

VOLUME 49, ISSUE 1
ISSUE DATE: **JANUARY 3, 2017**
PUBLIC NOTICES
LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BUREAU OF SECURITIES

Notice of Administrative Action

Notice of Statutory Construction

Rule 506 Notice Filings and Regulation A Tier 2 Offerings

N.J.S.A. 49:3-60.1(b) and (c)

Take notice that the New Jersey Bureau of Securities (Bureau) is filing this notice of statutory construction to resolve confusion arising from the recent recodification of provisions in the Federal Securities Act of 1933, specifically, cross-referenced in the New Jersey Uniform Securities Law. The Bureau is aware that this confusion is creating uncertainty as to whether agents of certain issuers are exempt from registration when they offer or sell Regulation A Tier 2 offerings.

N.J.S.A. 49:3-60.1(b) of the Uniform Securities Law, P.L. 1967, c. 93 (N.J.S.A. 49:3-47 et seq.), refers to certain provisions of the Securities Act of 1933 (15 U.S.C. §§ 77a et seq.) (the 1933 Act). In 2012, with the enactment of the Federal Jumpstart Our Business Startups Act (JOBS Act) (48 Stat. 74, codified at 15 U.S.C. §§77a et seq.), certain provisions of the 1933 Act were recodified, including the provision for Rule 506 offerings from Section 18(b)(4)(D) to Section 18(b)(4)(E). The Bureau notes, however, that N.J.S.A. 49:3-60.1(b) has not been updated to reflect the new codification of the 1933 Act provisions enacted under the JOBS Act.

N.J.S.A. 49:3-60.1(b) provides that:

"[w]ith respect to any security that is a federal covered security under subparagraph (D) of paragraph (4) of subsection (b) of section 18 of the "Securities Act of 1933," 15 U.S.C. s.77r(b)(4)(D), the bureau chief, by rule or otherwise, may require the issuer to file a notice on SEC Form D, 17 C.F.R. s.239.500, or a successor form, and a consent to service of process signed by the issuer no later than 15 days after the first sale of that federal covered security in this State, together with the fee required to be paid pursuant to paragraph (12) of subsection (b) of section 3 of P.L.1967, c.93 (C.49:3-50). . . ."

In addition, N.J.A.C. 13:47A-3.3(b) states, in relevant part, "[a]gent registration is not required for an individual who represents an issuer in effecting transactions exempted by N.J.S.A. 49:3-60.1(b) (certain Federally covered securities)."

At the time N.J.S.A. 49:3-60.1(b) was enacted and N.J.A.C. 13:47A-3.3(b) was promulgated, Section 18(b)(4)(D) of the 1933 Act referenced Rule 506 covered securities. In accordance with the JOBS Act [page=149] amendments, 18(b)(4)(D) of the 1933 Act now references Regulation A Tier 2 covered securities.

Take notice that based upon principles of statutory construction, the Bureau will continue to interpret N.J.S.A. 49:3-60.1(b) as applying to Rule 506 offerings as originally intended under the New Jersey Uniform Securities Law.

Take further notice that the Bureau interprets Regulation A Tier 2 offerings to be governed by N.J.S.A. 49:3-60.1(c) and, therefore, Regulation A Tier 2 offerings are not one of the types of offering for which an exclusion from the statutory definition of an "agent" is available.