

Bureau Regulation 13:47A-2.10 - Performance fee compensation

- (a) The provisions of N.J.S.A. 49:3-53(b)(I) 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) Nothing in this section relieves a client's representative from any of the obligations under N.J.S.A. 49:3-47 et seq. including, but not limited to, the obligation to register with the Bureau pursuant to N.J.S.A. 49:3-56(a) and the obligation to comply with N.J.S.A. 49:3-52 and 49:3-53.
- (e) For purposes of this section, a business development company, as defined by section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. § 80a-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.