

CHAPTER 47A

BUREAU OF SECURITIES

Authority

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

Source and Effective Date

Effective: July 17, 2015.
See: 47 N.J.R. 2165(b).

Chapter Expiration Date

Chapter 47A, Bureau of Securities Rules, expires on July 17, 2022.

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 As part of R.1997 d.451, effective October 20, 1997, Subchapter 6, Issuers, was repealed.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: 34 N.J.R. 3691(a), 35 N.J.R. 1563(b).

Chapter 47A, Bureau of Securities Rules, was readopted as R.2008 d.301, effective September 12, 2008. As part of R.2008 d.301, Subchapter 2, Investment Advisors, was renamed Investment Advisers; and Subchapter 6, Dishonest or Unethical Business Practices, was added as new rules, effective October 6, 2008. See: 40 N.J.R. 2061(a), 40 N.J.R. 5820(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 47A, Bureau of Securities, was scheduled to expire on September 12, 2015. See: 43 N.J.R. 1203(a).

Chapter 47A, Bureau of Securities Rules, was readopted, effective July 17, 2015. See: Source and Effective Date.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. BROKER-DEALERS

- 13:47A-1.1 Application for registration for FINRA members
- 13:47A-1.2 Application for registration for persons not eligible for registration via the CRD
- 13:47A-1.3 Financial reports to supplement application (Reserved)
- 13:47A-1.4 Preparation and contents of financial statements
- 13:47A-1.5 Minimum net capital
- 13:47A-1.6 Bonds
- 13:47A-1.7 Cash or securities in lieu of bond
- 13:47A-1.8 Change of status; submission of form
- 13:47A-1.9 Maintenance of books and records
- 13:47A-1.10 Maintenance of sales and advertising material (broker-dealers)
- 13:47A-1.11 Withdrawal of broker-dealer registration
- 13:47A-1.12 Display of name
- 13:47A-1.13 Application for successor

SUBCHAPTER 2. INVESTMENT ADVISERS

- 13:47A-2.1 Application for investment adviser registration
- 13:47A-2.2 Capital requirements
- 13:47A-2.3 Bonds
- 13:47A-2.4 Cash or securities in lieu of bond
- 13:47A-2.5 Change of status; submission of form
- 13:47A-2.6 Maintenance of books and records (Reserved)
- 13:47A-2.6A Withdrawal of investment adviser registration
- 13:47A-2.7 Application for successor
- 13:47A-2.8 "Investment advisory services" defined
- 13:47A-2.9 Performance fee compensation
- 13:47A-2.10 Notice filing of Federally registered investment advisers
- 13:47A-2.11 Supervision
- 13:47A-2.12 Investment adviser brochure rule
- 13:47A-2.14 NJ Bureau of Securities Investor Protection Information Form

SUBCHAPTER 3. AGENTS

- 13:47A-3.1 Agents of broker-dealers
- 13:47A-3.2 Change of status; agents; submission of form
- 13:47A-3.3 Issuer-agent registration
- 13:47A-3.4 General partners

SUBCHAPTER 3A. INVESTMENT ADVISER REPRESENTATIVES

- 13:47A-3A.1 Registration of investment adviser representatives
- 13:47A-3A.2 Change of status; submission of form

SUBCHAPTER 4. EXAMINATIONS

- 13:47A-4.1 Examinations for broker-dealers and investment advisers
- 13:47A-4.2 Examinations for agents
- 13:47A-4.3 Examination requirements for investment adviser representatives
- 13:47A-4.4 Requests for waiver of agent or investment adviser representative examinations

SUBCHAPTER 5. RENEWAL

- 13:47A-5.1 Expiration date
- 13:47A-5.2 Application for renewal
- 13:47A-5.3 Filing for renewal

SUBCHAPTER 6. DISHONEST OR UNETHICAL BUSINESS PRACTICES

- 13:47A-6.1 Authority, purpose and scope
 13:47A-6.2 Definitions
 13:47A-6.3 Examples of dishonest or unethical practices for broker-dealers, agents, issuer-agents, and advisers

SUBCHAPTER 7. MISCELLANEOUS

- 13:47A-7.1 Consent to service of process
 13:47A-7.2 Custody of clients' funds or securities
 13:47A-7.3 Broker-dealer
 13:47A-7.4 Prospectus defined
 13:47A-7.5 Effective date of applications
 13:47A-7.6 Effectiveness of registrations filed with the CRD or IARD
 13:47A-7.7 New registrations
 13:47A-7.8 Filing of information with the CRD or IARD
 13:47A-7.9 Notice filings for securities issued or offered by Federally registered investment companies and unit investment trusts
 13:47A-7.10 Private placement filings

SUBCHAPTER 8. PENALTY

- 13:47A-8.1 Assessment

SUBCHAPTER 9. (RESERVED)**SUBCHAPTER 10. REGISTRATION OF SECURITIES**

- 13:47A-10.1 (Reserved)
 13:47A-10.2 Registration by coordination
 13:47A-10.3 Registration by Qualification
 13:47A-10.4 Registration by Notification

APPENDIX A. NEW JERSEY ADDENDUM TO REGISTRATION STATEMENT**APPENDIX B. NEW JERSEY REGISTRATION STATEMENT FOR REGISTRATION BY NOTIFICATION****APPENDIX C. STATEMENT OF ELIGIBILITY FOR REGISTRATION BY NOTIFICATION****SUBCHAPTER 11. FORMS**

- 13:47A-11.1 Uniform Application for Broker-Dealer Registration (Form BD)
 13:47A-11.2 Uniform Application for Investment Adviser Registration (Form ADV)
 13:47A-11.3 Uniform Application for Securities Industry Registration or Transfer (Form U4)
 13:47A-11.4 Uniform Consent to Service of Process (Form U2)
 13:47A-11.5 Uniform Surety Bond Form (Form U-SB)
 13:47A-11.6 Uniform Request for Broker-Dealer Withdrawal (Form BDW)
 13:47A-11.7 Non-FINRA Broker-Dealer Renewal Application (Form BDR)
 13:47A-11.8 (Reserved)
 13:47A-11.9 Notice of Withdrawal from Registration as Investment Adviser (Form ADV-W)
 13:47A-11.10 Broker-Dealer Supplement form
 13:47A-11.11 Availability of other forms
 13:47A-11.12 through 13:47A-11.20 (Reserved)

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
 13:47A-12.2 Employee benefit plans

- 13:47A-12.3 Accredited investors
 13:47A-12.4 Manual exemptions

SUBCHAPTER 13. GENERAL RULES OF PRACTICE

- 13:47A-13.1 Scope of Rules of Practice
 13:47A-13.2 Bureau address and business hours
 13:47A-13.3 Appearance and practice before the Bureau by non-lawyers
 13:47A-13.4 Appearance and practice before the Bureau; by lawyers
 13:47A-13.5 (Reserved)
 13:47A-13.6 Notice of appearance; designation for service; power of attorney
 13:47A-13.7 Service upon the Bureau
 13:47A-13.8 Service upon persons not represented by counsel
 13:47A-13.9 Service upon persons represented by counsel
 13:47A-13.10 Service upon registered persons
 13:47A-13.11 Answers; when required
 13:47A-13.12 Time to file answer
 13:47A-13.13 Requirements of answer; effect of failure to deny
 13:47A-13.14 Effect of failure to file answer
 13:47A-13.15 Signature on answer; requirement and effect
 13:47A-13.16 Offers of settlement
 13:47A-13.17 Agreement of parties to participation of Bureau Chief in settlement discussions

SUBCHAPTER 14. RULES OF PRACTICE RELATING TO INVESTIGATIONS

- 13:47A-14.1 Scope of rules relating to investigations
 13:47A-14.2 Information obtained during the course of private investigations
 13:47A-14.3 Applicability of N.J.A.C. 13:47A-14.3 through 14.10
 13:47A-14.4 Official transcript
 13:47A-14.5 Access to transcripts
 13:47A-14.6 Access to documentary evidence
 13:47A-14.7 Witnesses; representation by counsel
 13:47A-14.8 Witnesses; representation of counsel defined
 13:47A-14.9 Sequestration of witnesses
 13:47A-14.10 Compelling incriminating testimony of witnesses
 13:47A-14.11 Service of subpoenas
 13:47A-14.12 Access to premises by Bureau; generally
 13:47A-14.13 Observation of conduct of business by Bureau
 13:47A-14.14 Access to documents by Bureau
 13:47A-14.15 Access to persons by Bureau
 13:47A-14.16 Failure to cooperate

SUBCHAPTER 1. BROKER-DEALERS**13:47A-1.1 Application for registration for FINRA members**

(a) Any person who is a member of the Financial Industry Regulatory Authority (FINRA), desiring to transact business in the State of New Jersey as a broker-dealer shall file an application with the Bureau of Securities (the Bureau) by filing the application with the 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 \$300.00 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

in New Jersey via the CRD/IARD shall result in the registration of the broker-dealer, investment adviser, agent, issuer-agent, and/or investment adviser representative being terminated as of its date of expiration.

(c) 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.

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), deleted "of Securities during the month of October" following the first occurrence of "Bureau" and "of Securities" following the second occurrence of "Bureau", inserted ", issuer agents" and substituted "non-FINRA" for "non-NASD", "shall" for "must" and "by the last business day" for "of Securities between October 1 and November 30".

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 "issuer-agents," for "issuer agents"; added new (b); and recodified former (b) as (c).

SUBCHAPTER 6. DISHONEST OR UNETHICAL BUSINESS PRACTICES

13:47A-6.1 Authority, purpose and scope

(a) The rules in this subchapter are being adopted pursuant to the authority granted by N.J.S.A. 49:3-47 et seq. and specifically N.J.S.A. 49:3-53(a)(3) and 49:3-58(a)(2)(vii).

(b) Nothing in this subchapter shall be construed to define any fraudulent activity as a dishonest and unethical practice to the exclusion of fraud. Specific fraudulent activity may still be charged as fraud under N.J.S.A. 49:3-52, 49:3-52.1 or 49:3-53.

(c) The rules in this subchapter identify certain acts and practices that the Bureau deems dishonest or unethical conduct under N.J.S.A. 49:3-47 et seq., specifically under N.J.S.A. 49:3-53(a)(3) and 49:3-58(a)(2)(vii). The list contained in this subchapter shall not be considered to include all acts and practices that are dishonest and unethical conduct, but rather is intended to act as a guide as to the types of conduct that may form a basis for the initiation of administrative proceedings by the Bureau.

(d) The rules in this subchapter are patterned after well-established standards in the industry which have been adopted by the SEC, FINRA, NASAA, the national securities

exchanges and various courts, and represent one of the purposes of the securities laws: to create viable securities markets in which those persons involved are held to a high standard of fairness with respect to their dealings with the public.

(e) The rules in this subchapter apply to Federal covered advisers to the extent that the conduct alleged is fraudulent or deceptive, or to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

(f) The Federal statutory and regulatory provisions referenced in N.J.A.C. 13:47A-6.3(a) shall apply to investment advisers and Federal covered advisers, regardless of whether the Federal provision limits its application to advisers subject to Federal registration.

13:47A-6.2 Definitions

(a) For purposes of this subchapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

"Adviser" includes investment adviser as defined in N.J.S.A. 49:3-49(g) and investment adviser representative as defined in N.J.S.A. 49:3-49(s).

"Market maker" means a broker-dealer who, with respect to a particular security:

1. Regularly publishes bona fide, competitive bid and ask quotations in a recognized inter-dealer quotation system; or regularly furnishes bona fide competitive bid and offer quotations to other broker-dealers upon request; and
2. Is ready, willing and able to effect transactions in reasonable quantities at his quoted price with other broker-dealers on a regular basis.

"NASAA" means the North American Securities Administrators Association, Inc.

"NASDAQ" means the National Association of Securities Dealers Automated Quotation System.

"OTC" means over-the-counter.

"Person" means person as defined in N.J.S.A. 49:3-49(i).

"SEC" means the United States Securities and Exchange Commission.

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

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

Added definition "Adviser".

13:47A-6.3 Examples of dishonest or unethical practices for broker-dealers, agents, issuer-agents, and advisers

(a) "Dishonest or unethical practices" as used in N.J.S.A. 49:3-47 et seq., specifically in N.J.S.A. 49:3-53(a)(3) and 49:3-58(a)(2)(vii), shall include the following:

1. Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers or in the payment, upon request, of free credit balances reflecting completed transactions of any of its customers, or both;

2. Inducing trading in a customer's account that is excessive in size or frequency in view of the financial resources and character of the account;

3. Recommending to a customer an investment strategy, or the purchase, sale, or exchange of any security or securities without reasonable grounds to believe that such strategy, transaction, or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation, and needs, and any other relevant information known by the broker-dealer;

4. Placing an order or executing a transaction on behalf of a customer without prior authorization to do so;

5. Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders, or both;

6. Executing any transaction in a margin account without securing consent to trade on margin from the customer before the initial transaction in the account;

7. Failing to segregate a customer's free securities or securities held in safekeeping;

8. Hypothecating a customer's securities without having a first lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by the rules and regulations of the SEC;

9. Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

10. Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;

11. Charging fees for services without prior notification to a customer as to the nature and amount of the fees;

12. Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

13. Offering to buy from or sell to any person any security at a stated price unless the broker-dealer is pre-

pared to purchase or sell, as the case may be, at the price and under the conditions as are stated at the time of the offer to buy or sell;

14. Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer; by any person for whom the broker-dealer is acting or with whom the broker-dealer is associated in the distribution; or by any person controlled by, controlling or under common control with the broker-dealer;

15. Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include, but not be limited to:

i. Effecting any transaction in a security that involves no change in the beneficial ownership thereof;

ii. Entering an order or orders for the purchase or sale of a security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of the security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this subparagraph shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers; or

iii. Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in a security or raising or depressing the price of a security for the purpose of inducing the purchase or sale of the security by others;

16. Guaranteeing a customer against loss in any securities account of the customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for the customer;

17. Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which:

i. Purports to report any transaction as a purchase or sale of any security unless the broker-dealer believes that the transaction was a bona fide purchase or sale of the security; or

ii. Purports to quote the bid price or asked price for any security, unless the broker-dealer believes that the quotation represents a bona fide bid for, or offer of, the security;

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).

Conduct on the part of an agent of a securities firm in borrowing money from customers and in failing to disclose the existence of liens in favor of a state taxing authority and the IRS constituted dishonest and unethical business practices within the meaning of governing regulations and afforded sufficient grounds for the revocation of the agent's license. In re Deans, CRD # 2200059, 2013 N.J. Sec. LEXIS 24, Order Revoking Registration (June 18, 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 "Advisor" 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.

New Rule, R.2008 d.301, effective October 6, 2008.
See: 40 N.J.R. 2061(a), 40 N.J.R. 5820(a).
Section was "Reserved".

13:47A-11.11 Availability of other forms

Other forms required for application and filing with the Bureau may be found on the Bureau's website at <http://www.njsecurities.gov/bosform.htm>.

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)".
New Rule, R.2008 d.301, effective October 6, 2008.
See: 40 N.J.R. 2061(a), 40 N.J.R. 5820(a).
Section was "Reserved".

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 the Bureau under N.J.S.A. 49:3-50(b)(12) or 49:3-60(f), 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) or 49:3-60(f) exemption.

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

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 "the Bureau" for "Bureau of Securities" and "(f)" for "(b)"; in (b), inserted "or 49:3-60(f)"; and in (c), substituted "purchasers" for "offerees" twice.

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 (26 U.S.C. §401), subject to the provisions of Part 4 of Subtitle B of Title I of ERISA (29 U.S.C. §§1001 et seq.), 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 (17 CFR 230.701), 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.

(e) The employee benefit plan exemption includes employees, directors, and consultants who provide services to the issuer, so long as the plan qualifies under Rule 701 of the Securities Act of 1933 or is otherwise in compliance with N.J.S.A. 49:3-50(a)(11) and this section.

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).

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), inserted “(26 U.S.C. §401)” and “(29 U.S.C. §§1001 et seq.)”; and in (b), inserted “(17 CFR 230.701)”.

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

Added (e).

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, thereunder (15 U.S.C. §77b(15) and 17 CFR 230.215 and 230.501), promulgated by the Securities and Exchange Commission, or as thereafter amended or superseded, shall be deemed an “accredited investor” within the meaning of N.J.S.A. 49:3-49(p).

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

Inserted “, thereunder (15 U.S.C. §77b(15) and 17 CFR 230.215 and 230.501)” and deleted “effective as of (the effective date of this rule)” following “Commission.”

13:47A-12.4 Manual exemptions

The manuals issued by Mergent’s and by Standard and Poor’s are recognized for the “manual” exemption under N.J.S.A. 49:3-50(b)(2)(i)(B). This exemption encompasses both the printed manuals and the electronic data services of Mergent’s and Standard and Poor’s.

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

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 (1997), 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 advisers, 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.

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)” and “advisers” for “advisors”.

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