

VOLUME 47, ISSUE 16
ISSUE DATE: **AUGUST 17, 2015**
RULE ADOPTIONS
LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BUREAU OF SECURITIES

Adopted Amendments: N.J.A.C. 13:47A-1.1, 1.9, 1.10A, 1.11, 1.13, 2.1, 2.2, 2.4, 2.5, 2.6, 2.10, 2.11, 3.1, 3.2, 3.3, 3A.1, 4.2, 4.4, 5.2, 5.3, 6.2, 6.3, 7.1, 7.2, 7.9, 11.1, 11.2, 11.4, 11.5, 11.6, 11.7, 11.9, and 12.2

Adopted New Rules: N.J.A.C. 13:47A-2.12, 2.13, 2.14, and 7.10

Adopted Repeals: N.J.A.C. 13:47A-2.6A and 11.8

Adopted Recodification with Amendments: N.J.A.C. 13:47A-4.3 as 4.4

Application for Registration; Change of Status, Submission of Form; Maintenance of Sales and Advertising Materials; Withdrawal of Broker-Dealer Registration; Application for Successor; Capital Requirements; Maintenance of Books and Records; Performance Fee Compensation; Supervision; Investment Adviser Brochure Rule; New Jersey Bureau of Securities Investor Protection Information Form, Agents of Broker-Dealers; Change of Status, Agents, Submission of Forms; Issuer-Agent Registration; Examinations; Application for Renewal; Dishonest or Unethical Business Practices; Consent to Service of Process; Custody of Clients' Funds or Securities; Notice Filings for Securities Issued or Offered by Federally Registered Investment Companies and Unit Investment Trusts; Private Placement Filings; Forms; Employee Benefit Plans

Proposed: April 6, 2015, at 47 N.J.R. 692(a).

Adopted: June 15, 2015, by Laura Posner, Bureau Chief, the Bureau of Securities.

Filed: July 16, 2015, as R.2015 d.130, **without change**.

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

Effective Dates: August 17, 2015.

Expiration Date: July 17, 2022.

Summary of Public Comment and Agency Response:

The official comment period ended on June 5, 2015. **The Bureau of Securities (Bureau) received no comments on the notice of proposal.**

Federal Standards Statement

A Federal standards analysis is not required because the adopted new rules, repeals, and amendments related to investment advisers are governed by N.J.S.A. 49:3-47 et seq. The

Bureau looks to Federal law and rules for guidance. In some cases, the adopted new rules, repeals, and amendments incorporate by reference Federal statutes and rules. In the areas for which Federal law has jurisdiction, a Federal standards analysis is not required because the adopted amendments, repeals, and new rules [page=2156] do not exceed Federal standards. The adopted 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 Part 230), the Securities Exchange Act of 1934 Rules, (17 CFR Part 240), the Investment Advisers Act of 1940 Rules, (17 CFR Part 270), and the Investment Company Act of 1940 Rules (17 CFR Part 275).

Full text of the adoption follows:

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. A consent to service of process executed by the applicant as set forth in N.J.A.C. 13:47A-7.1. A fully completed and executed Execution Page of the Form BD, Uniform Application for Broker-Dealer Registration, or a successor form as prescribed by the CRD, shall satisfy this requirement;
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 U2, Uniform Consent to Service of Process, for each person, or a fully completed and executed Individual/Applicant's Acknowledgement and Consent section 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 written permission for the Bureau Chief, or his or her duly designated representative, to examine without notice

any filings made by the applicant with the New York Stock Exchange, NYSE MKT LLC, or another national securities exchange registered pursuant to Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. § 78f).

(c)-(d) (No change.)

(e) If, during the pendency of the application, it appears to the Bureau Chief that the application may contain a misrepresentation, may omit a 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, in his or her discretion, may notify the applicant of the deficiency or act pursuant to N.J.S.A. 49:3-58 or 49:3-67. Notification of the deficiency shall require the applicant to perfect the application by amending or supplementing the information previously submitted within 21 days after notification of the deficiency; withdraw the application; or subject itself to further action of the Bureau Chief by Order or otherwise. If the applicant elects to perfect the application within 21 days, the amendment or supplement by the applicant shall postpone the effectiveness of the application for 30 days after the applicant perfects the application. The Bureau Chief may elect, in his or her discretion, to grant extensions of time to perfect the application.

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 there is any change to any information previously reported.

(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 there is any change to any information previously reported.

(c) Any amendment shall be filed no later than 30 days after the occurrence requiring the change. 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, or 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 requiring the change. 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 this chapter, the registrant shall make full detailed disclosure of the changes by a supplemental filing directly to the Bureau at its current office address.

(e) (No change.)

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, including electronic and social media, 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) (No change.)

(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.

13:47A-1.13 Application for successor

(a) (No change.)

(b) A broker-dealer registered in New Jersey by direct filing with the Bureau of Securities because it is not eligible for registration via the CRD may file directly with the Bureau an application on a Form BD, Uniform Application for Broker-Dealer Registration, accompanied by all of the information required by N.J.A.C. 13:47A-1.1 and in the same form as [page=2157] required by that section to effectuate the registration of a successor. Such application shall be marked "SUCCESSOR APPLICATION" in the upper right-hand corner by the registrant, and shall be accompanied by a consent to service of process executed by the applicant. A fully completed and executed Execution Page of the Form BD, Uniform Application for Broker-Dealer Registration, or a successor form as prescribed by the CRD shall satisfy this requirement. There shall be no filing fee for the successor application.

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, or a successor form, 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. The 30-day time period for review of an application will not commence until the applicant files all documents or information specified and requested by the Bureau.

(b) Such Form ADV shall be accompanied by:

1. A consent to service of process executed by the applicant. A fully completed and executed Part I, Domestic Investment Adviser 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. The Bureau will accept a financial statement accompanied by a notarized certification from an individual applicant or an officer, director, or general partner of the applicant corporation or partnership attesting to the accuracy of the information contained in the financial statement in lieu of a "certified statement," if the investment adviser does not have custody of client funds as defined in N.J.A.C. 13:47A-7.2 or if the investment adviser has custody solely due to direct fee deduction arrangements;

3.-4. (No change.)

5. Any other information the Bureau may request;

Recodify existing 5.-7. as 6.-8. (No change in text.)

(c) If, during the pendency of the application, it appears to the Bureau Chief that the application may contain a misrepresentation, omit a document or material fact, or contain any statement that 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, in his or her discretion, may notify the applicant of the deficiency or act pursuant to N.J.S.A. 49:3-58 or 49:3-67. Notification of the deficiency shall require the applicant to perfect the application by amending or supplementing the information previously submitted within 21 days after notification of the deficiency; withdraw the application; or subject itself to further action of the Bureau Chief by Order or otherwise. If the applicant elects to perfect the application, the amendment or supplement by the applicant shall postpone the effectiveness of the application for 30 days after the applicant perfects the application. The Bureau Chief may elect, in his or her discretion, to grant extensions of time to perfect the application.

13:47A-2.2 Capital requirements

(a) 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 \$ 35,000 or has posted a surety bond in the amount of \$ 35,000, except that investment

advisers having custody solely due to:

1. A direct fee deduction who are complying with the terms described under Rule 206(4)-2 (17 CFR 275.206(4)-2) and N.J.A.C. 13:47A-6.3(a)56ii(3) and related books and records requirements, as described in N.J.A.C. 13:47A-2.6, shall not be required to comply with the net worth or bonding requirements set forth in this section or N.J.A.C. 13:47A-2.3; or

2. Advising pooled investment vehicles who are complying with the terms described under Rule 206(4)-2(a)5 or 206(4)-2(b)4 (17 CFR 275.206(4)-2(a)(5) or 275.206(4)-2(b)(4)) and N.J.A.C. 13:47A-6.3(a)56ii(2) or (4) and related books and records requirements, as described in N.J.A.C. 13:47A-2.6, shall not be required to comply with the net worth or bonding requirements set forth in this section or N.J.A.C. 13:47A-2.3.

(b) An investment adviser, as defined under N.J.S.A. 49:3-49(g), who has discretionary authority over client funds or securities, but does not have custody of client funds or securities shall maintain at all times a minimum net worth of \$ 10,000.

(c) An investment adviser registered, as defined under N.J.S.A. 49:3-49(g), who accepts prepayment of advisory fees of more than \$ 500.00 per client and six or more months in advance shall maintain at all times a positive net worth.

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

(a) (No change.)

(b) No securities other than those listed on the New York Stock Exchange or the NYSE MKT LLC 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 registered investment adviser who is registered with New Jersey via the IARD shall file an amendment within 30 days 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 there is any change to any information previously reported on the Form ADV. No filing fee is required for any amendment, unless the IARD prescribes otherwise.

13:47A-2.6 Maintenance of books and records

(a) For purposes of this section, as referenced in Rule 204-2 (17 CFR 275.204-2):

1. "Financial statements" shall mean a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement, and a net worth/capital computation, if applicable, as required by N.J.A.C. 13:47A-2.2.

2. "Other communication" shall include communications by electronic media and social media.

(b) For purposes of this section, the Bureau requires investment advisers to retain the books and records described in Rule 204-2(a)(11), (16), and 204-2(e)(3) (17 CFR 275.204-2(a)(11), (16), and 275.204-2(e)(3)) under the Investment Advisers Act of 1940,

15 U.S.C. §§ 80b-1 et seq., that are distributed to two or more persons.

(c) 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 et seq.

[page=2158] (d) 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:

1. A litigation file documenting any criminal or civil action or administrative proceeding filed in any state or Federal court or by any administrative agency against the investment adviser or any of its personnel with respect to a securities or an investment advisory transaction and the disposition of the action or proceeding;
2. Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client;
3. Written policies and procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws, rules, and regulations;
4. A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or Federal agency or self-regulatory organization that pertains to the registrant or its investment adviser representatives as that term is defined in Rule 204-2(a)(12)(iii)(A) (17 CFR 275.204-2(a)(12)(iii)(A)) under the Investment Advisers Act of 1940, 15 U.S.C. §§ 80b-1 et seq., which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence;
5. Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U4 and each amendment to Disclosure Reporting Pages (DRPs U4);
6. Copies of the written disclosure delivered pursuant to N.J.A.C. 13:47A-2.13. If the disclosure obligation is met in whole or in part by the delivery of a prospectus, the investment adviser need only note such delivery and need not retain a copy of the prospectus in each client's file;
7. Where the investment adviser inadvertently held or obtained a client's securities or funds and returned them to the client within three business days of receiving them or has forwarded checks drawn by clients and made payable to third parties within three business days of receipt, the investment adviser shall keep a ledger or other listing of all securities or funds held or obtained, including the following information:
 - i. Issuer;
 - ii. Type of security and series;
 - iii. Date of issue;

- iv. For debt instruments, the denomination, interest rate, and maturity date;
- v. Certificate number, including alphabetical prefix or suffix;
- vi. Name in which registered;
- vii. Date given to the investment adviser;
- viii. Date sent to client or sender;
- ix. Form of delivery to client or sender or copy of the form of delivery to client or sender;
- x. Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return; and
- xi. Date each check was received by the investment adviser;

8. If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody under Rule 206(4)-2(b)(2) (17 CFR 275.204-2(b)(2)) under the Investment Advisers Act of 1940 (15 U.S.C. §§ 80b-1 et seq.), the investment adviser shall keep the following records:

- i. A record showing the issuer or current transfer agent's name, address, phone number, and other applicable contact information pertaining to the party responsible for recording client interests in the securities; and
- ii. A copy of any legend, shareholder agreement, or other agreement showing that those securities are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer; and

9. Sales or advertising material intended for the use in soliciting prospective investors or for training persons who will be making such communications.

(e) Subject to the limitations of Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-18a), if an investment adviser has custody or possession of securities or funds of any clients, as defined in N.J.A.C. 13:47A-7.2, the investment adviser must make and keep the following additional records:

- 1. A copy of any and all documents executed by the client (including a limited power of attorney) under which the investment adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian;
- 2. A copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the investment adviser also generates a statement that is delivered to the client, the investment adviser shall also maintain copies of such statements along with the date such statements were sent to the clients;
- 3. If applicable to the investment adviser's situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination;

4. A record of any finding by the independent certified public accountant of any material discrepancies found during the examination;
 5. If applicable, evidence of the client's designation of an independent representative;
 6. All records and evidence of compliance required by Rule 206(4)-2 (17 CFR 275.206(4)-2) under the Investment Advisers Act of 1940; and
 7. If an investment adviser has custody of funds or securities because it advises a pooled investment vehicle, as defined in Rule 206(4)-2(d)(2)(iii) (17 CFR 275.206(4)-2), the investment adviser shall also keep the following records:
 - i. True, accurate, and current account statements;
 - ii. Where the investment adviser complies with Rule 206(4)-2 (17 CFR 275.206(4)-2), the records required to be made and kept shall include the date(s) of the audit, a copy of the audited financial statements, and evidence of the mailing of the audited financial to all limited partners, members, or other beneficial owners within 120 days of the end of its fiscal year; and
 - iii. Where the investment adviser complies with N.J.A.C. 13:47A-6.3(a)56ii(2), the records required to be made and kept shall include a copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party, and copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.
- (f) In addition to the requirements of Rule 204-2(e) (17 CFR 275.204-2(e)), every investment adviser subject to (c) above shall preserve the following records in the manner prescribed:
1. Books and records required to be made under (d) above shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the State, if less.
 2. Notwithstanding other record preservation requirements of Rule 204-2(e), the following records or copies shall be required to be maintained for the period described in Rule 204-2(e) at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:
 - i. Records required to be preserved under paragraphs (a)(3), (a)(7) through (10), (a)(14) and (15), (a)(17) through (19), (b) and (c) inclusive of SEC Rule 204-2 of the Investment Advisers Act of 1940 (17 CFR 275.204-2(1996)); and
 - ii. The records or copies required under the provision of Rule 204-2(a)(11) and (a)(16), which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business location's physical address, mailing address, electronic mailing address, or telephone number.
- (g) An investment adviser subject to (c) and (d) above, before ceasing to conduct or discontinuing business as a registered investment adviser, shall arrange for and be

responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the [page=2159] Bureau in writing, within 30 days of a termination of its business or a change to the address where the books and records will be maintained, of the exact address where the books and records will be maintained during the period.

(h) Investment advisers required to maintain and preserve records pursuant to this section, shall comply with the storage requirements of this subsection.

1. Pursuant to this section, the records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser on:

i. Paper or hard copy form, as those records are kept in their original form;

ii. Micrographic media, including microfilm, microfiche, or any similar medium; or

iii. Electronic storage media, including any digital storage medium or system that meets the terms of this subsection.

2. The investment adviser must:

i. Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

ii. Provide promptly any of the following that the Bureau (by its examiners or other representatives) may request:

(1) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(2) A legible, true, and complete printout of the record; and

(3) Means to access, view, and print the records; and

iii. Separately store, for the time period required for preservation of the original record, a duplicate copy of the record on any medium allowed by this subsection.

3. In the case of records created or maintained on electronic storage media, the investment adviser must establish and maintain policies and procedures:

i. To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

ii. To limit access to the records to properly authorized personnel and the Bureau (including its examiners and other representatives); and

iii. To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(i) To the extent that the U.S. Securities and Exchange Commission promulgates changes to Rule 204-2 of the Investment Advisers Act of 1940, investment advisers in compliance with such rules as amended shall not be subject to enforcement action by the Bureau for

violation of this section to the extent that the violation results solely from the investment adviser's compliance with the amended SEC rules.

(j) Every investment adviser doing business within this State and that has its principal place of business in a state other than this State shall be exempt from the requirements of this section, provided the investment adviser is licensed in such other state and is in compliance with such other state's recordkeeping requirements.

13:47A-2.10 Performance fee compensation

(a) (No change.)

(b) The client entering into the contract subject to this section 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. The net worth of a natural person or a company shall be as set forth and determined pursuant to Rule 205-3 of the Investment Advisers Act of 1940.

(c)-(e) (No change.)

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, or a successor form, 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.-4. (No change.)

13:47A-2.12 Supervision

(a) Duty of reasonable supervision. Every investment adviser registered by the Bureau shall reasonably supervise employees who give investment advice with a view toward preventing violations of the New Jersey Uniform Securities Law, and other Federal and/or state securities laws. Final responsibility for proper supervision shall rest with the investment adviser. In determining whether an investment adviser registered by the Bureau has reasonably supervised, the following factors will be taken into consideration:

1. The investment adviser has established written policies and procedures and a system for applying the policies and procedures, with consideration for the size and number of locations of the investment adviser, that would reasonably be expected to prevent and detect, insofar as practicable, any violation by its investment adviser representatives or other persons, employed by or associated with, the investment adviser;

2. The investment adviser has reasonably discharged the duties and obligations incumbent on the investment adviser by reason of the established written policies and procedures and

the system for applying the policies and procedures without reasonable cause to believe that there was not compliance with the policies and procedures and systems; and

3. Any additional information, as needed by the Bureau, to make a determination.

(b) This supervisory system, including written supervisory policies and procedures, shall provide, at a minimum, to the extent relevant, for the following:

1. Portfolio management processes, including allocation of investment opportunities among clients and consistency of portfolios with clients' investment objectives, disclosures by the investment adviser, and applicable regulatory restrictions;

2. Trading practices, including policies and procedures by which the investment adviser satisfies its best execution obligation, uses client brokerage to obtain research and other services (soft dollar arrangements), and allocates aggregated trades among clients;

3. Proprietary trading of the investment adviser and personal trading activities of supervised persons;

4. The accuracy of disclosures made to investors, clients, and regulators, including account statements and advertisements;

5. Safeguarding of client assets from conversion or inappropriate use by advisory personnel;

6. The accurate creation of required records and their maintenance in a manner that secures them from unauthorized alteration or use and protects them from untimely destruction;

7. Marketing advisory services, including the use of solicitors;

8. Processes to value client holdings and assess fees based on those valuations;

9. Safeguards for the privacy protection of client records and information; and

10. Business continuity plans, which generally provide for, but are not limited to, the following:

i. The protection, back-up, and recovery of books and records;

ii. Establishing alternate means of communication with customers, employees, and regulators;

iii. Office relocation, in the event of a loss of principal place of business; and

iv. A designation of duties to responsible person(s) in the event of the death or disability of a key individual, principal, owner, or other such personnel.

(c) Annual review. Every investment adviser registered by the Bureau shall review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation.

[page=2160] (d) Chief Compliance Officer. Every investment adviser registered by the Bureau shall designate an individual (who is a supervised person) responsible for

administering the policies and procedures that are adopted under (a) above.

13:47A-2.13 Investment adviser brochure rule

(a) Definitions. For the purpose of this section, the following phrases shall have the following meanings, unless the context clearly indicates otherwise:

1. "Contract for impersonal advisory services" means any contract relating solely to the provision of investment advisory services:

- i. By means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts;
- ii. Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or
- iii. Any combination of the services in (a)1i or ii above.

2. "Entering into," in reference to an advisory contract, does not include an extension or renewal without material change of any such contract that is in effect immediately prior to such extension or renewal.

(b) General requirements for the investment adviser brochure rule are as follows:

1. Unless otherwise provided in this section, an investment adviser, registered or required to be registered pursuant to N.J.A.C. 13:47A-2.1 shall, in accordance with the provisions of this section, furnish each advisory client and prospective advisory client with:

i. A brochure, which may be a copy of Part 2A of its Form ADV or written documents containing the information required by Part 2A of Form ADV;

ii. A copy of its Part 2B brochure supplement for each individual:

(1) Providing investment advice and having direct contact with clients in this State; or

(2) Exercising discretion over assets of clients in this State, even if no direct contact is involved;

iii. A copy of its Part 2A Appendix 1 wrap fee brochure, if the investment adviser sponsors or participates in a wrap fee account;

iv. A summary of material changes from the last annual updating amendment (including, but not limited to, changes in advisory fees), which may be included in Form ADV Part 2 or given as a separate document; and

v. Such other information as the Bureau Chief may require.

2. The brochure must comply with the language, organizational format and filing requirements specified in the Instructions to Form ADV Part 2.

(c) Delivery of the brochure required under this section shall be as follows:

1. Initial delivery. An investment adviser, except as provided in (c)3 below, shall deliver the

Part 2A brochure and any brochure supplements required by this section to a prospective advisory client:

i. Not less than 48 hours prior to entering into any advisory contract with such client or prospective client; or

ii. At the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

2. Annual delivery shall be as follows:

i. An investment adviser, except as provided in (c)3 below, must:

(1) Deliver within 120 days of the end of its fiscal year a free, updated brochure and related brochure supplements, which include or are accompanied by a summary of material changes; or

(2) Deliver a summary of material changes, which includes an offer to provide a copy of the updated brochure and supplements and information on how the client may obtain a copy of the brochures and supplements.

ii. Investment advisers do not have to deliver a summary of material changes or a brochure to clients if no material changes have taken place since the last summary and brochure delivery. The Bureau interprets "material change" to include changes in advisory fees, thereby requiring an update to all parts of Form ADV.

3. Delivery of the brochure and related brochure supplements required by (c)1 and 2 above need not be made to:

i. Clients who receive only impersonal advice and who pay less than \$ 500.00 in fees per year;

ii. An investment company registered under the Investment Company Act of 1940; or

iii. A business development company, as defined in the Investment Company Act of 1940 and whose advisory contract meets the requirements of section 15c of that Act.

4. Delivery of the brochure and related supplements may be made electronically if the investment adviser:

i. In the case of an initial delivery to a potential client, obtains a verification that a readable copy of the brochure and supplements were received by the client;

ii. In the case of deliveries other than initial deliveries, obtains each client's prior consent to provide the brochure and supplements electronically;

iii. Prepares the electronically delivered brochure and supplements in the format prescribed in (b) above and instructions to Form ADV Part 2;

iv. Delivers the brochure and supplements in a format that can be retained by the client in either electronic or paper form; and

v. Establishes procedures to supervise personnel transmitting the brochure and supplements and prevent violations of this section.

(d) Other disclosures. Nothing in this section shall relieve any investment adviser from any obligation pursuant to any provision of the Act or the rules and regulations thereunder or other Federal or State law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this section.

13:47A-2.14 NJ Bureau of Securities Investor Protection Information Form

(a) An investment adviser, registered or required to be registered pursuant to N.J.A.C. 13:47A-2.1, shall furnish each advisory client with the NJ Bureau of Securities Investor Protection Information Form:

1. At the time of entering into any advisory contract with such client; and
2. Annually, within 120 days of the end of the investment adviser's fiscal year.

(b) The form is available online at <http://www.njsecurities.gov/bosform.htm>.

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 Individual/Applicant's Acknowledgement and Consent section of Form U4, Uniform Application for Securities Industry Registration or Transfer, will satisfy this requirement;
- 2.-3. (No change.)

(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 \$ 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.-x. (No change.)

xi. The applicant's clearing firm trading records;

- xii. A fully executed Supervisory Agreement; or
- xiii. Any additional documents or information, as needed.

2. (No change.)

(c)-(d) (No change.)

[page=2161] 13:47A-3.2 Change of status; agents; submission of form

(a) A registered agent shall file an amendment with the CRD, by filing or updating a Form U4, Uniform Application for Securities Industry Registration or Transfer, or its successor form, along with the fee, if any, prescribed by the CRD, whenever there is any change to the information previously reported on the Form U4. The amendment(s) must be filed within 30 days of the occurrence requiring the change. Whenever an agent commences employment with a broker-dealer or issuer, the agent must file the amendment within five days of the commencement of employment. For agents of non-FINRA member broker-dealers, the amendments shall be filed directly with the Bureau.

(b) (No change.)

13:47A-3.3 Issuer-agent registration

(a) Any issuer that is effecting or attempting to effect purchases or sales of securities other than through a registered broker-dealer shall register someone as an "agent," unless exempted or excluded from agent registration pursuant to (b) below. Only a natural person can be registered as an agent.

(b) Agent registration is not required for an individual who represents an issuer in effecting transactions exempted by N.J.S.A. 49:3-50(a)(1) (securities issued or guaranteed by the United States, a state, or political subdivision thereof); N.J.S.A. 49:3-50(a)(2) (Canadian and other foreign government securities); N.J.S.A. 49:3-50(a)(3) (bank securities); N.J.S.A. 49:3-50(a)(11) (employee benefit plans); N.J.S.A. 49:3-60.1(b) (certain Federally covered securities); all of the transactional exemptions under N.J.S.A. 49:3-50(b); effecting transactions with existing employees, partners, or directors of the issuer, if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this State; or for an individual representing a broker-dealer in effecting transactions in this State limited to those transactions described in paragraph (2) of subsection (h) of section 15 of the "Securities Exchange Act of 1934," 15 U.S.C. § 78o(h)2; and such other persons not otherwise within the intent of this subsection (b), as the Bureau Chief may by rule or order designate.

(c) (No change.)

SUBCHAPTER 3A. INVESTMENT ADVISER REPRESENTATIVES

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

(a) Subject to the provisions of Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-3a), any person, who has a place of business located in this State, who desires to act in the State of New Jersey as an investment adviser representative of an investment adviser registered in New Jersey with the Bureau or registered with the Securities and

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

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

2. (No change.)

(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.-10. (No change.)

11. An applicant's clearing firm trading records;

12. A fully executed Supervisory Agreement; or

13. Any additional documents or information, as needed.

(c)-(f) (No change.)

SUBCHAPTER 4. EXAMINATIONS

13:47A-4.2 Examinations for agents

(a) 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) and the Uniform Securities Agent State Law Examination (Series 63), or their successor exams, 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.

(b) Any person whose registration has been terminated for a period of two or more years preceding the date of receipt by the Bureau of a new application for registration shall be required to pass the examinations set forth in (a) above unless granted a waiver by the Bureau Chief pursuant to N.J.A.C. 13:47A-4.4(a).

13:47A-4.3 Examination requirements for investment adviser representatives

(a) An individual applying to be registered as an investment advisor or investment adviser representative shall provide the Bureau Chief with proof of having obtained a passing score on one of the following examinations, and which has not expired after two years of non-affiliation in a registered capacity, or of holding one of the following certifications:

1.-3. (No change.)

4. The Chartered Financial Consultant (ChFC) certification awarded by the American College of Financial Services, Bryn Mawr, Pennsylvania;

5. The Personal Financial Specialist (PFS) certification awarded by the American Institute of Certified Public Accountants;

6. (No change.)

7. The Chartered Investment Counselor (CIC) certification awarded by the Investment Adviser Association.

(b) Any person whose registration has been terminated for a period of two or more years preceding the date of receipt by the Bureau of a new application for registration shall hold one of the certifications set forth in (a) above or pass the required examinations, unless granted a waiver by the Bureau Chief pursuant to N.J.A.C. 13:47A-4.4(c).

Recodify existing (b) and (c) as (c) and (d) (No change in text.)

(e) Any registrant, who relied upon one of the certifications described in (a) above in lieu of a qualifying examination, shall notify the Bureau of any termination of the certification within 10 days of such termination. To maintain the registration with the Bureau, the registrant must pass a qualifying examination, obtain a current qualifying certification, or be granted a waiver by the Bureau Chief within six months of the date the certification terminates. Should the registrant fail to requalify within this six-month period, the registrant must withdraw the registration or the Bureau may take action to revoke the registration. If, at the time the certification terminates, the registrant holds another qualifying certification or passed a qualifying examination, the registrant has 30 days to notify the Bureau of such termination.

13:47A-4.4 Requests for waiver of agent or investment adviser representative examinations

(a) Except for requests made pursuant to (b) 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, other than the agent of an issuer registered pursuant to N.J.A.C. 13:47A-3.3, requesting a waiver must have been continuously and lawfully active in the securities field for a period of at least two full years [page=2162] prior to filing the request and have such knowledge, training, and experience as the Bureau Chief deems appropriate for the individual seeking the waiver.

(b) (No change in text.)

(c) Requests for waiver of investment adviser representative examination requirements will

be granted only on the basis of knowledge, training, and experience related to investment advisory work. Any investment adviser representative requesting a waiver must have been continuously and lawfully active in the investment advisory field for a period of at least two full years prior to filing the request and have such knowledge, training, and experience as the Bureau Chief deems appropriate for the individual seeking the waiver.

1. An applicant who is an agent for a broker-dealer and provides advisory services, but is not required by the agent's home jurisdiction to make a separate filing on CRD as an investment adviser representative, but who has previously met the examination requirement in N.J.A.C. 13:47A-4.3(a), which expired after two years of non-affiliation in a registered capacity, may request in accordance with (c) above, a waiver of retaking the Uniform Investment Adviser State Law Examination (Series 65). Based upon a review of the registration application and waiver request, the Bureau may request a certification by the applicant and/or his or her employer(s) that the applicant has provided investment advisory services for the previous two years.

(d) Requests for waiver of the agent or investment adviser representative examination must be submitted in writing directly to the Bureau Chief and requested as part of the filing of an application for registration with the CRD or the Bureau, as appropriate.

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.

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

(d) A registered investment adviser registered in New Jersey via direct registration with the Bureau may apply to renew its registration by filing 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)-(h) (No change.)

(i) (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) Failure to pay any of the fees required in N.J.A.C. 13:47A-5.2 by December 31 of each year for direct filing investment advisers, investment adviser representative, issuer-agents, and for non-FINRA member broker-dealers and their agents registered directly with the Bureau or within the billing time limits established by FINRA for those filing in New Jersey via the CRD/IARD shall result in the registration of the broker-dealer, investment adviser, agent, issuer-agent, and/or investment adviser representative being terminated as of its date of expiration.

(c) (No change in text.)

SUBCHAPTER 6. DISHONEST OR UNETHICAL BUSINESS PRACTICES

13:47A-6.2 Definitions

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

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

...

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

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

1.-2. (No change.)

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

4.-27. (No change.)

28. Failing to comply with any applicable provision of the Standards of Honor and Principles of Trade 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 comply with a suspension or bar order of the SEC, FINRA, any other self-regulatory organization, or any other securities regulator;

Recodify existing 29.-43. as 30.-44. (No change in text.)

45. Knowingly being designated, directly or indirectly, as a beneficiary of a client's account, estate, trust, insurance, or other property interest and, in the case of an agent or investment adviser representative, without the prior written authorization of the client and:

i. Any broker-dealer that the agent maintains registration with and with which the client has an account; and/or

ii. Any investment adviser that the investment adviser representative maintains registration with and with which the client has an account;

46. (No change in text.)

47. Using a certification or professional designation to indicate or imply that the user has special training in advising or servicing senior citizens or retirees (hereinafter, a "senior-specific certification" or "professional designation"), in such a way as to mislead any person, in connection with the offer, sale, or purchase of a security, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling a security, either directly or indirectly or through a publication or a writing, or by issuing or promulgating an analysis or report relating to a security.

i. Misusing a senior-specific certification or professional designation pursuant to this paragraph includes, but is not limited to, using:

(1) A certification or professional designation by a person who has not actually earned or who is otherwise ineligible to use that certification or professional designation;

(2) A nonexistent or self-conferred certification or professional designation;

(3) A certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and

(4) A certification or professional designation that was obtained from a certifying or designating organization that:

(A) Is primarily engaged in the business of instruction in sales or marketing;

(B) Does not have reasonable standards or procedures for assuring the competency of its certificants or designees;

(C) Does not have reasonable standards or procedures for monitoring and disciplining its certificants or designees for improper or unethical conduct; or

(D) Does not have reasonable continuing education requirements for its certificants or designees in order to maintain the certificate or designation.

ii. There is a rebuttable presumption that a certifying or designating organization is not included as an organization to which (a)47i(4) above is applicable, if the organization has been accredited by:

(1) The American National Standards Institute;

(2) The National Commission for Certifying Agencies; or

[page=2163] (3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the certification or professional designation issued by the organization does not primarily apply to sales or marketing.

iii. In determining whether a combination of words, or an acronym standing for a combination of words, constitutes a senior-specific certification or professional designation, the Bureau Chief will consider the following factors:

(1) The use of one or more words, such as "senior," "retirement," "elder," or like words, combined with one or more words, such as "certified," "registered," "chartered," "adviser,"

"specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those words are combined.

iv. For purposes of this paragraph:

(1) A senior-specific certification or professional designation shall not include a job title within an organization that is licensed or registered by a state or Federal financial services regulatory agency (which shall include, but not be limited to, an agency that regulates brokers, dealers, investment advisers, or investment companies as defined pursuant to the Federal "Investment Advisers Act of 1940" (15 U.S.C. §§ 80b-1 et seq.) or the Federal "Investment Company Act of 1940" (15 U.S.C. §§ 80a-1 et seq.)), if that job title:

(A) Indicates seniority or standing within the organization; or

(B) Specifies an individual's area of specialization within the organization.

v. Nothing in this section shall limit the Bureau Chief's enforcement authority under the law;

Recodify existing 45.-49. as 48.-52. (No change in text.)

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

54. (No change in text.)

55. Failing to adopt, maintain, and enforce written supervisory policies and procedures under the requirements of N.J.A.C. 13:47A-2.12;

56. 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 as defined in N.J.A.C. 13:47A-7.2:

i. 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.; or

ii. When the adviser's action fails to meet the requirements in this paragraph, in addition to those set forth in Rule 206(4)-2 (17 CFR 275.206(4)-2).

(1) Definitions. As used in this paragraph, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

(A) As referenced in Rule 206(4)-2 (17 CFR 275.206(4)-2), "public accountant" shall mean certified public accountant.

(B) "Independent party" means a person that:

I. Is engaged by the investment adviser to act as a gatekeeper for the payment of fees, expenses, and capital withdrawals from the pooled investment;

II. Does not control, and is not controlled by, and is not under common control with the

investment adviser;

III. Does not have, and has not had within the past two years, a material business relationship with the investment adviser; and

IV. Shall not negotiate or agree to have material business relations or commonly controlled relations with an investment adviser for a period of two years after serving as the person engaged in an independent party agreement.

(2) Special rule for limited partnerships and limited liability companies. With respect to Rule 206(4)-2(a)(5), the investment adviser must:

(A) Enter into a written agreement with an independent party who is obliged to act in the best interest of the limited partners, members, or other beneficial owners to review all fees, expenses, and capital withdrawals from the pooled accounts; and

(B) Send all invoices or receipts to the independent party, detailing the amount of the fee, expenses, or capital withdrawal and the method of calculation, such that the independent party can:

I. Determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement); and

II. Forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser.

(3) Fee deduction. With respect to Rule 206(4)-2(b)(3) (17 CFR 275.206(4)-2(b)(3)), an investment adviser is not required to obtain an independent verification of client funds and securities maintained by a qualified custodian if all of the following additional requirements are met:

(A) The investment adviser has written authorization from the client to deduct advisory fees from the account held with the qualified custodian;

(B) Each time a fee is directly deducted from a client account, the investment adviser concurrently:

I. Sends the independent party designated pursuant to Rule 206(4)-2(a)(7) an invoice or statement of the amount of the fee to be deducted from the client's account; and

II. Sends the client an invoice or statement itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee; and

(C) The investment adviser notifies the Bureau in writing that the investment adviser intends to use the safeguards of this sub-subparagraph. Such notification is required to be given on Form ADV.

(4) Limited partnerships subject to annual audit. With respect to Rule 206(4)-2(b)(4) (17 CFR 275.206(4)-2(b)(4)):

(A) The adviser must also send to all limited partners (or members or other beneficial owners) at least quarterly, a statement showing:

I. The total amount of all additions to and withdrawals from the fund as a whole, as well as the opening and closing value of the fund at the end of the quarter based on the custodian's records;

II. A listing of all long and short positions on the closing date of the statement, in accordance with FASB Rule ASC 946-210-50; and

III. The total amount of additions to and withdrawals from the fund by the investor, as well as the total value of the investor's interest in the fund at the end of the quarter.

(B) The listing in (a)56ii(4)(A)II above follows FASB rule ASC 946-210-50-6, whereby long and short positions representing more than five percent of the net assets of the fund must be reported as outlined in this subsection of the FASB rule. All provisions of subsection FASB rule ASC 946-210-50-6 apply to the position disclosure required on the quarterly customer statement. This is the same reporting format required by rule 13F under the Securities Exchange Act of 1934 for investment managers' annual reports.

(C) The investment adviser must also notify the Bureau in writing that the investment adviser intends to employ the use of the statement delivery and audit safeguards described in this sub-subparagraph. Such notification is required to be given on Form ADV;

57. 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;

Recodify existing 54. and 55. as 58. and 59. (No change in text.)

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

i. Unless the adviser obtains a written certification that:

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

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

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

[page=2164] ii. Notwithstanding (a)60i above, an adviser who comes into possession of material confidential information through a consultation is precluded from trading any relevant security until such time as the confidential information is made public.

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

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

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

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

Recodify existing 56. and 57. as 61. and 62. (No change in text.)

SUBCHAPTER 7. MISCELLANEOUS

13:47A-7.1 Consent to service of process

(a) The irrevocable consent appointing the Bureau Chief or his or her successor in office as attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or her shall be filed concurrently with the application directly with the Bureau Chief, except as provided below:

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

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

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

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

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

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

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

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

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

1. Possession of client funds or securities, (but not of checks drawn by clients and made payable to third parties), unless received inadvertently and returned to the sender within three business days of receipt;
2. Any arrangement (including a general power of attorney and direct fee deduction arrangements) authorizing or permitting the withdrawal of client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian; and
3. Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives a supervised person legal ownership of or access to client funds or securities.

13:47A-7.9 Notice filings for securities issued or offered by Federally registered investment companies and unit investment trusts

(a) (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. 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. The Bureau will accept an electronic signature on the Form U2 if filed electronically through an approved vendor; and

2.-3. (No change.)

(c) (No change.)

13:47A-7.10 Private placement filings

(a) An issuer offering a security pursuant to N.J.S.A. 49:3-50(b)(12) must file with the Bureau, no later than 15 days after the first sale of such security in this State, the following:

1. A completed Form D, if applicable, as filed with the Securities and Exchange Commission;

2. A manually signed and notarized Consent to Service of Process (Form U2 and U2A) naming the Bureau Chief as the designated officer;

3. A statement disclosing the first date of sale in this State;

4. A completed Private Placement Report Form or successor form.

i. The issuer shall file with the Bureau an amendment within 30 days, whenever there is any change to the information previously reported on the New Jersey Private Placement Report Form;

5. A final report shall be filed at the closing of the offering if the information in the final report would be materially different from the last prior filing; and

6. A check made payable to the State of New Jersey, Bureau of Securities in the amount of \$ 250.00.

(b) Rule 506 filings. An issuer offering a security pursuant to N.J.S.A. 49:3-60.1(b) shall file with the Bureau, no later than 15 days after the first sale of such security in this State, the notice filing and \$ 250.00 filing fee in the manner described in this subsection.

1. Issuers shall file with the Bureau using the Electronic Filing Depository (EFD), operated by the North American Securities Administrators Association, except as provided in (b)2 below. Issuers shall provide all required information as prescribed by EFD and the required fee in a manner prescribed by EFD.

2. If the issuer is unable to use EFD, the issuer shall contact the Bureau immediately. Upon a showing of hardship, the Bureau shall permit manual filing. If the Bureau permits manual filing, issuers shall file directly with the Bureau the following:

i. A completed Form D as filed with the Securities and Exchange Commission;

ii. A manually signed and notarized Consent to Service of Process (Form U2 and U2A) naming the Bureau Chief as the designated officer, except that if the Form D includes a consent to service of process, a separate document need not be filed for this purpose, and if the consent to service of process on the Form D is executed in a manner accepted by the Securities and Exchange Commission, it is deemed to comply with the requirement in this paragraph;

iii. A statement disclosing the first date of sale in this State; and

iv. A check made payable to the State of New Jersey, Bureau of Securities in the amount of \$ 250.00.

3. The issuer shall file via EFD or, if unable to use EFD as approved by the Bureau under (b)2 above, to file directly with the Bureau, an amendment within 30 days, whenever there is any change to the information previously reported on the Form D.

SUBCHAPTER 11. FORMS

13:47A-11.1 Uniform Application for Broker-Dealer Registration (Form BD)

The Uniform Application for Broker-Dealer Registration (Form BD) is promulgated by the U.S. Securities and Exchange Commission (SEC) and is available on-line at <http://www.sec.gov/about/forms/formbd.pdf>.

[page=2165] 13:47A-11.2 Uniform Application for Investment Adviser Registration (Form ADV)

The Uniform Application for Investment Adviser Registration (Form ADV) is promulgated by the SEC and is available on-line at <http://www.sec.gov/about/forms/formadv.pdf>.

13:47A-11.4 Uniform Consent to Service of Process (Form U2)

The Uniform Consent to Service of Process which is to be used to designate the Chief of the Bureau of Securities as agent for service of process is authored by the North American Securities Administrators Association (NASAA) and is available on-line at <http://www.nasaa.org/industry-resources/uniform-forms/>.

13:47A-11.5 Uniform Surety Bond Form (Form U-SB)

The Uniform Surety Bond Form (Form U-SB) is authored by the NASAA and is available on-line at www.nasaa.org/industry-resources.uniform-forms/.

13:47A-11.6 Uniform Request for Broker-Dealer Withdrawal (Form BDW)

The Uniform Request for Broker-Dealer Withdrawal is promulgated by the SEC and is available on-line at www.sec.gov/about/forms/formbdw.pdf.

13:47A-11.7 Non-FINRA Broker-Dealer Renewal Application (Form BDR)

The Non-FINRA Broker-Dealer Renewal Application (Form BDR) is authored by the Bureau and is available on-line at <http://www.njconsumeraffairs.gov/bos/njbos-21.pdf>.

13:47A-11.8 (Reserved)

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 www.sec.gov/pdf/fadvwo.pdf.

SUBCHAPTER 12. EXEMPTIONS FOR SECURITIES TRANSACTIONS AND SECURITIES OFFERINGS; EMPLOYEE BENEFIT PLANS; ACCREDITED INVESTORS

13:47A-12.2 Employee benefit plans

(a)-(d) (No change.)

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