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SPECIAL ADOPTION
LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BUREAU OF SECURITIES

Special Adopted Amendments and Concurrent Proposed Readoption of Special Adopted Amendments: N.J.A.C. 13:47A-6.3 and 7.1

Special Adopted New Rules and Concurrent Proposed Readoption of Special Adopted New Rules: N.J.A.C. 13:47A-12A

Intrastate Offering (Crowdfunding) Exemption; Dishonest or Unethical Practices; Consent to Service of Process

Special Adopted Amendments and New Rules Adopted and Concurrent Proposed Readoption of Special Amendments and New Rules Authorized: January 29, 2016, by Laura H. Posner, Bureau Chief, Bureau of Securities.

Filed: August 12, 2016, as R.2016 d.109.

Authority: P.L. 2015, c. 128.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Concurrent Proposal Number: PRN 2016-156.

Special Adopted Amendments and New Rules Effective Date: August 12, 2016.

Special Adopted Amendments and New Rules Expiration Date: August 11, 2017.

Submit written comments by November 18, 2016, to:

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In accordance with P.L. 2015, c. 128, the New Jersey Bureau of Securities (Bureau) has adopted the following amendments and new rules for issuers offering a security pursuant to the intrastate offering (crowdfunding) exemption and applicants wishing to register as an Internet site operator in the State that became effective on August 12, 2016, upon acceptance for filing by the Office of Administrative Law. The specially adopted amendments and new rules shall be effective for a period not to exceed six months from the date of filing, February 12, 2017.

Concurrently, the provisions of these special adopted amendments and new rules are proposed for re-adoption in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. By filing this notice of concurrent proposed re-adoption of special adopted amendments and new rules with the Office of Administrative Law prior to February 12, 2017, the expiration date of these amendments and new rules is extended 180 days to August 11, 2017, pursuant to N.J.S.A. 52:14B-5.1.c(2).

The agency special adoption and concurrent proposal follows:

Summary

On November 9, 2015, P.L. 2015, c. 128 was enacted, amending and supplementing the Uniform Securities Law, P.L. 1967, c. 93 (N.J.S.A. 49:3-47 et seq.). The law establishes a new transaction exemption, to be known as the intrastate offering (crowdfunding) exemption, for offerings that meet the requirements of N.J.S.A. 49:3-50(b)(14). Crowdfunding is a common term for the practice of raising money, typically in small amounts, from a large number of people in order to fund a company, venture, or an idea. Prior to the passage of P.L. 2015, c. 128, equity crowdfunding, the exchange of money for equity in a company, would not be permitted because it would constitute the sale of securities. In accordance with the Uniform Securities Law, it is unlawful for any security to be offered or sold in New Jersey unless the security is: exempt from regulation, registered with the Bureau of Securities, or is a Federally covered security.

Pursuant to P.L. 2015, c. 128, the Bureau is proposing a new subchapter, N.J.A.C. 13:47A-12A. The proposed new subchapter sets forth the requirements for issuers to avail themselves of the intrastate offering (crowdfunding) exemption established pursuant to N.J.S.A. 49:3-50(b)(14), including the offering conditions to qualify for the exemption, disqualifying criteria, exemption filing requirements, Internet site operator registration requirements and disqualifying criteria, the requirements and duties of the issuers and Internet site operators, recordkeeping requirements, inspection, and advertising provisions. P.L. 2015, c. 128 creates a new registrant category for an Internet site operator. "Internet site operator" is defined as a business entity organized under the laws of New Jersey and authorized to do business in this State, which makes available to the public through an Internet site any offering pursuant to the exemption in N.J.S.A. 49:3-50(b)(14). An "Internet site operator" does not include a broker-dealer.

In addition, the Bureau is proposing amendments to N.J.A.C. 13:47A-6.3, which sets forth examples of dishonest or unethical practices, to include Internet site operators and to add dishonest or unethical business practices for Internet site operators. Proposed new N.J.A.C. 13:47A-6.3(a)61 provides that it is a dishonest or unethical practice for Internet site operators to fail to notify the Bureau within 30 days after the Internet site operator knows or should have known that the issuer offering a security on its Internet site pursuant to the exemption does not qualify for, or is not in compliance, with the exemption at N.J.S.A. 49:3-50(b)(14) or the rules set forth at proposed N.J.A.C. 13:47A-12A, or, in conducting the offering the issuer is violating or has violated the anti-fraud section of the Uniform Securities Law as set forth in N.J.S.A. 49:3-52. In addition, proposed new N.J.A.C. 13:47A-6.3(a)62 provides that it is a dishonest or unethical practice for an Internet site operator to fail to adopt, maintain, and enforce written policies and procedures to ensure the requirements set forth in proposed N.J.A.C. 13:47A-12A.5 are met.

The Bureau is also proposing amendments to N.J.A.C. 13:47A-7.1 to cross-reference the consent to service of process provisions for an issuer offering a security pursuant to N.J.S.A.

49:3-50(b)(14) and for an Internet site operator.

Proposed new N.J.A.C. 13:47A-12A sets forth the requirements for issuers to avail themselves of the intrastate offering (crowdfunding) exemption established pursuant to N.J.S.A. 49:3-50(b)(14).

Proposed new N.J.A.C. 13:47A-12A.1 sets forth the authority for the rules in the subchapter. In addition, the rule provides that the antifraud provisions of N.J.S.A. 49:3-47 et seq., remain applicable and, specifically, that fraudulent activity may still be charged as fraud under N.J.S.A. 49:3-52, 49:3-52.1, or 49:3-53. Similarly, the rule specifies that the Federal securities laws remain applicable.

N.J.A.C. 13:47A-12A.2(a) sets forth the offering conditions to qualify for the intrastate offering (crowdfunding) exemption. The issuer must be a business entity organized under the laws of this State and authorized to do business in this State, must comply with the exemption filing requirements set forth in proposed N.J.A.C. 13:47A-12A.3, and may not have previously sold securities pursuant to the intrastate offering (crowdfunding) exemption. The transaction must also meet the requirements for the Federal exemption for intrastate offerings. The sum of all cash and other consideration received for all sales of the security in reliance on the exemption cannot exceed \$ 1,000,000. The cap of \$ 1 million does not include sales to any accredited investor or institutional investor. In addition, an offer or sale to an officer, director, partner, [page=1965] trustee, or individual occupying similar status or performing similar functions with the issuer, or to a person owning 10 percent or more of the outstanding securities of the issuer does not count towards the \$ 1 million aggregate monetary limitation. The rule also provides that the offering cannot be a blind pool and it must be made exclusively through a single Internet site operator consistent with the requirements of proposed N.J.A.C. 13:47A-12A.4. In addition, each individual investor, other than an accredited investor or institutional buyer, is limited to investing no more than \$ 5,000.

To comply with the State crowdfunding exemption, as well as the Federal exemption for intrastate offerings, each investor must also be a New Jersey resident. The Bureau will accept as evidence of New Jersey residence an affirmative representation made by the prospective investor and, for an individual, proof of property tax bills, deeds, leases, and other evidence of current property ownership, tenancy, or residency, a valid New Jersey driver license or official non-driver personal identification card issued by the State of New Jersey, or current utility bills. For an entity, the Bureau requires documentation evidencing that the entity's principle place of business is in New Jersey.

N.J.A.C. 13:47A-12A.2(b) sets forth the criteria disqualifying an issuer from claiming the exemption from registration pursuant to N.J.S.A. 49:3-50(b)(14). The exemption shall not be claimed if the issuer, or any predecessor of the issuer, officer, director, partner, trustee, or individual occupying similar status or performing similar functions with the issuer or a person owning 10 percent or more of the outstanding securities of the issuer is subject to any of the disqualifying events. The disqualifying criteria are: criminal convictions in connection with the purchase or sale of a security, or involving the making of a false filing related to the offer or sale of a security; injunctions and court orders against engaging in or continuing conduct or practices in connection with the purchase or sale of securities or involving the making of a false filing related to the offer or sale of a security or any criminal conviction as described in N.J.S.A. 49:3-56(k); United States Postal Service false representation orders; or being the subject of a Bureau stop order.

Proposed new N.J.A.C. 13:47A-12A.3(a) sets forth the filing requirements for the issuer to

claim the intrastate offering (crowdfunding) exemption. The issuer shall file with the Bureau, at least 10 days prior to the commencement of the offering, the New Jersey Intrastate Offering (Crowdfunding) Exemption Form, which includes information required in this subchapter or material to the offering and a consent to service of process provision, the required disclosure information set forth in proposed N.J.A.C. 13:47A-12A.5(a), and the filing fee. Subsection (b) requires the issuer to file an amendment within 30 days whenever there is any change to the information previously reported on the Exemption Form.

Proposed new N.J.A.C. 13:47A-12A.4 sets forth the registration requirements and disqualifying criteria for the Internet site operator. Subsection (a) requires the Internet site operator to file, with the Bureau, an Internet Site Operator Registration Form, which includes a consent to service of process provision, and the filing fee. Subsection (b) specifies the information that must be included on the Registration Form. Subsection (c) requires the Internet site operator to file an amendment within 30 days whenever there is any change to the information provided on the Registration Form. Subsections (d) and (e) set forth the conditions under which the Internet site operator is not required to register as a broker-dealer under N.J.S.A. 49:3-47 et seq.

Proposed new N.J.A.C. 13:47A-12A.5 sets forth the requirements and duties of the issuer and Internet site operator. Subsection (a) lists the information set forth in N.J.S.A. 49:3-77 that an issuer must disclose to prospective investors and that the Internet site operator must publish on its internet site for the offering to qualify for the transaction exemption set forth at N.J.S.A. 49:3-50(b)(14). To provide a standard method of calculation for investors to evaluate the offering, in proposed N.J.A.C. 13:47A-12A.5(a)6, 7, and 8, the Bureau requires that the minimum and maximum amount of securities being offered and the minimum offering amount to be stated in both dollars and the number of shares or units.

N.J.A.C. 13:47A-12A.5(b) provides that an issuer must execute an escrow agreement in accordance with proposed N.J.A.C. 13:47A-12A.7. Subsection (c) provides that the issuer shall ensure that the Internet site operator prominently and conspicuously displays on its internet site the legend required by the Bureau as it appears on the Bureau's website five business days before the first offering date. The issuer must also ensure that the Internet site operator displays the legend in 12 point font, Times New Roman typeface, black ink, with at least 1.5 line spacing. Prior to accessing the terms of the offering, the prospective investor must acknowledge that he or she has viewed the legend.

In accordance with N.J.S.A. 49:3-79(b), N.J.A.C. 13:47A-12A.5(d) also requires the issuer to obtain from the investor, prior to the consummation of the purchase, the investor certification required by the Bureau as it appears on the Bureau's website five business days before the first offering date. The investor must certify in writing or electronically that the investor understands that the investment may be a high-risk speculative business venture; the offering has not been reviewed or approved by the State or Federal securities regulatory authority, and no person or authority has confirmed the accuracy or determined the adequacy of disclosures made related to the offering; the securities are illiquid, there is no ready market for the sale of the securities, and it may be difficult or impossible to sell or otherwise dispose of the investment; the investor may be subject to tax on the taxable income and losses of the company; the investor may contact the Bureau to research the professional background of a financial professional and file complaints; and the investor is a New Jersey resident. In addition, the certification may include any additional information that the Bureau finds relevant.

N.J.A.C. 13:47A-12A.5(e) requires the issuer to provide a free quarterly report to its investors. The subsection also sets forth the manner in which the issuer may make the

report available and that, upon request, the issuer must provide a written copy to the investor. In addition, the regulation sets forth the information that must be included in the quarterly report. For purposes of the quarterly report, the Bureau considers "compensation" to also include non-equity compensation, such as incentives, deferred compensation, and any personal benefits, including, but not limited to, use or maintenance of equipment or vehicles, travel expenses, entertainment expenses, and tax gross-ups.

N.J.A.C. 13:47A-12A.5(f) requires an issuer to comply with the recordkeeping requirements of proposed N.J.A.C. 13:47A-12A.6. In addition, as set forth in subsection (g), whenever there is a material change to the terms of the offering or the information provided by the issuer, the issuer must, within three business days of the change, provide notice of the material change to each investor who made an investment commitment and update the information on the internet site through which the offering is made.

To assist the Internet site operator in complying with proposed N.J.A.C. 13:47A-6.3(a)⁶¹ and 12A.10, N.J.A.C. 13:47A-12A.5(h) ensures that the Internet site operator has the documentation evidencing the issuer's compliance with the investor investment limitations set forth in proposed N.J.A.C. 13:47A-12A.2(a)⁶, including, if applicable, documentation that the investor qualifies as an accredited or institutional buyer; the investor residency requirements set forth in proposed N.J.A.C. 13:47A-12A.2(a)⁷, and the disclosure requirements set forth in proposed N.J.A.C. 13:47A-12A.5(a).

Proposed new N.J.A.C. 13:47A-12A.6(a) sets forth the recordkeeping requirements for issuers and Internet site operators, including a five-year retention requirement. In addition, upon request, the Bureau is to have ready access to the records. In accordance with subsection (b), the records must be accurately created, maintained in a manner that secures them from unauthorized alteration or use, protects them from untimely destruction, and safeguards the privacy protection of issuer and investor records and information. Subsection (c) provides that the Bureau may access, inspect, and review any Internet site operator registered under N.J.A.C. 13:47A-12A, as well as its records.

Proposed new N.J.A.C. 13:47A-12A.7 requires the issuer to execute an escrow agreement with a bank, savings bank, savings and loan association, or credit union, which institution has a place of business in New Jersey. The rule also sets forth the specific conditions for releasing and returning the offering proceeds, which must be contained in the escrow agreement.

Proposed new N.J.A.C. 13:47A-12A.8 provides that an Internet site operator shall annually renew its registration with the Bureau by December 31 of each year by filing the required form and fee.

[page=1966] Proposed new N.J.A.C. 13:47A-12A.9(a) protects investors by limiting the ability of issuers to advertise the terms of the offering to ensure that potential investors are directed to the Internet site operator's internet site through which the offering is made, which contains the required disclosures. In addition, as noted by the Securities and Exchange Commission, one of the central tenets of the concept of crowdfunding is that the members of the crowd decide whether or not to fund an idea or business after sharing information with each other. Therefore, it is important for information about the offering to be provided to potential investors in one place, that is, the Internet site operator's internet site. N.J.A.C. 13:47A-12A.9(b) restricts the issuer and persons acting on behalf of the issuer from advertising the terms of an offering made pursuant to the intrastate offering (crowdfunding) exemption, except for notices that direct investors to the Internet site operator's internet site. In addition, the rule limits the information that the notice may

contain to: a statement that the issuer is conducting an offering pursuant to N.J.S.A. 49:3-50(b)(14), the name of the Internet site operator through which the offering is being conducted, and a link directing the potential investor to the Internet site operator's internet site, and factual information about the legal identity and business location of the issuer, which is limited to the name of the issuer of the security, the address, website of the issuer, and a brief description of the business of the issuer. N.J.A.C. 13:47A-12A.9(c) also provides that an issuer and persons acting on behalf of the issuer may communicate with investors and potential investors about the terms of the offering through communication channels provided by the Internet site operator through its internet site. The issuer must identify itself as the issuer in all communications. Similarly, persons acting on behalf of the issuer must identify their affiliation with the issuer in all communications. N.J.A.C. 13:47A-12A.9(d) specifies that, notwithstanding N.J.A.C. 13:47A-12A.9(a) and (c), the Internet site operator is not permitted to advertise or communicate with investors about the terms of the offering.

To reduce the risk of fraud and protect investors, proposed new N.J.A.C. 13:47A-12A.10(a) requires the Internet site operator in a transaction involving the offer or sale of securities pursuant to the intrastate offering (crowdfunding) exemption to have a reasonable basis for believing that the issuer complies with the requirements of proposed N.J.A.C. 13:47A-12A. The Internet site operator must also have a reasonable basis for believing that the issuer has an established means to keep accurate records of the holders of the securities it would offer and sell through the Internet site operator's internet site. An Internet site operator may rely on the representations of the issuer concerning compliance with these requirements, unless the Internet site operator has reason to question the reliability of those representations. N.J.A.C. 13:47A-12A.10(b) requires the Internet site operator to deny the issuer access to its internet site if the Internet site operator has a reasonable basis for believing that the issuer or any of its executive officers, directors, managing members, other persons occupying a similar status or performing similar functions on behalf of the issuer, or a person owning 10 percent or more of the outstanding securities of the issuer is subject to the disqualifying criteria set forth in proposed N.J.A.C. 13:47A-12A.2(b). In determining whether the Internet site operator has a reasonable basis for belief, the Bureau shall take into consideration whether the Internet site operator conducted a background and securities enforcement regulatory history check on each issuer whose offering is on its internet site and on each officer, director, or person owning 10 percent or more of the outstanding securities of the issuer. The Internet site operator must also deny an issuer access to its internet site if the Internet site operator has a reasonable basis for believing that the issuer or the offering violates the anti-fraud section of the Uniform Securities Law as set forth in N.J.S.A. 49:3-52.

The Bureau has determined that the comment period for this notice of proposal shall be 60 days; therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, this notice is excepted from the rulemaking calendar requirement.

Social Impact

The Bureau believes that concurrent proposed readoption of special adopted new N.J.A.C. 13:47A-12A and the concurrent proposed readoption of special adopted amendments N.J.A.C. 13:47A-6.3 and 7.1 will have a positive social impact by ensuring investor protection for investors buying securities offered pursuant to the intrastate offering (crowdfunding) exemption. In addition, the proposed amendments and new rules will have a positive effect upon members of the regulated community, that is, issuers offering securities pursuant to this exemption and Internet site operators by setting forth their obligations and responsibilities under the State securities laws.

Economic Impact

The Bureau believes that the concurrent proposed readoption of special adopted amendments and new rules will have no financial impact on investors or potential investors. To the extent the proposed new rules encourage start-ups, there may be a positive financial impact on issuers. In addition, the concurrent proposed readoption of special adopted amendments and new rules will have an economic impact on issuers who offer securities pursuant to the intrastate offering (crowdfunding) exemption and to entities who become Internet site operators. An issuer will pay a one-time filing fee when it notifies the Bureau that it is offering securities in reliance on the exemption. All entities that intend to operate as an Internet site operator will be required to register and will incur costs from registering and annually renewing their registration. In addition, the issuers and Internet site operators will incur administrative costs to comply with the recordkeeping requirements. This cost will vary depending upon the storage and other recordkeeping systems of each issuer and Internet site operator. The concurrent proposed readoption of special adopted amendments and new rules may require issuers to engage the professional services of accountants and attorneys to assist with the offering. Internet site operators may also choose to engage the professional services of attorneys to ensure they comply with the State and Federal securities laws, or experts to assist with establishing procedures that ensure compliance with the proposed rules and amendments. The costs associated with engaging professional services of accountants, attorneys, or other professional experts are difficult to estimate, and they will vary depending upon the amount of work that each issuer and Internet site operator will require and the rate that the professional will collect for his or her services.

Federal Standards Statement

A Federal standards analysis is not required because the concurrent proposed readoption of special adopted amendments and new rules relate to securities offered pursuant to the intrastate offering (crowdfunding) exemption, which is governed by N.J.S.A. 49:3-47 et seq. In accordance with N.J.S.A. 49:3-50(b)(14), the transaction must meet the requirements for the Federal exemption for intrastate offerings. In addition, proposed N.J.A.C. 13:47A-12A.1 makes clear that Federal securities laws remain applicable. In the areas in which Federal law is applicable, a Federal standards analysis is not required because the concurrent proposed readoption of special adopted amendments and new rules do not exceed Federal standards. The proposed rules and amendments are consistent with the applicable Federal standards in the Securities Act of 1933 (15 U.S.C. §§ 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. §§ 78a et seq.), and in the applicable regulations, the Securities Act of 1933 Rules (17 CFR Part 230) and the Securities Exchange Act of 1934 Rules (17 CFR Part 240).

Jobs Impact

The Bureau does not anticipate that the concurrent proposed readoption of special adopted amendments and new rules will result in an increase or decrease in the number of jobs in the State.

Agriculture Industry Impact

The concurrent proposed readoption of special adopted amendments and new rules will have no impact on the agriculture industry in the State because the concurrent proposed readoption of special adopted amendments and new rules concern State securities laws.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for the concurrent proposed readoption of special adopted amendments and new rules because issuers and Internet site operators cannot be considered small businesses because issuers are not registrants and Internet site operators are a new registrant category who are not yet authorized to operate. If issuers and Internet site operators are considered "small businesses" [page=1967] within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., then the following analysis applies.

The concurrent proposed readoption of special adopted amendments and new rules will impose reporting, recordkeeping, and compliance requirements upon issuers and Internet site operators. These requirements are discussed in the Summary above. They will also have an economic impact as discussed in the Economic Impact above. The concurrent proposed readoption of special adopted amendments and new rules may require issuers to engage the professional services of accountants and attorneys to assist with the offering. Internet site operators may also choose to engage the professional services of attorneys to ensure they comply with the State and Federal securities laws or experts to assist with establishing procedures that ensure compliance with the concurrent proposed readoption of special adopted amendments and new rules. The costs associated with engaging professional services of accountants, attorneys, or other professional experts are difficult to estimate, and they will vary depending upon the amount of work that each issuer and Internet site operator will require and the rate that the professional will collect for his or her services.

The Bureau proposes the concurrent proposed readoption of special adopted amendments and new rules in order to protect the welfare of the investing public. The rules will apply to all members of the regulated community, which includes issuers offering securities pursuant to the intrastate offering (crowdfunding) exemption and Internet site operators. Therefore, no differing compliance requirements for any issuer offering securities pursuant to the intrastate offering (crowdfunding) exemption or Internet site operator are provided based upon the size of the business.

Housing Affordability Impact Analysis

The concurrent proposed readoption of special adopted amendments and new rules will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the concurrent proposed readoption of special adopted amendments and new rules concern State securities laws.

Smart Growth Development Impact Analysis

The concurrent proposed readoption of special adopted amendments and new rules will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the concurrent proposed readoption of special adopted amendments and new rules concern State securities laws.

Full text of the special adopted amendments and new rules and concurrent proposed readoption of special adopted amendments and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 6. DISHONEST OR UNETHICAL BUSINESS PRACTICES

13:47A-6.3 Examples of dishonest or unethical practices for broker-dealers, agents, issuer-agents, [and] advisers, **and Internet site operators**

(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.-60. (No change.)

61. As to Internet site operators, failing to notify the Bureau within 30 days after the Internet site operator knows or should have known of the existence of any of the following by an issuer offering a security pursuant to N.J.S.A. 49:3-50(b)(14) on its internet site:

i. The issuer does not qualify for, or is not in compliance with, the exemption at N.J.S.A. 49:3-50(b)(14) or N.J.A.C. 13:47A-12A; or

ii. In conducting the offering pursuant to N.J.S.A. 49:3-50(b)(14), the issuer has previously, or is currently, violating the anti-fraud section of the Uniform Securities Law as set forth in N.J.S.A. 49:3-52;

62. As to Internet site operators, failing to adopt, maintain, and enforce written policies and procedures to ensure the requirements of N.J.A.C. 13:47A-12A.5 are met;

Recodify existing 61. and 62. as **63. and 64.** (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.-4. (No change.)

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[.];

7. For an issuer offering a security pursuant to N.J.S.A. 49:3-50(b)(14), the New Jersey Intrastate Offering (Crowdfunding) Exemption Form; and

8. For an Internet site operator, the Internet Site Operator Registration Form.

SUBCHAPTER 12A. INTRASTATE OFFERING (CROWDFUNDING) EXEMPTION

13:47A-12A.1 Authority

(a) The rules in this subchapter are adopted pursuant to the authority granted by N.J.S.A. 49:3-47 et seq., and specifically N.J.S.A. 49:3-83.

(b) Nothing in this subchapter shall be construed to eliminate the applicability of the antifraud provisions of N.J.S.A. 49:3-47 et seq. 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) Nothing in this subchapter shall be construed to eliminate the applicability of the Federal securities laws.

13:47A-12A.2 Offering conditions to qualify for intrastate offering (crowdfunding) exemption; disqualifying criteria

(a) For an offering to qualify for the transaction exemption set forth in N.J.S.A. 49:3-50(b)(14), the following conditions shall be met:

1. The issuer is a business entity organized under the laws of this State and authorized to do business in this State;
 2. The transaction meets the requirements for the Federal exemption for intrastate offerings in section 3(a)(11) of the Federal Securities Act of 1933 (15 U.S.C. § 77c(a)(11)), and Rule 147 adopted under the Securities Act of 1933 (17 CFR 230.147);
 3. The sum of all cash and other consideration to be received for all sales of the security in reliance on the exemption under N.J.S.A. 49:3-50(b)(14), excluding sales to any accredited investor or institutional investor, does not exceed \$ 1,000,000;
 - i. An offer or sale to an officer, director, partner, trustee, or individual occupying similar status or performing similar functions with the issuer or to a person owning 10 percent or more of the outstanding securities of the issuer shall not be counted toward the aggregate monetary limitation of shares to be issued as established in this paragraph;
 4. The offering is not a blind pool;
 5. The offering by the issuer is made exclusively through a single Internet site operator that meets the requirements of N.J.A.C. 13:47A-12A.4;
 6. The issuer does not accept an investment of more than \$ 5,000 from any single investor, unless the investor is an accredited investor or institutional buyer;
 7. The investor in the security is a resident of this State;
 - i. The Bureau shall deem as sufficient evidence that a prospective investor is a New Jersey resident an affirmative representation made by the prospective investor that the prospective investor is a New Jersey resident; and
- (1) For an individual, one of the following:
- (A) A property tax bill, deed, lease, and other evidence of current property ownership, tenancy, or residency;

[page=1968] **(B) A valid New Jersey driver license or official non-driver personal identification card issued by the State of New Jersey; or**

(C) A current utility bill;

(2) For an entity, documentation evidencing that the entity's principle place of business is in New Jersey.

8. The issuer has never previously sold securities pursuant to N.J.S.A. 49:3-50(b)(14); and

9. The issuer shall comply with the exemption filing requirements set forth in N.J.A.C. 13:47A-12A.3.

(b) An issuer shall not claim the exemption from registration pursuant to N.J.S.A. 49:3-50(b)(14) if the issuer or any predecessor of the issuer, officer, director, partner, trustee, or individual occupying similar status or performing similar functions with the issuer, or a person owning 10 percent or more of the outstanding securities of the issuer is subject to any of the following disqualifying events:

1. Criminal convictions in connection with the purchase or sale of a security, or involving the making of a false filing related to the offer or sale of a security;

2. Injunctions and court orders against engaging in or continuing conduct or practices in connection with the purchase or sale of securities or involving the making of a false filing related to the offer or sale of a security or any criminal conviction as described in N.J.S.A. 49:3-56(k);

3. United States Postal Service false representation orders; and

4. The issuer or any predecessor of the issuer, officer, director, partner, trustee, or individual occupying similar status or performing similar functions with the issuer, or a person owning 10 percent or more of the outstanding securities of the issuer is subject to a Bureau stop order.

13:47A-12A.3 Intrastate offering (crowdfunding) exemption filing

(a) An issuer offering a security pursuant to N.J.S.A. 49:3-50(b)(14) shall file with the Bureau, no less than 10 days prior to the commencement of an offering of the security, the following:

1. The New Jersey Intrastate Offering (Crowdfunding) Exemption Form, which includes information required under this subchapter or material to the offering and a consent to service of process provision;

2. The information required to be disclosed pursuant to N.J.A.C. 13:47A-12A.5(a); and

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

(b) An issuer offering a security pursuant to N.J.S.A. 49:3-50(b)(14) shall file an amended New Jersey Intrastate Offering (Crowdfunding) Exemption Form whenever there is any change to the information previously reported. Any such amendment shall be filed no later than 30 days after the occurrence requiring the change.

13:47A-12A.4 Internet site operator registration; disqualifying criteria

(a) An Internet site operator shall file the following with the Bureau:

- 1. An Internet Site Operator Registration Form, which includes a consent to service of process provision; and**
- 2. A check made payable to the State of New Jersey, Bureau of Securities in the amount of \$ 1,000.**

(b) The Internet Site Operator Registration Form shall include all of the following:

- 1. That the Internet site operator is a business entity organized under the laws of this State and authorized to do business in this State;**
- 2. That the internet site is being utilized to offer and sell securities pursuant to the exemption under N.J.S.A. 49:3-50(b)(14);**
- 3. The name, business address, and contact information for the Internet site operator; and**
- 4. Except as provided in (d) and (e) below, that the Internet site operator is registered as a broker-dealer under N.J.S.A. 49:3-47 et seq.**

(c) The Internet site operator shall file with the Bureau an amended Internet Site Operator Registration Form whenever there is any change to the information previously reported. Any such amendment shall be filed no later than 30 days after the occurrence requiring the change.

(d) The Internet site operator shall not be required to register as a broker-dealer under N.J.S.A. 49:3-47 et seq., if all of the following apply with respect to the Internet site operator and its internet site:

- 1. It does not offer investment advice or recommendations;**
- 2. It does not solicit purchases, sales, or offers to buy the securities offered or displayed on the internet site;**
- 3. It does not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the internet site;**
- 4. It is not compensated based on the amount of securities sold, and it does not hold, manage, possess, or otherwise handle investor funds or securities;**
- 5. The fee it charges an issuer for an offering of securities on the internet site is a fixed amount for each offering, a variable amount based on the length of time that the securities are offered on the internet site, or a combination of such fixed and**

variable amounts;

6. It does not identify, promote, or otherwise refer to any individual security offered on the internet site in any advertising for the internet site; and

7. Neither the Internet site operator, nor any director, executive officer, general partner, managing member, or other person with management authority over the Internet site operator, has been subject to any conviction, order, judgment, decree, or other action specified in Rule 506(d)(1) adopted under the Securities Act of 1933 (17 CFR 230.506(d)(1)) that would disqualify an issuer under Rule 506(d) adopted under the Securities Act of 1933 (17 CFR 230.506(d)) from claiming an exemption specified in Rule 506(a) to (c) adopted under the Securities Act of 1933 (17 CFR 230.506(a) to (c)).

(e) An Internet site operator registered with the Bureau in accordance with this section is not required to register as a broker-dealer under N.J.S.A. 49:3-47 et seq., if the Internet site operator is registered as a broker-dealer under the Securities Exchange Act of 1934 (15 U.S.C. § 78o) or is a funding portal registered under the Securities Act of 1933 (15 U.S.C. § 77d) and the rules adopted by the Securities and Exchange Commission under authority of section 3(h) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(h)) and Pub.L. 112-106, section 304, governing funding portals. Nothing in this section shall be construed to require an Internet site operator to register as a broker-dealer under the Securities Exchange Act of 1934 or as a funding portal under the Securities Act of 1933.

13:47A-12A.5 Issuer and Internet site operator requirements and duties

(a) For an offering to qualify for the transaction exemption set forth in N.J.S.A. 49:3-50(b)(14), the issuer seeking to offer securities that meet those requirements shall provide, and the Internet site operator shall publish on its internet site through which the offering is made, the following information to the prospective investors in writing:

1. A copy of the legend as required in (c) below;

2. Evidence that the issuer is a business organization organized under the laws of this State and is authorized to do business in this State;

3. A description of the company, which includes the following:

i. Its form and date of business organization;

ii. The address and telephone number of its principal office;

iii. Its history;

iv. Its business plan;

v. A description of material agreements;

vi. A description of the intended use of the offering proceeds, at least 65 percent of which shall be specifically disclosed in dollar amount and percentage terms in a

Use of Proceeds section and which shall also include any amounts to be paid, as compensation or otherwise, to any owner, executive officer, director, managing member, or other person occupying a similar status or performing similar functions on behalf of the issuer;

4. The identity of each person owning more than 10 percent of the ownership interests of any class of securities of the company, with a [page=1969] description of options or other contingent securities outstanding and a description of the amount of those options or other contingent securities that those persons own;

5. The identity of the executive officers, directors, managing members, and other persons occupying a similar status or performing similar functions in the name of and on behalf of the issuer, including their titles and their prior experience, with a description of options or other contingent securities outstanding and a description of the amount of those options or other contingent securities that those persons own;

6. The terms and conditions of the securities being offered and of any outstanding securities of the company, the minimum and maximum amount of securities being offered, if any, and the percentage ownership of the company represented by the offered securities and the valuation of the company implied by the price of the offered securities. The minimum and maximum amount of securities being offered shall be stated in both dollars and number of shares or units;

7. The minimum offering amount, stated in both dollars and number of shares or units, that is necessary to implement the business plan, and a notice that the funds will only be released to the issuer if the minimum offering amount is reached;

8. The time and date, which may be no more than 12 months from the date of the offering, by which the minimum offering amount, stated in both dollars and number of shares or units, must be reached before the funds will be returned to investors;

9. A provision stating that the investors may cancel their commitment to invest for up to 30 days following the date the investment is made, except that investors who invest within 30 days of the time and date by which the minimum offering amount must be reached as provided in (a)8 above shall only have the amount of time left before the time and date by which the minimum offering amount must be reached in which to cancel their commitment to invest, even if that amount of time is less than 30 days;

10. The identity of any person who has been or will be retained by the issuer to assist the issuer in conducting the offering and sale of the securities, including any Internet site operator, but excluding persons acting solely as accountants or attorneys and employees whose primary job responsibilities involve the operating business of the issuer, rather than assisting the issuer in raising capital;

11. A description of the consideration being paid for assistance to each person identified under (a)10 above;

12. A description of any litigation or legal proceedings involving the company or its management;

13. A discussion of significant factors that make the offering speculative or risky;
14. A description of any conflicts of interest;
15. Financial statements, including a balance sheet, income statement, cash flow statement, and capitalization of issuer;
16. A statement of current liabilities outstanding, including obligations past due and obligations due within 12 months;
17. The internet site address, if applicable, at which the quarterly report required in (e) below will be made available; and
18. Any additional information material to the offering.

(b) For an exempted transaction that meets the requirements of N.J.S.A. 49:3-50(b)(14), the issuer shall execute an escrow agreement as set forth in N.J.A.C. 13:47A-12A.7.

(c) To satisfy the legend requirement of N.J.S.A. 49:3-79, the issuer shall ensure that the:

1. Internet site of the Internet site operator through which the offering is being conducted displays the legend as it appears, as of five business days prior to the first offering date, on the Bureau's website at <http://www.njsecurities.gov>;
2. Internet site operator requires each prospective investor to acknowledge that he or she has viewed the legend prior to accessing the terms of the offering; and
3. Legend is prominently and conspicuously displayed on the internet site of the Internet site operator, that it appears in at least 12 point font, Times New Roman typeface, black ink, with at least 1.5 line spacing.

(d) For an exempted transaction that meets the requirements of N.J.S.A. 49:3-50(b)(14), the issuer shall, prior to the consummation of a purchase, obtain from the investor in the securities the investor certification as it appears, as of five business days before the first offering date, on the Bureau's website at <http://www.njsecurities.gov>. The investor shall certify in writing or electronically that the investor understands:

1. The investment may be a high-risk speculative business venture;
2. The offering has not been reviewed or approved by any State or Federal securities regulatory authority and no person or authority has confirmed the accuracy or determined the adequacy of disclosures made related to this offering;
3. The securities are illiquid, there is no ready market for the sale of the securities, and it may be difficult or impossible to sell or otherwise dispose of the investment;
4. The investor may be subject to tax on the taxable income and losses of the company;

5. The investor may contact the Bureau to research the professional background of a financial professional and file complaints;
6. The investor is a New Jersey resident; and
7. Any additional information the Bureau finds relevant.

(e) For an exempted transaction that meets the requirements of N.J.S.A. 49:3-50(b)(14), the issuer shall provide, free of charge, a quarterly report to the issuer's investors.

1. An issuer may satisfy the reporting requirement of this subsection by making the information available on the internet site of the issuer or Internet site operator, if the information is made available within 45 days after the end of each fiscal quarter and remains available until the succeeding quarterly report is issued.

2. A written copy of the quarterly reports shall be provided to an investor upon request.

3. The quarterly report shall include a statement of the compensation received by each director and executive officer, including cash compensation earned since the previous report, as well as any bonuses, stock, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or any compensation received. For purposes of this paragraph, "compensation" shall also include non-equity compensation, such as incentives, deferred compensation, and any personal benefits, including, but not limited to, use or maintenance of equipment or vehicles, travel expenses, entertainment expenses, and tax gross-ups.

4. The quarterly report shall include an analysis by management of the issuer of the business operations and financial condition of the issuer.

(f) For an exempted transaction that meets the requirements of N.J.S.A. 49:3-50(b)(14), the issuer shall comply with the recordkeeping requirements of N.J.A.C. 13:47A-12A.6.

(g) If there is a material change to the terms of the offering or to the information provided by the issuer, the issuer shall, within three business days of the change, provide each investor who has made an investment notice of the material change and shall update the information on the internet site through which the offering is made.

(h) The issuer shall provide to the Internet site operator, if the Internet site operator does not otherwise have it, documentation evidencing compliance with:

1. The investor investment limitations set forth in N.J.A.C. 13:47A-12A.2(a)6, including, if applicable, documentation that an investor qualifies as an accredited investor or institutional buyer;
2. The investor residency requirements set forth in N.J.A.C. 13:47A-12A.2(a)7; and
3. The disclosure requirements set forth in (a) above.

13:47A-12A.6 Records and inspection

(a) An issuer and Internet site operator shall maintain for a period of five years from either the date of the document or communication, or the date of the closing or termination of the securities offering, whichever is later, records of all offers and sales of securities effected through the Internet site and shall provide ready access to the records to the Bureau, upon request.

[page=1970] **(b) An issuer and Internet site operator shall accurately create the required records and maintain them in a manner that secures them from unauthorized alteration or use, protects them from untimely destruction, and safeguards the privacy protection of issuer and investor records and information.**

(c) The Bureau may access, inspect, and review an Internet site operator registered under this subchapter, as well as its records.

13:47A-12A.7 Escrow account

(a) An issuer shall execute an escrow agreement with a bank, savings bank, savings and loan association, or credit union, which institution has a place of business in New Jersey, which provides that:

1. Investor funds obtained pursuant to N.J.S.A. 49:3-50(b)(14) will be deposited in that institution;

2. All offering proceeds will be released to the issuer only when the aggregate capital raised from all investors pursuant to N.J.S.A. 49:3-50(b)(14) is equal to or greater than the minimum offering amount specified in the issuer's business plan as necessary to implement the business plan; and

3. All investor funds will be returned within 60 days to investors if that minimum offering amount is not raised by the time stated in the disclosures required in N.J.A.C. 13:47A-12A.5(a)8.

13:47A-12A.8 Renewal

An Internet site operator shall renew its registration with the Bureau by filing the Internet Site Operator Renewal Form by December 31 of each year, accompanied by a check or money order for \$ 1,000 made payable to the State of New Jersey, Bureau of Securities.

13:47A-12A.9 Advertising

(a) An issuer and persons acting on behalf of the issuer may not advertise the terms of an offering made pursuant to N.J.S.A. 49:3-50(b)(14), except exclusively on the internet site of the Internet site operator.

(b) Notwithstanding (a) above, a notice may advertise an issuer's offering made pursuant to N.J.S.A. 49:3-50(b)(14), if it directs investors to the Internet site operator's internet site and includes only the following information:

1. A statement that the issuer is conducting an offering pursuant to N.J.S.A. 49:3-50(b)(14), the name of the Internet site operator through which the offering is

being conducted, and a link directing the potential investor to the Internet site operator's internet site; and

2. Factual information about the legal identity and business location of the issuer, limited to the name of the issuer of the security, the address, website of the issuer, and a brief description of the business of the issuer.

(c) Notwithstanding (a) above, an issuer and persons acting on behalf of the issuer may communicate with investors and potential investors about the terms of the offering through communication channels provided by the Internet site operator on its internet site, provided that an issuer identifies itself as the issuer in all communications. Persons acting on behalf of the issuer shall identify their affiliation with the issuer in all communications on the Internet site operator's internet site.

(d) Notwithstanding (a) and (c) above, an Internet site operator shall not advertise or communicate with investors about the terms of the offering.

13:47A-12A.10 Measures to reduce risk of fraud

(a) An Internet site operator in a transaction involving the offer or sale of securities pursuant to N.J.S.A. 49:3-50(b)(14) shall have a reasonable basis for believing that:

1. An issuer seeking to offer and sell securities pursuant to N.J.S.A. 49:3-50(b)(14) through the Internet site operator's internet site complies with the requirements of this subchapter. In satisfying this requirement, an Internet site operator may rely on the representations of the issuer concerning compliance with these requirements unless the Internet site operator has reason to question the reliability of those representations; and

2. An issuer seeking to offer and sell securities pursuant to N.J.S.A. 49:3-50(b)(14) has established means to keep accurate records of the holders of the securities it would offer and sell through the Internet site operator's internet site, provided that an Internet site operator may rely on representations of the issuer concerning its means of recordkeeping unless the Internet site operator has reason to question the reliability of those representations.

(b) An Internet site operator in a transaction involving the offer or sale of securities pursuant to N.J.S.A. 49:3-50(b)(14) shall deny access to its internet site to an issuer if the Internet site operator has a reasonable basis for believing that:

1. The issuer or any of its executive officers, directors, managing members, other persons occupying a similar status or performing similar functions in the name of and on behalf of the issuer, and a person owning 10 percent or more of the outstanding securities of the issuer is subject to the disqualifying criteria set forth in N.J.A.C. 13:47A-12A.2(b);

i. In determining whether the Internet site operator has a reasonable basis of belief, the Bureau shall take into consideration whether the Internet site operator conducted a background and securities enforcement regulatory history check on each issuer whose offering is on its internet site and on each officer, director, or person owning 10 percent or more of the outstanding securities of the issuer.

2. The issuer or the offering violates the anti-fraud section of the Uniform Securities Law as set forth in N.J.S.A. 49:3-52.