

Rule Adoptions  
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Law and Public Safety  
Division of Consumer Affairs  
BUREAU OF SECURITIES

Readoption with Amendments: N.J.A.C. 13:47A  
Adopted New Rules: N.J.A.C. 13:47A-6 and 12.4  
Adopted Repeal: N.J.A.C. 13:47A-7.10

### **Bureau of Securities Rules**

Proposed: April 21, 2008 at *40 N.J.R. 2061(a)*.  
Adopted: August 1, 2008 by Vincent J. Oliva, Chief, Bureau of Securities.  
Filed: September 12, 2008 as R.2008 d.301, **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. 49:3-47* et seq., specifically *N.J.S.A. 49:3-67(a)*.  
Effective Dates: September 12, 2008, Readoption;  
October 6, 2008, Amendments, New Rules and Repeals.  
Expiration Date: September 12, 2013.

### **Federal Standards Statement**

A Federal standards analysis is not required because the readopted rules and adopted amendments and new rules do not exceed Federal standards. The rules are consistent with the applicable Federal standards in the National Securities Markets Improvement Act of 1996 (NSMIA) (P.L. 104-290) (1996), the Securities Act of 1933, (*15 U.S.C. §§77a* et seq.), the Securities Exchange Act of 1934, (*15 U.S.C. §§78a* et seq.), the Investment Advisers Act of 1940, (*15 U.S.C. §§80b-1* et seq.), the Investment Company Act of 1940, (*15 U.S.C. §§80a-1* et seq.) and in the applicable regulations, the Securities Act of 1933 Rules, (17 CFR 230 et seq.), the Securities Exchange Act of 1934 Rules, (17 CFR 240 et seq.), the Investment Advisers Act of 1940 Rules, (17 CFR 270 et seq.), and the Investment Company Act of 1940 Rules, (17 CFR 275 et seq.).

**Full text** of the readopted rules can be found in the New Jersey Administrative Code at *N.J.A.C. 13:47A*.

**Full text** of the adopted amendments and new rules follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

### **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 for immediate revocation of the registration. The applicant shall supplement the application filed with the CRD by directly filing with the Bureau the Broker-Dealer Supplement and any additional information that the Chief of the Bureau of Securities of the State of New Jersey (the Bureau Chief) requires. The 30-day time period for review of an application will not commence until the applicant files all documents or material facts specified and required. The following additional information shall be filed with

the Bureau for all broker-dealer applications and no application shall be deemed complete until all of the following are properly submitted, unless the requirements are waived by the Bureau Chief:

1. (No change.)

2. A consent to service of process executed by each officer, director, general partner or limited partner of the applicant who is to act as an agent in the State of New Jersey , as set forth in *N.J.A.C. 13:47A-7.1*. A fully completed and executed Form U-2, Uniform Consent to Service of Process, for each person, or a fully completed and executed page 1 of Form U4, Uniform Application for Securities Industry Registration or Transfer, or a successor form, shall satisfy this requirement;

3.-4. (No change.)

(b) The applicant shall submit to the Bureau as part of the application an identification photograph of each partner, officer or director, unless the applicant is a member of FINRA or is a member of and has current photographs on file with the New York Stock Exchange, American Stock Exchange, or another *\*[major stock]\* **\*national securities\**** exchange **\*registered pursuant to Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. §78f)\***, and has granted written permission to the Bureau Chief, or his or her duly designated representative, to examine without notice any filings made by the applicant with such exchange or association.

(c) If the applicant is a natural person and is not *\*[a member of FINRA, the New York Stock Exchange or the American Stock Exchange,]\* **\*applying for registration through the CRD ,\**** he or she shall submit to the Bureau as part of the application, *\*[one applicant (noncriminal) fingerprint card with impressions taken by a recognized law enforcement agency]\* **\*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)\****.

(d) If the applicant is a corporation or partnership and is not *\*[a member of FINRA, the New York Stock Exchange or the American Stock Exchange,]\* **\*applying for registration through the CRD ,\**** it shall submit to the Bureau as part of the application, *\*[one applicant (noncriminal) fingerprint card for]\* **\*the fingerprints of\**** each officer, director, controlling person\*, **(as defined on the Form BD),\*** or partner\*, *\*[with all of the impressions taken by a recognized law enforcement agency]\* **\*and written consent from each for a criminal history record background check to be performed pursuant to N.J.S.A. 49:3-56(p)\****.

(e) (No change.)

#### 13:47A-1.2 Application for registration for persons not eligible for registration via the CRD

Any person desiring to transact business in the State of New Jersey who is not a member of FINRA or who is not otherwise eligible to register via the CRD pursuant to *N.J.A.C. 13:47A-1.1*, shall file all of the information required by *N.J.A.C. 13:47A-1.1* and in the same form required by that section directly with the Bureau at its current office address. The application shall be accompanied by a check or money order payable to the State of New Jersey , Bureau of Securities, in the amount of \$ 300.00.

#### 13:47A-1.3 Financial reports to supplement application

(a) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934 (*15 U.S.C. § 78o*), an application for registration as a broker-dealer must be supplemented by a concurrent filing directly with the Bureau of a certified statement of the applicant's financial condition as of a date within 60 days of the application; provided, however, if the applicant has been engaged in business for one year or more preceding the date of the application, a certified financial statement as of the end of its last fiscal period, along with an unaudited balance sheet as of a date within 60 days of the application may be submitted directly to the Bureau concurrently with the filing of the application for registration. The concurrent filing will be considered to be a necessary part of the registration application, whether the application is filed via the CRD for FINRA members, or directly with the Bureau for non-FINRA members.

(b) The balance sheet must be signed by a principal or officer of the applicant listed on Schedule A of the Form BD

and must be notarized.

#### 13:47A-1.5 Preparation and contents of financial statements

(a) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934 (*15 U.S.C. § 78o*), financial statements and reports required of registered broker-dealers under *N.J.S.A. 49:3-47 et seq.*, including the financial statement filed with the application for initial registration, shall consist of a balance sheet supported by an analysis of the trading and investment inventories and shall be prepared by a certified public accountant or a public accountant who shall be in fact independent.

(b) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934 (*15 U.S.C. § 78o*), complete copies of the Financial and Operational Combined Uniform Single (FOCUS) Report, Form X-17A-5, as filed with the Securities and Exchange Commission, or copies of the New York Stock Exchange Financial Questionnaire (Form FQ) may be filed to comply with the requirements of this section.

(c) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934 (*15 U.S.C. § 78o*), the analysis of the trading and investment inventories required by (a) above shall have attached thereto, and made a part thereof, a statement under oath by the broker-dealer which shall set forth those securities within said trading and investment inventories which have not been registered under the Securities Act of 1933 (*15 U.S.C. §§77a et seq.*, the "1933 Act"), or which are not subject to, or are exempted from the registration requirements of the 1933 Act and the rules and regulations promulgated thereunder other than by reason of section 3(a) of the 1933 Act and the rules and regulations promulgated under section 3(a) of the 1933 Act.

#### 13:47A-1.6 Minimum net capital

(a) No registration as a broker-dealer shall be issued unless the applicant has a minimum net capital or has posted with the Bureau a surety bond in the amount of the minimum net capital. The minimum net capital shall be as required by Section 15 of the Securities Exchange Act of 1934 (*15 U.S.C. § 78o*) and rules promulgated thereunder.

(b)-(c) (No change.)

#### 13:47A-1.7 Bonds

(a) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934 (*15 U.S.C. § 78o*) and rules promulgated thereunder, the bonds required to be filed under *N.J.A.C. 13:47A-1.6* (Minimum net capital) shall provide for suit thereon by third parties for any cause of action under *N.J.S.A. 49:3-71*, for loss and damages, and shall be on the Uniform Security Bond, Form U-SB, as set forth in *N.J.A.C. 13:47A-11.5*. The bond shall be for a term of two years, but the right to bring an action under the bond for losses sustained while it was in force shall continue for two years from the date of the sale upon which the action is based.

(b) (No change.)

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

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

1.-4. (No change.)

5. A partner, officer or director of the registered broker-dealer resigns, retires or otherwise terminates his or her affiliation with the broker-dealer;

6. The registered broker-dealer terminates the employment of an agent. This amendment shall be filed within 30 days of the termination; or

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

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

(c) Any amendment shall be filed no later than 30 days after the occurrence named therein. The amendment filed with the CRD shall be accompanied by the fee, if any, prescribed by the CRD for amendments. There shall be no fee for those amendments required to be filed directly with the Bureau.

(d) For a registered broker-dealer that has had any changes occur regarding the answers in its original or amended Form BD application as to arrests, convictions of any crime, disciplinary actions by any administrative body, restraints, injunctions, suspension, revocations, denials, judgments, as to the registrant or any partner, officer or director shall file an amendment with the CRD ; or if not a member of FINRA, shall file the amendment directly with the Bureau fully disclosing the details of the changes within 30 days of the occurrence named in the amendment. Such amendment shall be accompanied by the fee, if any, prescribed by the CRD or the Bureau for amendments. In the event that the CRD amendment form does not allow for full detailed disclosure of the details of the changes, as required by the Uniform Securities Law (1997), *N.J.S.A. 49:3-47 et seq.*, and these rules, the registrant shall make full detailed disclosure of the changes by a supplemental filing directly to the Bureau at its current office address.

(e) A registered broker-dealer, if a corporation or partnership, shall file with the Bureau or the CRD , whichever is applicable, \*[one applicant (noncriminal) fingerprint card with all of the impressions taken by a recognized law enforcement agency, for]\* **\*the fingerprints of\*** each officer, director, controlling person\*, **(as defined on the Form BD)\***, or partner who commences any employment or affiliation with said registered broker-dealer no later than five days after the commencement of such employment or affiliation\*, **and written consent from each for a criminal history record background check to be performed pursuant to *N.J.S.A. 49:3-56(p)*\***. Those persons exempt from filing a fingerprint card with the Securities and Exchange Commission pursuant to Rule 17f-2 promulgated under the Securities Exchange Act of 1934 ( *17 CFR 240.17f-2* ) or its successor rule shall be exempt from filing fingerprint\*s\* \*[cards]\* with the Bureau pursuant to this subsection.

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

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

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

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

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

## SUBCHAPTER 2. INVESTMENT ADVISERS

### 13:47A-2.1 Application for investment adviser registration

(a) Any person desiring to act as an investment adviser, 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 on the Form ADV, Uniform Application for Investment Adviser Registration, together with all relevant schedules, unless that person is registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940 (*15 U.S.C. §80b-3*), as amended, or is not so registered because that person is excepted from the definition of investment adviser under Section 202(a)(11) (*15 U.S.C. §80b-2(a)(11)*). The Form ADV may be filed with the Bureau by filing it with the 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 IARD. If the Form ADV is filed with the Bureau by electronically filing it with the IARD, the signature requirements required by the Bureau shall conform to the electronic signature requirements in place for filing with the IARD.

(b) Such Form ADV shall be accompanied by:

1.-4. (No change.)

5. The Notice of Withdrawal from Registration as an Investment Adviser, 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]\* \*The requisite registration fee in the amount of \$ 200.00 shall be submitted with the application filed with the IARD for electronic filers or to the Bureau in a\* check or money order payable to the State of New Jersey, Bureau of Securities, \*[in the amount of \$ 200.00]\*\*for paper filers\***; and

7. (No change.)

### 13:47A-2.2 Capital requirements

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

### 13:47A-2.3 Bonds

(a) Subject to the limitations of Section 222 of the Investment Advisers Act of 1940 (*15 U.S.C. § 80b-18a*), the bond required to be filed under *N.J.A.C. 13:47A-2.2* (Capital requirements) shall provide for suit thereon by third parties for damage sustained as a result of misuse or misapplication of clients' funds or securities and shall be in the Uniform Surety Bond, Form U-SB, as set forth in *N.J.A.C. 13:47A-11.5*. The bond shall be for a term of two years, but the right to file claims thereunder for losses sustained while it was in force shall continue for two years from the time the aggrieved party knew or should have known of the existence of his or her cause of action.

(b)-(c) (No change.)

### 13:47A-2.4 Cash or securities in lieu of bond

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

(b) No securities other than those listed on the New York Stock Exchange or the American Stock Exchange or designated or approved for designation upon notice of issuance as a NASDAQ Global Select Market security will be

accepted, except that mutual funds may be accepted in certain cases, in the discretion of the Bureau Chief.

#### 13:47A-2.5 Change of status; submission of form

(a) A registered investment adviser **\*who is registered with New Jersey via the IARD\*** shall file **\*an amendment with the IARD on the amendment form prescribed by the IARD, or for hardship cases, shall file directly\*** with the Bureau a revised and updated Form ADV, so as to have a complete and current Form ADV on file with the Bureau, whenever **\*[it changes]\*\*any of the following events occur\***. No filing fee is required for these amendments, unless the **\*[ CRD ]\*\*IARD\*** prescribes otherwise:

1.-3. (No change.)

(b) Such form shall be filed no later than 30 days after the occurrence named therein.

(c) A registered investment adviser shall file with the **\*IARD or directly with the\*** Bureau amended pages of the Form ADV together with an amended Schedule D to Form ADV on such person to update its Form ADV on file with the Bureau whenever there is a change to the information reported on Schedule A, B, or C to Form ADV, as applicable. The form shall be filed no later than 30 days after the occurrence named therein.

(d) A registered investment adviser shall file with the **\*IARD or directly with the\*** Bureau amended pages of the Form ADV together with an amended Schedule D or E, as applicable to update its Form ADV on file with the Bureau whenever any changes occur regarding the answers on its investment adviser application to the Disciplinary questions in Item 11 of Form ADV or its successor, within 30 days of the occurrence named therein.

(e) A registered investment adviser shall file with the **\*IARD or directly with the\*** Bureau amended pages of the Form ADV to update its Form ADV on file with the Bureau, whenever any changes occur as to the resignation, retirement or termination of the affiliation of any partner, officer or director, within 30 days of the occurrence named therein.

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

#### 13:47A-2.6 Maintenance of books and records

**\*[All]\* \*Subject to the limitations of Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. §80b-18a), all\*** investment advisers shall keep at their principal place of business, open to inspection for the Bureau of Securities of the State of New Jersey, all books and records, as set forth in Rule 204-2 ( *17 CFR 275.204-2* ) under the Investment Advisers Act of 1940, *15 U.S.C. §§80b-1 et seq.*

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

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

#### 13:47A-2.7 Withdrawal of investment adviser registration

A registered investment adviser shall file with the **\*IARD or the\*** Bureau a Form ADV-W, Notice of Withdrawal

from Registration as Investment Adviser, as set forth in *N.J.A.C. 13:47A-11.9*, when it desires to withdraw its registration as an investment adviser in the State of New Jersey. Such request for withdrawal will become effective 30 days after filing with the Bureau.

#### 13:47A-2.8 Application for successor

A registered investment adviser may file an application with the Bureau on the Uniform Application for Investment Adviser Registration, Form ADV, as set forth in *N.J.A.C. 13:47A-11.2*, for the registration of a successor. Such application shall be marked "SUCCESSOR APPLICATION" in the upper right-hand corner by the registrant **\*for paper filings only\***. There is no filing fee for the successor application.

#### 13:47A-2.9 "Investment advisory services" defined

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

#### 13:47A-2.10 Performance fee compensation

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

(b) The client entering into the contract subject to this regulation must be a natural person or a company as defined in Rule 205-3, who the registered investment adviser (and any person acting on the investment adviser's behalf) entering into the contract reasonably believes, immediately prior to entering into the contract, is a natural person or a company as defined in Rule 205-3, whose net worth at the time the contract is entered into exceed \$ 1,500,000. The net worth of a natural person shall be as defined by Rule 205-3 of the Investment Advisers Act of 1940.

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

(d) (No change.)

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

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

(a) Any person doing business in New Jersey who is registered or required to be registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940 (*15 U.S.C. § 80b-3*), as amended, or is not exempted from making a notice filing by *N.J.S.A. 49:3-56(g)*, shall file the following items with the Bureau, unless such person is not within the State definition of "investment adviser" set forth in *N.J.S.A. 49:3-49(g)*:

1. In connection with an initial notice filing with the Bureau by the applicant, the applicant shall make a written notice filing in the form of the current Form ADV, as filed with the Securities and Exchange Commission, and file with the Bureau a check made payable to the State of New Jersey, Bureau of Securities in the amount of \$ 200.00;

2.-3. (No change.)

4. All filings required by this section shall be filed with the Bureau electronically through the 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 3. AGENTS

### 13:47A-3.1 Agents of broker-dealers

(a) Any person desiring to act in the State of New Jersey as an agent of a non-FINRA member broker-dealer registered in New Jersey directly with the Bureau or as an agent of an issuer shall file a complete and accurate application 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*. Such application shall be accompanied by:

1. A consent to service of process executed by the applicant. A fully executed page one of Form U4, Uniform Application for Securities Industry Registration or Transfer, will satisfy this requirement;

\*[2. One applicant noncriminal fingerprint card with impressions taken by a recognized law enforcement agency; and]\*

**\*2. 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)*; and\***

3. A check or money order made payable to the State of New Jersey , Bureau of Securities, in the amount of \*[\$ 70.00]\* **\*\$ 60.00\***. Issuers of securities under *N.J.S.A. 49:3-50(b)* need not register as agents or qualify as issuers. However, a pattern of *N.J.S.A. 49:3-50(b)(12)* offerings by the same person or group of persons may raise a presumption that the person or persons are acting as an unregistered broker-dealer requiring broker-dealer registration of the issuer and its agents.

(b) Any person desiring to act in the State of New Jersey as an agent of a broker-dealer registered in New Jersey via the CRD shall file an application for registration as an agent with the CRD on the Form U4, Uniform Application for Securities Industry Registration or Transfer, or its successor agent application form prescribed by the CRD . The agent application shall be accompanied by a consent to service of process executed by the applicant; fingerprint cards as required by the CRD ; and payment in the form prescribed by the CRD of \*[\$ 70.00]\* **\*\$ 60.00\*** for each year of the registration period. 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 fees as provided above within the billing time limits established by the Bureau or by the CRD .

1. 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:

- i. An agent narrative which includes the facts and circumstances surrounding any item reported to the Bureau;
- ii. Copies of the agent's complaint file containing documentation of verbal customer complaints, the written customer complaints, or legally prepared complaints, as it exists from either the current or previous employers;
- iii. Copies of arbitration documents, including but not limited to, the statement of claim, answer, award, exhibits, and settlement documents;
- iv. Copies of arrest reports, indictments, police reports, judgments, sentence documents, and criminal charge documents;
- v. Any and all documents pertaining to civil or regulatory actions, including but not limited to, pleadings, complaints, orders, Acceptance Waivers and Consents ( AWC ), and judgments;

- vi. Copies of State registration agreements;
- vii. An employer letter confirming agent's physical location of office of employment;
- viii. An employer letter granting permission for outside business;
- ix. Fingerprint card processing pursuant to *N.J.S.A. 49:3-56(p)*;
- x. Written justification of qualifications for examination waiver processing;
- xi. The applicant's clearing firm trading records; or
- xii. A fully executed Supervisory Agreement.

2. Upon request, the applicant may be required to participate in an in-person interview conducted by the Bureau in order to complete the application process. The applicant shall supplement the application filed with the CRD by filing any additional information requested directly with the Bureau. The 30-day time period for review of an application will not commence until the application is complete.

(c) At any time during the pendency of the application, the applicant may be subject to action by the Bureau Chief pursuant to *N.J.S.A. 49:3-58*. Nevertheless, the Bureau may notify the applicant of the incomplete status of the application 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) (No change in text.)

#### 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 the agent changes his or her name or home address, and whenever a change in the answers on his or her original application for registration occurs, as to arrests, convictions of any crime, disciplinary actions by any administrative body, restraints, injunctions, suspensions, revocations, denials, or judgments, or to any other information contained in answers to Item 14 and the Disclosure Reporting Page of the Form U4. The amendment(s) must be filed within 30 days of the occurrence identified therein. Whenever an agent commences employment with a broker-dealer or issuer, the agent must file the amendment within five days of the commencement of employment. For agents of non-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.

### SUBCHAPTER 3A. INVESTMENT ADVISER REPRESENTATIVES

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

(a) Subject to the provisions of Section 203A of the Investment Advisers Act of 1940 (*15 U.S.C. § 80b-3a*), any

person, who has a place of business located in this State, who desires to act in the State of New Jersey as an investment adviser representative of an investment adviser registered in New Jersey with the Bureau 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*. 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. \*[One applicant non-criminal fingerprint card with impressions taken by a recognized law enforcement agency.]\*  
**\*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 registered through the CRD need not supply fingerprint\*s\*  
\*[cards]\* directly to the Bureau if they have been supplied to FINRA as part of the applicant's 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 customer complaints, the written customer complaints, or legally prepared complaints, as it exists from either the current or previous employers;
3. Copies of arbitration documents, including but not limited to, the statement of claim, answer, award, exhibits, and settlement documents;
4. Copies of arrest reports, indictments, police reports, judgments, sentence documents, and criminal charge documents;
5. Any and all documents pertaining to civil or regulatory actions, including but not limited to, pleadings, complaints, orders, Acceptance Waivers and Consents ( AWC ), and judgments;
6. Copies of State registration agreements;
7. An employer letter confirming investment adviser representative's physical location of office of employment;
8. An employer letter granting permission for outside business;
9. Fingerprint card processing pursuant to *N.J.S.A. 49:3-56(p)*;
10. Written justification of qualifications for examination waiver processing;
11. An applicant's clearing firm trading records; or
12. A fully executed Supervisory Agreement.

(c) Upon request, the applicant may be required to participate in an in-person interview conducted by the Bureau in order to complete the application process. The applicant shall supplement the application filed with the CRD by filing any additional information requested directly with the Bureau. The 30-day time period for review of an application will not commence until the application is complete.

(d) At any time during the pendency of the application, the applicant may be subject to action by the Bureau Chief pursuant to *N.J.S.A. 49:3-58*. Nevertheless, the Bureau may notify the applicant of the incomplete status of the application 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.

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

(f) (No change in text.)

#### 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 U4 within 30 days, whenever there is any change to the information previously reported on the Form U4.

(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 U5, Uniform Termination Notice for Securities Industries Registration, within 30 days of the termination.

(c) A Form U4 or Form U5, or amendments thereto, may be filed with the Bureau by electronically filing them with the CRD, as applicable.

### SUBCHAPTER 4. EXAMINATIONS

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

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

#### 13:47A-4.2 Examinations for agents

No person shall be registered as an agent unless he or she has either successfully passed a securities examination or securities examinations approved by the Bureau Chief 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. Individuals acting in the capacity of an agent are required to take and pass the examinations required by FINRA for the type of activity the individual intends to perform prior to performing the corresponding activities. Individuals acting in a supervisory capacity are required to take and pass the appropriate supervisory examinations required by FINRA prior

to performing the corresponding activities.

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

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

1.-2. (No change.)

3. The Certified Financial Planner (CFP) certification awarded by the Certified Financial Planner Board of Standards, Inc.;

4.-7. (No change.)

(b) Persons applying for registration as an agent who wish to act as an investment adviser representative, shall pass the Series 7 and the revised Series 66 examinations effective January 1, 2000 , or their successor examinations, and persons applying for registration as investment adviser representatives, without otherwise registering as an agent, shall pass the revised Series 65 examination effective January 1, 2000 , or its successor examinations. Registered agents who have passed the revised 2000 Series 66 examination can give investment advice as part of their agent activities without registering separately as investment adviser representatives.

(c) (No change.)

#### SUBCHAPTER 5. RENEWAL

#### 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 \$ 300.00 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 may apply to renew its registration by filing Form BDR issued to the registrant by the Bureau accompanied by a check or money order for \$ 300.00 made payable to the State of New Jersey, Bureau of Securities.

(c) A registered investment adviser registered or notice filed in New Jersey via the IARD may apply to renew its registration by filing the renewal forms prescribed by the IARD by December 31 of each year, accompanied by payment of a \$ 200.00 renewal fee.

(d) A registered investment adviser registered in New Jersey via direct registration with the Bureau 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, along with a current copy of the Form ADV, together with a check or money order for \$ 200.00 made payable to the State of New Jersey, Bureau of Securities.

(e) An agent registered in New Jersey via the CRD may apply to renew his or her registration by filing the renewal prescribed by the CRD accompanied by a \*[\$ 70.00]\* **\*\$ 60.00\*** renewal fee.

(f) A broker-dealer registered in New Jersey via direct registration with the Bureau may apply to renew its agents who are registered in New Jersey via direct registration with the Bureau by filing with the Bureau 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 \*[\$ 70.00]\* **\*\$ 60.00\*** per agent per year.

(g) An issuer agent registered in New Jersey may apply to renew his or her registration with the Bureau by filing a

completed Form ISR issued to the registrant by the Bureau accompanied by a check or money order in the amount of \*[\$ 70.00]\*\*\$ 60.00\*, made payable to the State of New Jersey, Bureau of Securities.

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

(i) An investment adviser representative registered in New Jersey via direct registration with the Bureau 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 with any amendments to such investment adviser representatives' Forms U4 that have not been previously filed with the Bureau, along with a fee equal to \$ 50.00 for each investment adviser representative included in the filing.

(j) (No change in text.)

#### 13:47A-5.3 Filing for renewal

(a) Applications for renewal will be issued by the Bureau for direct filing investment advisers, investment adviser representatives, issuer agents and for non-FINRA member broker-dealers and their agents registered directly with the Bureau and shall be filed with the Bureau by the last business day of the current year.

(b) (No change.)

### 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:

"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.

## 13:47A-6.3 Registrants and applicants

(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)(2)* and *49:3-58(a)(2)(vii)*, shall include the following. In relation to Federal covered advisers, as used in *N.J.S.A. 49:3-47* et seq. and *49:3-58(a)(2)(vii)*, "dishonest or unethical practices" shall include any of the following, but only if such conduct involves fraud or deceit\*:

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 the purchase, sale or exchange of any security without reasonable grounds to believe that such 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 prepared 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;

18. Using any advertising or sales presentation by any person in such a fashion as to be deceptive or misleading. An

example of the prohibited practice would be distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, press release, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

19. Failing to disclose to a customer that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of the security, or failing to supplement a disclosure not made in writing by giving or sending written disclosure at or before completion of the transaction;

20. Failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter or a selling group member, or from a member participating in the distribution as an underwriter or selling group member;

21. Failing or refusing to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint;

22. Permitting a person to open an account for another person or transact business in the account unless there is on file written authorization for the action from the person in whose name the account is carried;

23. Permitting a person to open or transact business in a fictitious account;

24. Permitting an agent to open or transact business in an account other than the agent's own account, unless the agent discloses in writing to the broker-dealer or issuer with which the agent associates the reason therefore;

25. In connection with the solicitation of a sale or purchase of an OTC, non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act of 1934 (*15 U.S.C. §78m*), when requested to do so by a customer;

26. Marking any order tickets or confirmations as "unsolicited" when in fact the transaction is solicited;

27. For any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account which, with respect to all OTC non-NASDAQ equity securities in the account, contains a value for each security based on the closing market bid on a date certain; provided that this provision shall apply only if the firm has been a market maker in the security at any time during the month in which the monthly or quarterly statement is issued;

28. Failing to comply with any applicable provision of the Conduct Rules of FINRA or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization which relate to honesty and fair dealings and just and equitable principles of trade;

29. Failing to cooperate in accordance with *N.J.A.C. 13:47A-14.16*;

30. Making any misrepresentation or omission of a material fact or otherwise employing any form of concealment or deception in connection with the offer, sale, purchase or negotiation of any securities, commodity futures, banking or insurance contract, instrument or transaction;

31. Engaging in any material misrepresentation or omission or engaging in deceitful, deceptive or fraudulent conduct involving any aspect of the securities, banking, insurance, investment advisory or commodities futures industries or engaging in any conduct described above which, at the time, is prohibited by the statutes or rules governing the above industries in the jurisdiction where the conduct occurred;

32. Altering any document relevant to or on the books and records of any broker-dealer, investment adviser, bank, insurance or commodities futures business with any entry or deletion which is materially false or misleading;

33. In connection with any securities, banking, insurance, investment advisory, or commodity futures contract, instrument or transaction, signing any client's name without the prior knowledge and written consent of both the client and the applicant's or registrant's employing firm;
34. In the case of agents of broker-dealers, effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;
35. Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;
36. Engaging in acts or practices that constitute deceptive market-timing in the trading of mutual funds, including, but not limited to:
  - i. Breaking a trade into smaller trades to avoid detection; or
  - ii. Using multiple accounts, nominees, agent numbers or multiple agents or representatives to avoid detection;
37. Sharing directly or indirectly in profits or losses in the account of any customer without the prior written authorization of the customer and the broker-dealer which the agent represents;
38. Dividing or otherwise splitting commissions or otherwise paying production-based compensation from the purchase or sale of securities to any person not registered with the Bureau, except where the broker-dealer has established a retirement plan which has received prior Bureau approval;
39. For agents who are dually registered, failing to disclose the dual license to a client;
40. Altering client account records to falsely change the client's investment objectives to conform to unsuitable or unauthorized trades made by the agent in the client's account;
41. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client;
42. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of an investment adviser, or a financial institution engaged in the business of loaning funds;
43. Loaning money to a client except in the case of a broker-dealer, or where the lending party is a financial institution engaged in the business of loaning funds, or where the client is an affiliate;
44. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading;
45. Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact. This provision does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service;
46. Charging a client an unreasonable advisory fee;
47. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:
  - i. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

ii. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees;

48. Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered;

49. Publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 ( *17 CFR 275.206(4)-1* ) under the Investment Advisers Act of 1940, *15 U.S.C. §§80b-1 et seq.*;

50. Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client;

51. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the requirements of Rule 206(4)-2 ( *17 CFR 275.206(4)-2* ) under the Investment Advisers Act of 1940, *15 U.S.C. §§80b-1 et seq.*;

52. Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract;

53. Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information in violation of Section 204A of the Investment Advisers Act of 1940 (*15 U.S.C. §80b-4a*);

54. Entering into, extending, or renewing any advisory contract which would violate Section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers registered or required to be registered under this Act, notwithstanding whether such adviser would be exempt from Federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940 (*15 U.S.C. §80b-3(b)*);

55. 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*);

56. 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

57. 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.

## 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. The Bureau accepts the following forms:

i. For agent applications for registration in New Jersey , a fully executed Form U-2 Uniform Consent to Service of Process or a fully executed page 1 of Form U4, Uniform Application for Securities Industry Registration or Transfer, for direct registration or via the CRD ;

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

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

iv. For investment adviser representatives, a fully executed page 1 of Form U4, Uniform Application for Securities Industry Registration or Transfer, for direct registration or via the CRD .

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

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

#### 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.

#### 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.-4. (No change.)

#### 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\***.**

**\*[(c)]\*(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.

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

Filing an application for registration with the CRD or IARD does not in any way impair the authority of the Bureau to

require that additional information be filed with the Bureau or the CRD or IARD, nor does it in any way impair the Bureau's authority to deny, suspend, postpone or revoke any registration in accordance with the provisions of the Uniform Securities Law (1997) and the regulations promulgated under that Law. Allowing registrants to file their applications with the CRD or IARD, if they are eligible to do so, is for the convenience of the registrant and the Bureau, but is not intended to impair or substitute any other person's discretion or decision making authority for that of the Bureau in reviewing and acting upon applications.

#### 13:47A-7.7 New registrations

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

(b) Investment adviser registrants registered with the IARD in other states who wish to include a registration in New Jersey may do so by filing an amendment with the IARD to the Form ADV, Uniform Application for Investment Adviser Registration, to include New Jersey as one of the states in which it is registered. These registrants must also include in the amendment filing any other information required by *N.J.A.C. 13:47A-2.1* or *2.5*. The information required by *N.J.A.C. 13:47A-2.1* and *2.5* may be filed as a supplement to the amendment filed with the IARD or by a separate supplemental filing made directly to the Bureau at the same time the amendment is filed with the IARD.

(c) New applicants who are not registered either directly with the Bureau or via the CRD or IARD must file their application for registration with the CRD or IARD in accordance with *N.J.A.C. 13:47A-1.1* or *2.1*, if they are eligible to do so. Only those new applicants who are not eligible for filing with the CRD or IARD may file their applications directly with the Bureau in accordance with *N.J.A.C. 13:47A-1.2* or *2.1*.

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

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

#### 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 (*15 U.S.C. § 77r(b)(2)*) 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:

1.-2. (No change.)

(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:

1. (No change.)

2. A check made payable to the State of New Jersey, Bureau of Securities in the amount of \$ 500.00 for an investment company for the period from the date of receipt until the following June 30. Payment of fees shall be due and payable upon filing.

i. The notice filing for an investment company shall become effective upon receipt by the Bureau 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.

ii. Notice filings pursuant to this section shall be renewed annually not later than June 30 by filing the Form NF for investment companies or 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. (No change.)

(c) (No change.)

## SUBCHAPTER 8. PENALTY

### 13:47A-8.1 Assessment

A registrant who fails to file with the Bureau or the CRD or IARD (as limited by *N.J.A.C. 13:47A-7.8*) any information required by *N.J.A.C. 13:47A-1.9* (change of status), or any fee, annual report, financial report or statement as required by the Uniform Securities Law (1997) or the rules promulgated thereunder, within the time prescribed by the Law and the rules, may be subject to civil or administrative action, including monetary penalties or other available remedies at law.

## SUBCHAPTER 10. REGISTRATION OF SECURITIES

### APPENDIX A

#### NEW JERSEY ADDENDUM TO REGISTRATION STATEMENT

1. Has the issuer, any partner, officer or director of the issuer, any person (as that term is defined in *N.J.S.A. 49:3-49(i)*) occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, or any broker-dealer or other person involved directly or indirectly in the offering:

(a)-(c) (No change.)

(d) Been the subject of an order entered within the past five years by the securities administrator of any other state or by the Securities and Exchange Commission denying or revoking securities registration, registration as a broker-dealer, agent, or investment adviser, or the substantial equivalent of those terms as defined in the "Uniform Securities Law (1997)," P.L. 1967, c. 93 (c. 49:3-48 et seq.), or been the subject of an order of the Securities and Exchange Commission suspending or expelling him from a national securities exchange or national securities association registered under the "Securities Exchange Act of 1934" (*15 U.S.C. 78a* et seq.) or been the subject of a United States Postal Service fraud order?

Yes \_\_\_ No \_\_\_

(e) (No change.)

2.-3. (No change.)

## SUBCHAPTER 11. FORMS

### 13:47A-11.3 Uniform Application for Securities Industry Registration or Transfer (Form U4)

The Uniform Application for Securities Industry Registration or Transfer (Form U4) is promulgated by the SEC and is available on-line at [www.finra.org](http://www.finra.org).

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

The Investment Adviser Renewal for Calendar Year 20XX (Form IAR-year) is authored by the Bureau and is distributed annually to currently registered investment advisers.

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

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

### 13:47A-11.10 \*[(Reserved)]\* **\*Broker-Dealer Supplement form\***

**\*The Broker-Dealer Supplement form is authored by the Bureau and is available on-line as NJBOS - 18 at <http://www.njsecurities.gov/bosform.htm>.\***

### 13:47A-11.11 \*[(Reserved)]\* **\*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>.\***

## 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)*.

### 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)-(d) (No change.)

### 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)*.

#### 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.

### 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.

### SUBCHAPTER 14. RULES OF PRACTICE RELATING TO INVESTIGATIONS

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

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

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

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

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

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

#### 13:47A-14.14 Access to documents by Bureau

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

Bureau in legible form.

(b)-(c) (No change.)