a), 24 N.J.R. 4060(a).
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-7.9 Notice filings for securities issued or offered by Federally registered investment companies and unit investment trusts

(a) Pursuant to the authority of the Bureau Chief provided by N.J.S.A. 49:3-67(a) and 49:3-60.1, issuers of Federal covered securities under paragraph (2) of subsection (b) of Section 18 of the Securities Act of 1933 selling securities in or from the State that are not otherwise exempt from registration under the Uniform Securities Law (1997) shall annually file with the Bureau of Securities:

1. A copy of the most recent registration statement and all pre-effective amendments thereof and exhibits thereto filed with the U.S. Securities and Exchange Commission; or
2. Annually a copy of the Form NF for investment companies, and initially (and effective for 18 months from the date of receipt at the Bureau) a copy of the Form NF for unit investment trusts.

(b) In addition to (a)1 or 2 above, issues of Federal covered securities as described in (a) above shall annually file with the Bureau of Securities:

1. A consent to service of process, designating the Chief of the New Jersey Bureau of Securities as agent, unless one is already on file with the Bureau; and
2. A check made payable to the State of New Jersey, Bureau of Securities in the amount of \$500.00 for an investment company for the period from the date of receipt until the following June 30. Payment of fees shall be due and payable upon filing.

The notice filing for an investment company shall become effective upon receipt by the Bureau of Securities and shall be effective until the following June 30. The annual registration period for an investment company shall be from June 30 of one year until June 30 of the following year. No notice filing for an investment company shall be effective for more than one full year, unless it is renewed.

Notice filings pursuant to this section shall be renewed annually not later than June 30 by filing the Form NF for investment companies and the most recent form of registration statement, along with the payment of the fees in (b)2 above. Renewals shall be effective from the expiration date of the notice filing being renewed until June 30 of the following calendar year; and

3. A check made payable to the State of New Jersey, Bureau of Securities in the amount of \$200.00 for a unit investment trust. Payment of fees shall be due and payable upon filing. The notice filing for a unit investment trust shall become effective upon receipt by the Bureau of Securities and shall be effective for 18 months from the date of receipt by the Bureau of Securities. Notice filings pursuant to this section shall be renewed not later than 18 months after the effective date of the initial notice filing by filing the Form NF for unit investment trusts or the most recent form of registration statement, along with the payment of the fees as above. Renewals shall be effective from the expiration date of the notice filing being renewed until 18 months later.

(c) Only one notice and one fee needs to be filed for multiple portfolios, classes, trusts, or funds that are offered through one prospectus.

New Rule, R.2002 d.3, effective January 7, 2002 (operative July 1, 2002).
See: 32 N.J.R. 4232(a), 34 N.J.R. 300(b).

13:47A-7.10 Operative dates

Investment adviser and investment adviser representative filers may begin to file initial applications or filings, amendments or renewal filings with the Bureau via CRD/IARD, pursuant to N.J.A.C. 13:47A-2.1, 2.11, 3A.1, 3A.2 and 5.2 respectively, whenever the CRD/IARD capability to do so becomes operational, but in any event not later than July 1, 2002. Otherwise, the amendments to N.J.A.C. 13:47A-2.1 and 5.2 and new rules N.J.A.C. 13:47A-2.11, 3A.1 and 3A.2 adopted effective January 7, 2002 are operative July 1, 2002.

New Rule, R.2002 d.3, effective January 7, 2002 (operative July 1, 2002).
See: 32 N.J.R. 4232(a), 34 N.J.R. 300(b).

SUBCHAPTER 8. PENALTY**13:47A-8.1 Assessment**

A registrant who fails to file with the Bureau of Securities or the CRD (as limited by N.J.A.C. 13:47A-7.8) any information required by N.J.A.C. 13:47A-1.9 (change of status), or any fee, annual report, financial report or statement as required by the Uniform Securities Law (1967) or the rules promulgated thereunder, within the time prescribed by the Law and the rules, may be subject to civil or administrative action, including monetary penalties or other available remedies at law.

Amended by R.1992 d.435, effective November 2, 1992.
 See: 24 N.J.R. 2524(a), 24 N.J.R. 4060(a).
 Revised text.
 Amended by R.1997 d.451, effective October 20, 1997.
 See: 29 N.J.R. 3119(a), 29 N.J.R. 4463(a).

Case Notes

Gross negligence. *Mayflower Securities v. Bureau of Securities*, 64 N.J. 85, 312 A.2d 497 (1973).

SUBCHAPTER 9. (RESERVED)

SUBCHAPTER 10. REGISTRATION OF SECURITIES

13:47A-10.1 (Reserved)

Repealed by R.1973 d.230, effective August 24, 1973.
 See: 5 N.J.R. 356(b).
 Section was "Notification of interstate securities offerings".

Case Notes

Data Access Systems, Inc. v. State, 117 N.J. Super. 95, 283 A.2d 750, reversed 63 N.J. 158, 305 A.2d 427 (1973).

13:47A-10.2 Registration by coordination

(a) A person who seeks to register by coordination a security for which a registration statement has been filed under the Securities Act of 1933 shall file with the Bureau the following documents and information.

1. A completed application Form U-1, Uniform Application to Register Securities, which shall be accompanied by the following:
 - i. The New Jersey Addendum, incorporated herein by reference as Appendix A;
 - ii. One copy of the Registration Statement filed with the Securities and Exchange Commission and each amendment to such registration statement together with all exhibits;
 - iii. Three copies of the prospectus in the latest form on file with the Securities and Exchange Commission whether or not such prospectus was printed as a separate document;
 - iv. One copy of the Underwriting agreement, agreement among underwriters and selected dealers agreement or similar agreements between the broker-dealer and the person owning the securities to be sold;
 - v. One copy of the indenture, if applicable;

vi. One copy of the issuer's charter or articles of incorporation, or if the issuer is not a corporation the similar relevant document, as amended to date;

vii. One copy of the issuer's by-laws as amended to date;

viii. One copy of the signed, unqualified, and unconditional opinion of counsel as to the legality of the security being registered, with a certified English translation if it is in a foreign language, which states that the security, when issued will be legally issued, fully paid, and nonassessable, and, if a debt security, is a binding obligation of the issuer; and if the issuer is a partnership, association or trust, whether the purchasers will be liable for the obligations of the partnership;

ix. One copy of a specimen of the security or, if not applicable, a copy of the document that represents the interest to be sold and the rights of the parties involved;

x. An irrevocable consent appointing the Chief of the Bureau agent for service of process, executed by the issuer on Form U-2, Uniform Consent to Service of Process, and, if the issuer is a corporation, a corporate resolution executed by the secretary of that corporation, on Form U-2A, Uniform Corporate Resolution;

xi. One copy of each pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering;

xii. An undertaking executed by the applicant to forward to the Bureau within one business day after filing with the Securities and Exchange Commission a marked copy of any amendments to the federal registration statement, designating the changed, revised or added material or information by underlining and otherwise marking the same;

xiii. Any other document or information requested by the Bureau;

xiv. A check or money order payable to the New Jersey Bureau of Securities, in the amount of \$1,000, for each registration statement filed with the Bureau. The Bureau may require the applicant to submit a money order or certified check in appropriate instances;

xv. If the securities are being offered and sold by or through a broker-dealer, the identity of the broker-dealer who will offer and/or sell the securities in or from the State of New Jersey and a statement that such broker-dealer is registered with the Bureau pursuant to N.J.S.A. 49:3-56(a); and

xvi. If the securities are being offered and sold directly by the issuer in or from the State of New Jersey through any bona fide officer, director or employee, the name of such officer, director or employee and a statement that the issuer is relying on an exemption

from agent registration for such officer, director or employee or that such officer, director or employee is registered with the Bureau as an agent.

2. Any document filed with the Bureau pursuant to N.J.S.A. 49:3-61, 49:3-61.1 and 49:3-61.2 within three years preceding the filing of a registration statement may be incorporated by reference pursuant to N.J.S.A. 49:3-62(d) provided that the applicant shall clearly identify in the reference the name of the document, the name of the applicant, the Bureau file number, the date of filing and state that no changes have been made in such documents since the last amendment filed with the Bureau.

3. All documents filed pursuant to this section must be legible, securely bound and on paper no larger than 8½ inches by 11 inches.

(b) An application for registration by coordination shall become effective with the Bureau simultaneously with the registration statement filed with the Securities and Exchange Commission provided the following conditions have been met:

1. All documents and information required by (a) above have been filed with the Bureau; and

2. The application to register securities by coordination:

i. Was filed with the Bureau within 10 calendar days after the initial filing of the registration statement was made with the Securities and Exchange Commission and such application has been on file with the Bureau for at least 10 calendar days; or

ii. Has been on file with the Bureau for at least 30 calendar days; and

3. A statement that the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions have been on file for at least two business days; and

4. No order has been issued pursuant to N.J.S.A. 49:3-64.

(c) The following post effective requirements shall be complied with by an applicant whose securities have been registered with the Bureau by coordination:

1. Three copies of the final prospectus filed with the Securities and Exchange Commission shall be filed with the Bureau no later than two business days after such prospectus was filed with or forwarded to the Securities and Exchange Commission.

(f) A preliminary prospectus may be distributed after the filing with the Bureau of an application for registration by Notification and before its effectiveness if such distribution is made for informational purposes only and provided such distribution also complies with Federal securities law. The telephone number of a broker-dealer or issuer may not be displayed prominently on the front cover or inside cover or back cover page of a prospectus or preliminary prospectus unless such broker-dealer or issuer has complied with the registration requirements of N.J.S.A. 49:3-47 et seq.

(g) Securities registered by Notification may in the discretion of the Bureau be deregistered under any of the following conditions:

- i. An exemption is or has become available pursuant to N.J.S.A. 49:3-50(a);
- ii. The securities will not be sold; or
- iii. For good cause shown.

(h) An application for registration by Notification may be deemed by the Bureau to be abandoned under any of the following circumstances:

- i. The applicant has not responded for more than 30 days to a request from the Bureau for information concerning the offering; or
- ii. The application has been on file with the Bureau for more than 12 months and has been inactive for more than two months.

(i) Shelf registration may be permitted only in the discretion of the Bureau. Generally shelf registrations will not be permitted unless the securities have been registered with the Securities and Exchange Commission. In the case of "shelf" registrations, the initial filing with the Bureau shall cover the first takedown. Subsequent takedowns may be registered by filing Form U-1, Uniform Application to Register Securities, together with any supplements or amendments to the registration statement, and a filing fee in the amount of \$1,000 for each registration statement filed with the Bureau. The subsequent filing will be expedited provided the filing makes a clear reference to the original shelf filing by giving the name of the issuer, the securities registered, the New Jersey registration number and the effective date of the prior registration. Subsequent take-

downs which comply with the foregoing shall become effective upon notice by the filing of a supplement or an amendment to the registration statement.

New Rule, R.1990 d.241, effective May 21, 1990.
 See: 21 N.J.R. 2903(a), 22 N.J.R. 1617(a).
 Amended by R.1997 d.451, effective October 20, 1997.
 See: 29 N.J.R. 3119(a), 29 N.J.R. 4463(a).

APPENDIX A

NEW JERSEY ADDENDUM TO REGISTRATION STATEMENT

1. Has the issuer, any partner, officer or director of the issuer, any person (as that term is defined in 49(i)) occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, or any broker-dealer or other person involved directly or indirectly in the offering:

(a) Been convicted of:

i. Any crime of embezzlement under state, federal or foreign law?

Yes ___ No ___

ii. Any crime involving any theft, forgery or fraudulent practices in regard to any state, federal or foreign securities law, banking law, insurance law, commodities trading law or any antifraud law?

Yes ___ No ___

(b) Been permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business?

Yes ___ No ___

(c) Been the subject of an effective order of the Bureau Chief denying, suspending, or revoking securities registration, or registration as a broker-dealer, agent, or investment advisor?

Yes ___ No ___

(d) Been the subject of an order entered within the past five years by the securities administrator of any other state or by the Securities and Exchange Commission denying or revoking securities registration, registration as a broker-dealer, agent, or investment advisor, or the substantial equivalent of those terms as defined in the "Uniform Securities Law (1967)," P.L. 1967, c.93 (c.49:3-48 et seq.), or been the subject of an order of the Securities and Exchange Commission suspending or expelling him from a national securities exchange or national securities association registered under the "Securities Exchange Act of 1934" (15 U.S.C. 78a et seq.) or been the subject of a United States Postal Service fraud order?

Yes ___ No ___

(e) Ever been found by any court in a civil or criminal action or by any state or federal agency to have engaged in any act involving fraud, or dishonest or unethical practices in the securities business?

Yes ___ No ___

2. (a) Is the issuer, any partner, officer or director of the issuer, any person (as that term is defined in 49(i)) occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, or any broker-dealer or other person involved directly or indirectly in the offering insolvent, either in the sense that liabilities exceed assets or in the sense that obligations cannot be met as they mature?

Yes ___ No ___

(b) Has such entity or person filed a petition under federal bankruptcy laws or any state insolvency law or had a receiver, fiscal agent or similar officer appointed by a court for the business or property of such person, or any partnership in which such person was a general partner at or within two years before the time of such filing, or any corporation or business association of which such person was an executive officer at or within two years before the time of such filing?

Yes ___ No ___

3. If the answer to any of the questions above is "yes" the following information is required:

(a) Give the citation for each statute under which the relevant action or proceeding was initiated. Give the full title of the action or proceeding, the docket number, the relevant court agency and the date such action or proceeding was initiated.

(b) Describe the activities which gave rise to such action or proceeding.

(c) State the name, address and connection with the issuer, broker-dealer or other person described in questions 1 and 2, for each person who was the subject of such action or proceeding.

(d) Describe the final disposition of such action or proceeding and the present status. (The term final disposition as used herein refers to any conviction, injunction, order, decree, court decision, petition, pleas or other final adjudication of the action or proceeding.)

(e) State whether or not the final disposition has been modified, reversed, suspended, vacated or nullified. If a description of the action or proceeding and the final disposition is not included in the registration statement, the reason for the omission should be set forth in detail on a rider to this addendum. Include all mitigating circumstances.

The undersigned is aware of N.J.S.A. 49:3-54 and understands that this addendum is part of the registration statement filed with the Bureau of Securities, and acknowledges the responsibility to update and keep current the information contained herein so long as this application is pending.

DATE: _____ ISSUER _____
by: _____ (Signature)
_____ (Title)

New Rule, R.1990 d.241, effective May 21, 1990.
See: 21 N.J.R. 2903(a), 22 N.J.R. 1617(a).

APPENDIX B

NEW JERSEY REGISTRATION STATEMENT FOR REGISTRATION BY NOTIFICATION

All items must be answered. Attach riders where necessary.

I. DESCRIPTION OF ISSUER

A. Name: _____

B. Address: _____

C. Form of organization: _____

State: _____

Date organized: _____

D. General character of business: _____

E. Principal place of business: _____

Description of Securities	No. of units now outstanding	Maximum offering price per unit ⁽¹⁾ \$	Market price per units as of	Book value per unit as of	Total value ⁽³⁾ \$
			_____ date ⁽¹⁾ \$	_____ date ⁽²⁾ \$	
			A. Total value	\$ _____	
			B. 5% of total value	\$ _____	
			C. Average net earnings (restate from Item 4)	\$ _____	

In order to qualify for Registration by Notification, "C" must be greater than or equal to "B".

(1) The maximum offering price or the market price on a day selected by the applicant, but must be within 30 days before the date of filing this registration statement.

(2) Book value must be of a day, selected by the applicant, within 90 days of filing this registration statement. Book value may be used only if there is neither a readily determinable market price nor a cash offering price.

(3) The total value is the product of either (1) the number of units multiplied by the higher of the maximum offering price or the market price, or (2) the number of units multiplied by the book value.

6. If the securities of the issuer or any of its predecessors (which do not have a fixed maturity or a fixed interest or dividend provision) have not been outstanding for 3 full fiscal years, complete the chart below. (Include all securities which will be outstanding if all the securities being offered or proposed to be offered are issued, whether or not they are proposed to be registered or offered in New Jersey.)

Description of Securities	No. of units to be outstanding	Maximum offering price per unit ⁽¹⁾ \$	Market price per units as of	Book value per unit as of	Total value ⁽³⁾ \$
			_____ date ⁽¹⁾ \$	_____ date ⁽²⁾ \$	
			A. Total value	\$ _____	
			B. 5% of total value	\$ _____	
			C. Average net earnings (restate from Item 4)	\$ _____	

In order to qualify for Registration by Notification, "C" must be greater than or equal to "B".

The registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing pursuant to N.J.S.A. 49:3-61.2.

Date: _____

Issuer

By: _____
(Title)

New Rule, R.1990 d.241, effective May 21, 1990.
See: 21 N.J.R. 2903(a), 22 N.J.R. 1617(a).

Exchange Commission (SEC) and is available on-line at <http://www.sec.gov/about/forms/formbd.pdf> or http://www.nasdr.com/pdf-text/form_bd_approved.pdf.

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

SUBCHAPTER 11. FORMS

13:47A-11.1 Uniform Application for Broker-Dealer Registration (Form BD)

The Uniform Application for Broker-Dealer Registration (Form BD) is promulgated by the U.S. Securities and

13:47A-11.2 Uniform Application for Investment Adviser Registration (Form ADV)

The Uniform Application for Investment Adviser Registration (Form ADV) is promulgated by the SEC and is available on-line at <http://www.sec.gov/pdf/fadvpaper.pdf>.

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-11.3 Uniform Application for Securities Industry Registration or Transfer (Form U-4)

The Uniform Application for Securities Industry Registration or Transfer (Form U-4) is promulgated by the SEC and is available on-line at http://www.nasdr.com/pdf-text/form_ru4_revised.pdf.

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-11.4 Uniform Consent to Service of Process (Form U-2)

The Uniform Consent to Service of Process which is to be used to designate the Chief of the Bureau of Securities as agent for service of process is authored by the North American Securities Administrators Association (NASAA) and is available on-line at <http://nasaa.org/nasaa/library/Form%2OU-2.doc>.

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, investment advisor and issuer change of status statement (SB-4)".

13:47A-11.5 Uniform Surety Bond Form (Form U-SB)

The Uniform Surety Bond Form (Form U-SB) is authored by the NASAA and is available on-line at <http://nasaa.org/nasaa/library/Form%2OU-SB.doc>.

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 "Agent change of status statement (SB-5)".

13:47A-11.6 Uniform Request for Broker-Dealer Withdrawal (Form BDW)

The Uniform Request for Broker-Dealer Withdrawal is promulgated by the SEC and is available on-line at http://www.nasdr.com/pdf-text/form_bdw_revised.pdf.

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-61)".

13:47A-11.7 Non-NASD Broker-Dealer Renewal Application (Form BDR)

The Non-NASD Broker-Dealer Renewal Application (Form BDR) is authored by the Bureau and is available on-line at <http://www.state.nj.us/lps/ca/bos/regforms.htm>.

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-6C)".

13:47A-11.8 Investment Advisor Renewal for Calendar Year 20XX (Form IAR-year)

The Investment Advisor Renewal for Calendar Year 20XX (Form IAR-year) is authored by the Bureau and is available on-line at <http://www.state.nj.us/lps/ca/bos/regforms.htm>.

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-6P)".

13:47A-11.9 Notice of Withdrawal from Registration as Investment Advisor (Form ADV-W)

The Notice of Withdrawal from Registration as Investment Advisor (Form ADV-W) is promulgated by the SEC and is available on-line at <http://www.sec.gov/pdf/fadvw.pdf>.

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 (Reserved)

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)".

Repealed by R.2003 d.154, effective April 7, 2003.
See: 34 N.J.R. 3691(a), 35 N.J.R. 1563(a).

Section was "Form for Declaring Eligibility for SEC Registration After Effective Date of Amendments to Investment Advisors Act of 1940 (ADV-T)".

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 "any investment contract issued in connection with an employees' or professional stock purchase, savings, pension, profit-sharing, retirement or similar benefit plan and securities issued pursuant to an employee benefit plan." N.J.S.A. 49:3-50(a)(11) 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) 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.

(d) 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.

Amended by R.2003 d.154, effective April 7, 2003.
See: 34 N.J.R. 3691(a), 35 N.J.R. 1563(b).

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

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.

(b) When an attorney appears before the Bureau or a hearing officer in a representative capacity in a particular proceeding which involves a hearing or an opportunity for a hearing, the attorney shall enter a written appearance with the Bureau which shall state the attorney's name, firm, address and telephone number and the name and address of the person or persons on whose behalf the attorney appears. If the address or telephone number of the attorney or the person represented changes during the course of representation before the Bureau, the attorney shall notify the Bureau in writing no later than 10 days following the change(s). If an attorney withdraws, or is otherwise relieved, from representing a person in a matter in which the attorney has entered an appearance, the attorney shall notify the Bureau in writing immediately. If an attorney is substituted for, or otherwise relieves, another attorney who has entered an appearance, the new attorney shall immediately enter a written appearance with the Bureau as prescribed in this subsection.

(c) Any person, other than an attorney, appearing or practicing before the Bureau in a representative capacity shall file a written appearance with the Bureau including authority to act in such capacity.

13:47A-13.7 Service upon the Bureau

Service upon the Bureau shall be made in accordance with New Jersey Court Rule 4:4-4(a)(7).

13:47A-13.8 Service upon persons not represented by counsel

Service of subpoenas, complaints, summonses, orders, notices or other written communications upon persons not represented by counsel in matters before the Bureau shall be made in accordance with N.J.A.C. 1:1-7.1(a). Service by mail shall be complete upon mailing.

13:47A-13.9 Service upon persons represented by counsel

In any proceeding or matter where an attorney has filed an appearance pursuant to N.J.A.C. 13:47A-13.6, any subpoena, complaint, summons, order, notice or other written communication to be served upon or furnished to the person represented by the attorney shall be served upon the attorney (or one of such attorneys, if the client is represented by more than one attorney). Such service shall be made in the same manner as set forth in N.J.A.C. 13:47A-13.8 for the person represented, and shall be deemed sufficient service regardless of whether such communication is furnished directly to the person represented.

13:47A-13.10 Service upon registered persons

Any person registered with the Bureau in any capacity, or required to register with the Bureau in any capacity, whether or not actually registered, shall be subject to personal service inside or outside of New Jersey in any manner described in N.J.A.C. 13:47A-13.8 and 13.9. If a registered person, as defined in N.J.S.A. 49:3-49, conducts business in

New Jersey through one or more branch offices in New Jersey, service upon a responsible party at any such branch office shall be considered effective service upon the registered person. Officers, directors, principals, partners and supervisory personnel of a registered person, as well as any employees of a registered person with apparent authority to receive communications from the public, shall be deemed responsible parties for purposes of this section.

13:47A-13.11 Answers; when required

When a complaint or an order containing allegations is issued by the Bureau, each party respondent shall file an answer to the complaint or the allegations in the order.

13:47A-13.12 Time to file answer

Except where a different period is provided by statute, regulation or order, a party respondent shall file an answer within 20 days after service of the complaint or order.

13:47A-13.13 Requirements of answer; effect of failure to deny

Unless otherwise directed by the Bureau, an answer filed pursuant to statute or this subchapter shall specifically admit, deny, or state that the party does not have and is unable to obtain sufficient information to admit or deny, each and every paragraph in the complaint or each and every allegation in the order filed by the Bureau. A statement of a lack of information shall have the effect of a denial. Any paragraph or allegation not denied shall be deemed admitted. When a party intends in good faith to deny only a part of a paragraph or allegation, the party shall specify so much of it as is true and shall deny only the remainder. An answer filed pursuant to this statute or this subchapter shall set forth specifically and separately a statement of facts constituting any affirmative defense or defenses.

13:47A-13.14 Effect of failure to file answer

If a party fails to file an answer required by statute or this subchapter within the time provided, such party shall be deemed in default and the proceeding may be determined against that party by the Bureau upon consideration of the complaint or order, the contents of which may be deemed to be true.

13:47A-13.15 Signature on answer; requirement and effect

Every answer shall be signed by the party filing it or by at least one attorney, in his or her individual name and, where applicable, the name of the firm, who represents such party. The signature constitutes a verification by the signer that the signer has read the answer; that to the best of the signer's knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.

13:47A-13.16 Offers of settlement

Parties may, at any time, make written settlement proposal to, or may request settlement conferences with, the Bureau Chief or the Chief's designee where time, the nature of the proceeding, and the public interest permit.

13:47A-13.17 Agreement of parties to participation of Bureau Chief in settlement discussions

By making a written settlement proposal or requesting a settlement conference, the parties agree that the Bureau Chief or the Chief's designee may express the Chief's views regarding the appropriateness of any offer of settlement, and may otherwise participate in settlement negotiations, without such views or participation giving rise to claims of prejudgment on the part of the Bureau Chief or the Chief's designee. In any event, the Bureau Chief or the Chief's designee, in his or her discretion, may decline to express any view on an offer. Neither a settlement offer nor any documents relating to any settlement offer shall constitute a part of the record. Nothing in this section shall be deemed to authorize ex parte communications otherwise prohibited by the Rules of Professional Conduct.

**SUBCHAPTER 14. RULES OF PRACTICE
RELATING TO INVESTIGATIONS**
13:47A-14.1 Scope of rules relating to investigations

N.J.A.C. 13:47A-14.1 through 14.16, inclusive, apply only to private investigations conducted by the Bureau pursuant to N.J.S.A. 49:3-68.

13:47A-14.2 Information obtained during the course of private investigations

Information or documents obtained by the Bureau in the course of any private investigation, unless such information or documents are published by the Bureau pursuant to its authority under N.J.S.A. 49:3-68(a), shall be deemed non-public. Such information and documents may be disclosed to representatives of domestic or foreign governmental authorities, self-regulatory agencies, state or federal law enforcement officers, state securities law administrators, special counsels, and trustees in bankruptcy. The Bureau may also, to the extent necessary, disclose such information and documents in court proceedings; when ordered to do so by a court of competent jurisdiction; or, when appropriate, in furtherance of any ongoing investigation or proceeding.

13:47A-14.3 Applicability of N.J.A.C. 13:47A-14.3 through 14.10

N.J.A.C. 13:47A-14.3 through 14.10 shall be applicable to a person who appears either voluntarily, pursuant to an administrative investigative subpoena or administrative order, or at the request of, or with the permission of, the Bureau. Such person, being sworn in an investigation or examination, shall be referred to as a "witness." Such investigation or examination, hereinafter referred to as an "investigative proceeding," shall be conducted by the Bureau before one or more of its employees, or one or more Deputy Attorneys General, or before any other person designated by the Bureau for the purpose of taking testimony of witnesses and receiving other evidence.

13:47A-14.4 Official transcript

Transcripts, if any, of investigative proceedings shall be recorded solely by the official reporter or by any other person or means designated by the officer conducting the investigation. There shall be one official transcript of a witness' testimony, which shall be the property of the Bureau. Except as provided by N.J.A.C. 13:47A-14.5, any other contemporaneous, verbatim transcription by writing or recording, in any form and in any media, shall be prohibited.

13:47A-14.5 Access to transcripts

Any witness, and counsel, upon proper identification and after giving reasonable prior notice, shall have the right to inspect the official transcript of the witness' own testimony at the Bureau's offices during normal business hours; but neither the witness, nor counsel for the witness, shall have the right to remove, copy or order a copy of the official transcript without authorization by the Bureau Chief.

13:47A-14.6 Access to documentary evidence

A person complying with any request, order, or subpoena issued by the Bureau for the production of documentary evidence, shall retain the originals and shall provide the Bureau with clearly legible, true and complete copies of the documents requested, which shall be Bates stamped, along with a signed cover letter, which shall identify those documents with a reasonable degree of specificity.

13:47A-14.7 Witnesses; representation by counsel

A witness may be accompanied, represented and advised by counsel, as defined in N.J.A.C. 13:47A-13.4. In order to protect the integrity of any investigation, the Bureau Chief may, in the reasonable exercise of his or her discretion, prohibit multiple representations by counsel, and may prohibit representation by counsel who is likely to become a witness during the course of either the investigation itself or of any legal proceedings expected to ensue upon the investigation's conclusion.

13:47A-14.8 Witnesses; representation of counsel defined

Counsel may advise witnesses before, during and after the conclusion of testimony given in the course of an investigative proceeding, and may make summary notes during such testimony solely for use in the representation of the witness. The witness is responsible for having counsel present at the time and place designated by the officer conducting the investigation. Where no timely prior request for adjournment was made, or where such request was denied for good cause, neither the substitution of counsel nor the failure of counsel to appear at the designated time and place for the witness' testimony shall constitute an acceptable ground for the witness's failure to appear at the designated time and place or to answer the questions of the officer conducting the examination.

13:47A-14.9 Sequestration of witnesses

Unless permitted in the discretion of the Bureau employee, Deputy Attorney General or other person designated by the Bureau conducting the investigation, no witness shall be present during the examination of any other witness called in such proceeding. Where counsel represents more than one witness as set forth in N.J.A.C. 13:47A-14.7 through 14.10, inclusive, counsel shall not inform one witness of the nature and contents of another witness' examination.

13:47A-14.10 Compelling incriminating testimony of witnesses

A witness who has claimed privilege against self-incrimination may be compelled to give testimony pursuant to N.J.S.A. 49:3-68(d) only by an order signed by the Bureau Chief with the approval of the Attorney General or the Attorney General's designee. Except as provided in this section, no employee of the Bureau has the authority to compel, orally or in writing, the testimony of a witness or otherwise exempt a witness from prosecution pursuant to N.J.S.A. 49:3-68(d).

13:47A-14.11 Service of subpoenas

Service of subpoenas issued in investigative proceedings shall be effected in the manner prescribed by N.J.A.C. 13:47A-13.7 through 13.10, inclusive, including service upon an attorney who has filed an appearance pursuant to N.J.A.C. 13:47A-13.3 through 13.6. Investigatory subpoenas may be issued to persons within or without the State of New Jersey.

13:47A-14.12 Access to premises by Bureau; generally

All broker-dealers and investment advisors registered with the Bureau shall, upon request, provide members of the Bureau's staff prompt access, during regular business hours, to that part of the premises at the broker-dealer's or investment advisor's place of business where documents are stored or where trading or investor solicitation is conducted.

13:47A-14.13 Observation of conduct of business by Bureau

A broker-dealer or investment advisor registered with the Bureau shall accord members of the Bureau staff the opportunity to observe the conduct of business at the broker-dealer's or investment advisor's place of business.

13:47A-14.14 Access to documents by Bureau

(a) The Bureau, without notice, may examine in a manner reasonable under the circumstances the records, within or without this State, of a registered broker-dealer, agent, or investment advisor in order to determine compliance with the Uniform Securities Law. Broker-dealers, agents, and investment advisors shall make their records available to the Bureau in legible form.

(b) The Bureau may copy records or require a registered person to copy records and provide the copies to the Bureau to the extent and in a manner reasonable under the circumstances.

(c) The Bureau may impose a reasonable fee for the expense of making any copies under (b) above.

13:47A-14.15 Access to persons by Bureau

Members of the Bureau staff may interview individuals included within the scope of N.J.A.C. 13:47A-13.10 who may be present on the registered person's premises and who voluntarily consent to be interviewed. If such interview is conducted on the registered person's premises, Bureau staff shall be given access to a private, enclosed area where the interview can go forward without monitoring, surveillance or interference by any kind of device or by persons who are not members of the Bureau staff.

13:47A-14.16 Failure to cooperate

(a) A registered person shall cooperate in any inquiry, investigation or inspection conducted by, or on behalf of, the Bureau, for the purposes of determining whether or not any person has violated or is about to violate any provision of the Uniform Securities Law or any regulation or order promulgated thereunder. A registered person's willful failure to cooperate, absent good cause or bona fide claim of privilege, may be deemed by the Bureau a violation of the Uniform Securities Law within the meaning of N.J.S.A. 49:3-58(a)(2)(ii) and thus subject the registered person to denial, suspension, or revocation of registration.

(b) The following are examples of conduct by a registered person that may be deemed a failure to cooperate:

1. The failure to timely respond by way of appearance or production of documents to a subpoena or order issued by the Bureau pursuant to N.J.S.A. 49:3-68 or as may otherwise be provided by law;

2. The failure to answer any question pertinent to inquiry made pursuant to N.J.S.A. 49:3-68 or other applicable law unless the response to said question is subject to a bona fide claim of privilege.

3. The failure to grant Bureau personnel access to the business premises of a registered person or to the records and documents the registered person is required, by statute or rule, to make available for inspection;

4. The failure to attend any scheduled proceeding at which the registered person's appearance is directed. In the event a registered person elects to retain counsel for the purpose of representation in any such proceeding, it shall be the registered person's responsibility to do so in a timely fashion. The failure of a registered person to retain counsel, absent a showing of good cause therefor, shall not require an adjournment of the proceeding;

5. The failure to timely respond or to provide information requested pursuant to a demand under N.J.S.A. 49:3-68 or any other applicable law; or

6. Aiding or abetting another registered person's failure to cooperate.