

New Jersey Register  
VOLUME 34, NUMBER 1  
**MONDAY, JANUARY 7, 2002**

RULE ADOPTION  
LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS

**BUREAU OF SECURITIES**  
BUREAU OF SECURITIES RULES  
INVESTMENT ADVISERS; INVESTMENT ADVISER REPRESENTATIVES

Adopted Amendments: N.J.A.C. 13:47A-2.1, 4.2, 4.3, 5.1, 5.2 and 5.3

Adopted New Rules: N.J.A.C. 13:47A-2.11, 3A.1, 3A.2, 4.4, 7.9 and 7.10

Proposed: December 4, 2000 at 32 N.J.R. 4232(a).

Adopted: November 28, 2001 by Franklin L. Widmann, Chief, Bureau of Securities.

Filed: December 4, 2001 as R.2002 d.3, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30- 6.3).

Authority: N.J.S.A. 49:3-67(a).

Effective Date: January 7, 2002.

Operative Date: July 1, 2002.

Expiration Date: September 26, 2002.

The Bureau of Securities ("Bureau") afforded all interested parties an opportunity to comment on the proposed new rules, N.J.A.C. 13:47A-2.11, 3A.1, 3A.2 and 7.9, and the proposed amendments to N.J.A.C. 13:47A- 2.1, 4.2, 4.3, 5.1, 5.2 and 5.3. The official comment period ended January 3, 2001. Announcement of the opportunity to respond to the Bureau appeared in the New Jersey Register on December 4, 2000 at 32 N.J.R. 4232(a). Announcements were also sent to the American Bar Association, The Record, American Stock Exchange, Asbury Park Press, Brinton Eaton Associates, Inc., Barron's, Certified Financial Planners Board of Standards, Commerce Clearing House, Inc., Commodity Futures Trading Commission, Financial Planning Association, National Association of Securities Dealers Regulation, Inc., Investment Company Institute, National Association of Investors Corporation, National Society of Compliance Professionals, New Jersey Occupational Informational Coordinating Committee, New York Times, New Jersey State Bar Association, Pacific Stock Exchange, New Jersey Law Journal, New Jersey Society of Certified Public Accountants, New York Law Journal, North American Securities Administrators Association, U.S. Securities and Exchange Commission, Securities Industry Association, Star-Ledger, Trentonian, Wall Street Letter, Philadelphia Stock Exchange, Securities Week, Bureau of National Affairs, Securities Regulation and Law Report, Trenton Times, Wall Street Journal, West Publishing Company, Associated Press, Reuters America, Inc., The Hastings Group, Mead Data Central, Standard & Poor's Corporation, Calhoun Consulting Group, Inc., Moody's Investors Service, Consumer Federation of America, Wiss & Company, AARP, Atlantic City Press, Courier-Post, securities firms, securities lawyers and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Bureau of Securities, PO Box 47029, Newark, New Jersey 07101.

**Summary of Agency-Initiated Changes:**

The Bureau has amended N.J.A.C. 13:47A-2.1(b)7 to make a technical change substituting the phrase "principal place of business" for "headquarters," because principal place of business is a defined term under the related Federal securities law provision.

The Bureau has amended proposed N.J.A.C. 13:47A-3A.1(a)2, now (a)1, to delete the requirement that applicants submit fingerprint cards directly to the Bureau, if the fingerprints have been supplied to the NASDR as part of the applicant's filing with the CRD/IARD.

The Bureau has amended N.J.A.C. 13:47A-3A.2(b) to conform the Form U-5 filing requirement with the Bureau to the requirement provided by the NASD rule on the same subject. That would change the filing requirement from five to 30 days.

The Bureau has amended N.J.A.C. 13:47A-4.3 to clarify that this section applies to waivers of examinations for agent applicants, and, therefore, does not apply to other waivers. Any waivers for investment adviser representatives would require a substantive change to the rules and cannot be adopted at this time.

The Bureau has amended N.J.A.C. 13:47A-5.2(f) to clarify that it only applies to direct agent registration.

The Bureau has amended N.J.A.C. 13:47A-5.2 to add subsection (g) to allow for electronic renewals via the CRD/IARD for investment adviser representatives.

The Bureau has amended proposed N.J.A.C. 13:47A-7.9(b)2, now (a)4, to require payment of the fees upon filing rather than upon the effective date of the rule.

The Bureau has added N.J.A.C. 13:47A-7.10 to specify the operative dates of certain of these rules.

### **Federal Standards Statement**

To the extent that the adopted amendments and new rules conform the New Jersey rules with the Federal law concerning the same subject matter, no Federal standards analysis is necessary. In particular, adopted N.J.A.C. 13:47A-2.11 concerning notice filing of Federally registered investment advisers and adopted N.J.A.C. 13:47A-7.11 concerning notice filings for Federal covered securities, are necessary to conform State law to the changes in Federal law brought about by enactment of the National Securities Markets Improvement Act of 1996.

No Federal standards analysis is necessary for the remaining adopted rules as they are not subject to any Federal standards. Specifically, investment adviser representatives are not regulated by the Securities and Exchange Commission, although investment adviser firms are regulated Federally. Nor is regulation of investment adviser representatives by the states preempted by Federal law.

### **Full text of the adoption follows:**

<< NJ ADC 13:47A-2.1 >>

#### **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, <<-including Schedule I, if the person has been registered with the Securities and Exchange Commission since July 8, 1997,->> 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->> <<+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 <<- headquartered->> <<+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 <<-is headquartered->> <<+has its principal place of business+>> with respect to that state's books and records, net capital and bonding requirements, if any.

<< NJ ADC 13:47A-2.11 >>

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

(a) <<-All persons->> <<+Any person+>> doing business in New Jersey who <<-are->> <<+is+>> registered or required to be registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940, as amended, <<-but who are not within the definition of "investment adviser" set forth in N.J.S.A. 49:3-49(g),->> 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. Initially, a current Form ADV, as filed with the Securities and Exchange Commission;->>

<<-2. Annually, on a calendar year basis,->> <<+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. <<-Promptly->> <<+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. Within 90 days of the end of the fiscal year, Schedule I to the Form ADV, as filed with the Securities and Exchange Commission.->>

<<+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.+>>

### **SUBCHAPTER 3A. INVESTMENT ADVISER REPRESENTATIVES**

#### **<< NJ ADC 13:47A-3A.1 >>**

#### **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.+>> <<-Such->> <<+An+>> application shall be accompanied by:

<<-1. A consent to service of process executed by the applicant (if not contained in the application form);->>

<<-2.->><<+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

<<-3.->><<+2.+>> <<-A check or money order->> <<+A fee of \$50.00 shall be assessed for each initial application. The fee may be 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<<-, in the amount of \$50.00->> <<+if the application was filed directly with the Bureau+>>.

<<+(b) Registration shall be effective from the date of effectiveness until the following December 31.+>>

#### **<< NJ ADC 13:47A-3A.2 >>**

#### **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 <<-five->> <<+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.+>>

**<< NJ ADC 13:47A-4.2 >>**

**13:47A-4.2 Examinations for agents <<-and investment adviser representatives->>**

No person shall be registered as an agent <<-or an investment adviser representative->> 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. <<-Persons applying for registration as an agent shall pass the Series 7 and Series 63 examinations, and persons applying for registration as investment adviser representatives shall pass the Series 65 or the Series 7 and Series 66 examinations. Other examinations may be considered as equivalent to these examinations for the purpose of a waiver request under N.J.A.C. 13:47A-4.3. Registered agents are excluded from the definition of investment adviser representative pursuant to N.J.S.A. 49:3-49(s)(5) and can give investment advice as part of their agent activities without registering separately as investment adviser representatives.->>

**<< NJ ADC 13:47A-4.3 >>**

**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 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.

**<< NJ ADC 13:47A-4.4 >>**

**<<+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 to the Bureau Chief with proof of having obtained a passing score on one of the following examinations:+>>

<<+1. The Uniform Investment Adviser Law Examination (Series 65 examination); or+>>

<<+2. The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).+>>

<<+(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.+>>

<< NJ ADC 13:47A-5.1 >>

### **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.

<< NJ ADC 13:47A-5.2 >>

### **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 <<-New Jersey->> registered investment adviser <<+registered or notice filed in New Jersey via the CRD/IARD+>> may apply to renew its registration by filing <<-Form IAR-(year), as set forth in N.J.A.C. 13:47A-11.8, issued to the registrant by the Bureau of Securities->> <<+the renewal forms prescribed by the CRD/IARD by December 31 of each year,+>> accompanied by <<-a check or money order for->> <<+payment of a+>> \$100.00 <<-made payable to the State of New Jersey, Bureau of Securities->> <<+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.+>>

<<-(d)->><<+(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.

<<-(e)->><<+(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.+>>

<<-(f)->><<+(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.+>>

<<-(g)->><<+(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.

<< NJ ADC 13:47A-5.3 >>

### **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.

<< NJ ADC 13:47A-7.9 >>

### **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. <<-A->> <<+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 <<-companies or \$200.00 for unit investment trusts->> <<+company+>> for the period from the date of receipt until the following June 30. Payment of fees shall be due and payable <<-on (upon the effective date of this rule)->> <<+upon filing+>>.

<<-(c) ->>The notice filing <<-under (a) and (b)->> <<+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.

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

<<-(e) ->>Notice filings pursuant to this section shall be renewed annually not later than June 30 by filing the Form NF for investment companies <<-for unit investment trusts or->> <<+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.+>>

<< **NJ ADC 13:47A-7.10** >>

<<+**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.+>>

33 N.J.R. 300(b)