

by letter, which notification shall not affect any action taken by the Bureau Chief before or after the letter is issued. The issuance by the Bureau of a notification letter may allow the applicant to supplement or amend the information previously submitted in an attempt to cure the incomplete status of the application, or to withdraw the application, within 21 days after receipt of the notification letter.

1. If, during the pendency of the application, it appears to the Bureau that the application contains a misrepresentation, omits a required 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 may deny the application.

(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.

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).

Amended by R.2008 d.301, effective October 6, 2008.
See: 40 N.J.R. 2061(a), 40 N.J.R. 5820(a).

Rewrote the section.

Amended by R.2015 d.130, effective August 17, 2015.
See: 47 N.J.R. 692(a), 47 N.J.R. 2155(a).

In (a)1, substituted "Individual/Applicant's Acknowledgement and Consent section" for "page one"; in (b)1xi, deleted "or" from the end; in (b)1xii, substituted "; or" for a period; and added (b)1xiii.

Case Notes

Registration of an agent was revoked after he violated N.J.A.C. 13:47A-14.16 by failing to report Bureau of Securities' customer complaints, regulatory actions, and changes in supervisors as required by a heightened supervisory agreement that he signed pursuant to N.J.A.C. 13:47A-3.1(d). In re Gregg Charles Lorenzo, CRD #4525167, 2014 N.J. Sec. LEXIS 9, Summary Revocation Order (October 28, 2014).

The registration of a broker-dealer agent was summarily revoked on findings that he had failed to disclose the existence of certain unsatisfied judgments and/or liens against him as required by N.J.A.C. 13:47A-3.1 and N.J.A.C. 13:47A-3.2 and that his conduct in borrowing money from customers of broker-dealer firms with which he was associated, conduct which violated FINRA rules, constituted dishonest and unethical practices as defined by N.J.A.C. 13:47A-6.3(a) and provided grounds for revocation. In re Saviano, CRD # 1081879, 2013 N.J. Sec. LEXIS 18, Final Decision (July 10, 2013).

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 U4, Uniform Application for Securities Industry Registration or Transfer, or its successor form, along with the fee, if any, prescribed by the CRD, whenever there is any change to the information previously reported on the Form U4. The amendment(s) must be filed within 30 days of the occurrence requiring the change. 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-FINRA member broker-dealers, the amendments shall be filed directly with the Bureau.

(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 U5, Uniform Termination Notice for Securities Industries Registration, within 30 days of the termination. For agents of non-FINRA member broker-dealers, the Form U5, Uniform Termination Notice for Securities Industries Registration, shall be filed directly 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).

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).

Amended by R.2008 d.301, effective October 6, 2008.

See: 40 N.J.R. 2061(a), 40 N.J.R. 5820(a).

In (a), substituted "U4," for the first occurrence of "U-4" and "U4" for the second occurrence of "U-4", deleted "based on fraud" following "judgments", substituted "14" for "23", "30" for "20" and "non-FINRA" for "non-NASD" and deleted "of Securities" following "Bureau"; and in (b), substituted "U5," for "U-5" twice, substituted "non-FINRA" for "non-NASD" and deleted "of Securities" following "Bureau".

Amended by R.2015 d.130, effective August 17, 2015.

See: 47 N.J.R. 692(a), 47 N.J.R. 2155(a).

Rewrote (a).

Case Notes

The registration of a broker-dealer agent was summarily revoked on findings that he had failed to disclose the existence of certain unsatisfied judgments and/or liens against him as required by N.J.A.C. 13:47A-3.1 and N.J.A.C. 13:47A-3.2 and that his conduct in borrowing money from customers of broker-dealer firms with which he was associated, conduct which violated FINRA rules, constituted dishonest and unethical practices as defined by N.J.A.C. 13:47A-6.3(a) and provided grounds for revocation. In re Saviano, CRD # 1081879, 2013 N.J. Sec. LEXIS 18, Final Decision (July 10, 2013).

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) Any issuer that is 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); N.J.S.A. 49:3-60.1(b) (certain Federally covered securities); 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).

Amended by R.2015 d.130, effective August 17, 2015.

See: 47 N.J.R. 692(a), 47 N.J.R. 2155(a).

In (a), substituted "Any issuer that is" for "All issuers which are"; and in (b), substituted "state" for the first occurrence of "State" and "Bureau Chief" for "bureau chief", and inserted "N.J.S.A. 49:3-60.1(b) (certain Federally covered securities);".

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 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 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, shall file an application with an original signature, with the Bureau on the Uniform Application for Securities Industry Registration or Transfer, Form U4, as set forth in N.J.A.C. 13:47A-11.3, and a consent to service of process executed by the applicant. A fully executed Domestic Investment Adviser Execution Page of the Form ADV, Uniform Application for Investment Adviser Registration, will satisfy the consent to service of process requirement. The Form U4 may be filed with the Bureau by filing the Form U4 electronically with the CRD and designating in the Form U4 that the applicant intends to apply for registration in New Jersey. For a Form U4 filed electronically with the Bureau via the CRD such Form U4 shall have the requisite electronic signatures as required by the CRD. An application shall be accompanied by:

1. The applicant's fingerprints and written consent for a criminal history record background check to be performed pursuant to N.J.S.A. 49:3-56(p). (Applicants currently registered as an agent of a broker-dealer through the CRD need not supply fingerprints directly to the Bureau if they have been supplied to FINRA as part of the applicant's agent filing with the CRD.); and

2. A fee of \$50.00 shall be assessed for each initial application. The fee may be paid to the Bureau electronically through the CRD, 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. In accordance with N.J.S.A. 49:3-58(a)(2)(i), an application is incomplete unless and until the applicant pays the registration fee as provided above within the billing time limits established by the Bureau or by the CRD.

(b) Pursuant to N.J.S.A. 49:3-57(a), the Bureau Chief may require that any applicant provide any of the following information, upon request:

1. An investment adviser representative narrative which includes the facts and circumstances surrounding any item reported to the Bureau;

2. Copies of the investment adviser representative's complaint file containing documentation of verbal cus-

59. To indicate, in an advisory contract any condition, stipulation, or provisions binding any person to waive compliance with any provision of N.J.S.A. 49:3-47 et seq., or of the Investment Advisers Act of 1940, 15 U.S.C. §§80b-1 et seq., or any other practice that would violate Section 215 of the Investment Advisers Act of 1940 (15 U.S.C. §215);

60. Retaining investment consulting services for compensation that is provided either directly to the consultant or indirectly through a matching or expert network service, shall be as follows:

i. Unless the adviser obtains a written certification that:

(1) Describes all confidentiality restrictions relevant to the potential consultation that the consultant has, or reasonably expects to have;

(2) Affirmatively states that the consultant will not provide any confidential information to the adviser; and

(3) Is signed and dated by the consultant, and is accurate as of the date of the initial, and any subsequent, consultation(s).

ii. Notwithstanding (a)60i above, an adviser who comes into possession of material confidential information through a consultation is precluded from trading any relevant security until such time as the confidential information is made public.

iii. Definitions. For purposes of this paragraph, the following terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) "Confidential information" means any non-public information that one is bound by a confidentiality agreement or fiduciary (or similar) duty not to disclose.

(2) "Matching or expert network service" means a firm that, for compensation, matches consultants with advisers.

(3) "Investment consulting services" means a consultation for the purposes of assisting the adviser's decision as to whether to buy, sell, or abstain from buying or selling, positions in client accounts;

61. Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contravention of Section 206(4) of the Investment Advisers Act of 1940 (15 U.S.C. §206(4)) notwithstanding the fact that such investment adviser is not registered or required to be registered under Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. §203); or

62. Engaging in conduct or any act, indirectly or through or by any other person, that would be unlawful for such person to do directly under the provisions of N.J.S.A. 49:3-47 et seq., or any rule promulgated thereunder.

Amended by R.2015 d.130, effective August 17, 2015.

See: 47 N.J.R. 692(a), 47 N.J.R. 2155(a).

Section was "Registrants and applicants". Rewrote the section.

Case Notes

The registration of a broker-dealer agent was summarily revoked on findings that he had failed to disclose the existence of certain unsatisfied judgments and/or liens against him as required by N.J.A.C. 13:47A-3.1 and N.J.A.C. 13:47A-3.2 and that his conduct in borrowing money from customers of broker-dealer firms with which he was associated, conduct which violated FINRA rules, constituted dishonest and unethical practices as defined by N.J.A.C. 13:47A-6.3(a) and provided grounds for revocation. In re Saviano, CRD # 1081879, 2013 N.J. Sec. LEXIS 18, Final Decision (July 10, 2013).

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 below:

1. For agent applications for registration in New Jersey, a fully executed Form U2 Uniform Consent to Service of Process or a fully executed Individual/Applicant's Acknowledgement and Consent section of Form U4, Uniform Application for Securities Industry Registration or Transfer, for direct registration or via the CRD;

2. For broker-dealer applications for registration in New Jersey filed directly with the Bureau or via the CRD a fully executed 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;

3. For investment adviser applications for registration in New Jersey, a fully executed Domestic Investment Adviser Execution Page of the Form ADV, Uniform Application for Investment Adviser Registration, or a successor form as prescribed by the Bureau may be filed with the Bureau to fulfill the requirement of (a) above for the investment adviser;

4. For investment adviser representatives, a fully executed Individual/Applicant's Acknowledgement and Consent section of Form U4, Uniform Application for Securities Industry Registration or Transfer, for direct registration or via the CRD;

5. For mutual funds and unit investment trusts, see N.J.A.C. 13:47A-7.9; and

6. For private placements, see N.J.A.C. 13:47A-7.10.

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)1ii; added (a)1iii; 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.

Amended by R.2008 d.301, effective October 6, 2008.

See: 40 N.J.R. 2061(a), 40 N.J.R. 5820(a).

In the introductory paragraph of (a), deleted "by (a)1ii" preceding "below"; in the introductory paragraph of (a)1 and in (a)1iii, deleted "of Securities" following "Bureau"; in (a)1i and (a)1iv, substituted "U4" for "U-4" and inserted ", for direct registration or via the CRD"; in (a)1ii, inserted "directly with the Bureau or" and inserted commas following "BD" and "Applications"; in (a)1iii and (a)1iv, substituted "adviser" for "advisor" throughout; and in (a)1iii, inserted a comma following "ADV", substituted "Adviser" for "Advisor".

Amended by R.2015 d.130, effective August 17, 2015.

See: 47 N.J.R. 692(a), 47 N.J.R. 2155(a).

Rewrote the section.

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

(a) The term "custody of clients' funds or securities" as used in N.J.S.A. 49:3-57(e) shall mean holding directly or indirectly, client funds or securities, or having any authority to obtain possession of them or having the ability to appropriate them except as an incident to transactions with or for customers that are promptly consummated by payment or delivery.

(b) Custody of client's funds or securities shall include:

1. Possession of client funds or securities, (but not of checks drawn by clients and made payable to third parties), unless received inadvertently and returned to the sender within three business days of receipt;

2. Any arrangement (including a general power of attorney and direct fee deduction arrangements) authorizing or permitting the withdrawal of client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian; and

3. Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives a supervised person legal ownership of or access to client funds or securities.

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.2008 d.301, effective October 6, 2008.

See: 40 N.J.R. 2061(a), 40 N.J.R. 5820(a).

Substituted "N.J.S.A. 49:3-57(e)" for "Section 49:3-57(e) of the Uniform Securities Law (1967)".

Amended by R.2015 d.130, effective August 17, 2015.

See: 47 N.J.R. 692(a), 47 N.J.R. 2155(a).

Rewrote the section.

13:47A-7.3 Broker-dealer

The term "broker-dealer" as used in the Uniform Securities Law (1997) shall include underwriters, wholesalers or distributors whether acting for their own account or the account of others.

Amended by R.2008 d.301, effective October 6, 2008.

See: 40 N.J.R. 2061(a), 40 N.J.R. 5820(a).

Substituted "(1997)" for "(1967)".

13:47A-7.4 Prospectus defined

(a) The term "prospectus" as used in the administration of the Uniform Securities Law (1997) 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.

Amended by R.2008 d.301, effective October 6, 2008.

See: 40 N.J.R. 2061(a), 40 N.J.R. 5820(a).

In the introductory paragraph of (a), substituted "(1997)" for "(1967)".

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

(a) Pursuant to N.J.S.A. 49:3-57(a), complete applications become effective on noon on the 30th day after filing with the Bureau.

(b) 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 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.

(c) An agent or investment advisor representative application shall be deemed to be incomplete by the Bureau, unless and until the applicant has received an approved status from the jurisdiction in which his or her office of employment is located when such registration is required.

(d) 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 accelerated application become effective in less than five full business days after having been filed with the Bureau.