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RULE ADOPTIONS
LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BUREAU OF SECURITIES

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

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

Proposed: September 19, 2016, at 48 N.J.R. 1964(a).

Adopted: March 7, 2017, by the Bureau of Securities, Amy Kopleton, Acting Bureau Chief.

Filed: June 23, 2017, as R.2017 d.145, **without change**.

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

Effective Date: June 23, 2017.

Expiration Date: July 17, 2022.

Summary of Public Comment and Agency Response:

The official comment period ended November 18, 2016. **The Bureau of Securities received no comments.**

Federal Standards Statement

A Federal standards analysis is not required because the readoption of the 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, readopted 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 readopted amendments and new rules do not exceed Federal standards. The readopted rules and [page=2539] 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).

Full text of the readopted special adopted amendments and new rules follows:

SUBCHAPTER 6. DISHONEST OR UNETHICAL BUSINESS PRACTICES

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

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;

(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) [page=2540] 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 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;

[page=2541] 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.

(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.

[page=2542] (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.