

## 56 N.J.R. 1876(a)

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### RULE ADOPTIONS

#### Reporter

56 N.J.R. 1876(a)

*NJ - New Jersey Register > 2024 > SEPTEMBER > SEPTEMBER 16, 2024 > RULE ADOPTIONS > LAW AND PUBLIC SAFETY -- DIVISION OF CONSUMER AFFAIRS*

#### Agency

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LAW AND PUBLIC SAFETY > DIVISION OF CONSUMER AFFAIRS > BUREAU OF SECURITIES

#### Administrative Code Citation

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Adopted Amendments: N.J.A.C. 13:47A-1.9, 2.12, 3.1, 3A.1, 4.2, 4.3, 6.3, and 12.4

Adopted New Rules: N.J.A.C. 13:47A-1.14 and 4.4

#### Text

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##### Designated Supervisors; Continuing Education

Proposed: June 3, 2024, at 56 N.J.R. 987(a).

Adopted: August 7, 2024, by Elizabeth M. Harris, Bureau Chief, New Jersey Bureau of Securities.

Filed: August 16, 2024, as R.2024 d.088, **without change**.

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

Effective Date: September 16, 2024.

Expiration Date: June 13, 2029.

##### Summary of Public Comment and Agency Response:

The official comment period ended August 2, 2024. **The Bureau of Securities received no comments.**

[page=1877]

### **Federal Standards Statement**

A Federal standards analysis is not required because the adopted new rules and amendments do not exceed Federal standards. The adopted new rules and amendments 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 with 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-1.9 Change of status; submission of form

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

(e) A registered broker-dealer, if a corporation or partnership, shall file with the Bureau or the CRD, whichever is applicable, the fingerprints of each officer, director, controlling person, (as defined on the Form BD), or partner who commences any employment or affiliation with said registered broker-dealer no later than five days after the commencement of such employment or affiliation, and written consent from each for a criminal history record background check to be performed pursuant to N.J.S.A. 49:3-56.p. Those persons exempt from filing fingerprint data with the Securities and Exchange Commission pursuant to Rule 17f-2 promulgated pursuant to the Securities Exchange Act of 1934 (17 CFR 240.17f-2), or its successor rule, shall be exempt from filing fingerprints with the Bureau pursuant to this subsection.

##### 13:47A-1.14 Supervision

(a) Every registered broker-dealer must employ at its principal office and at each office of supervisory jurisdiction (OSJ) in this State at least one person designated to act in a supervisory capacity who is registered as an agent in this State, is located in this State, and has satisfied the supervisory examination requirements of FINRA.

(b) For any other office in this State not designated as an OSJ, a supervisor must be designated to supervise the office. The designated

supervisor shall be registered in this State as an agent and satisfy the supervisory examination requirements of FINRA, but shall not be required to be located in this State.

(c) Failure to comply with this section for more than 30 days may be deemed a failure to reasonably supervise and may result in the revocation or suspension of the registered broker-dealer's registration until such time as the broker-dealer comes into compliance with this section.

## SUBCHAPTER 2. INVESTMENT ADVISERS

### 13:47A-2.12 Supervision

(a)-(c) (No change.)

(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 pursuant to (a) above. The designated individual shall have successfully passed the Uniform Investment Adviser Law Examination (Series 65 Examination), or its successor exam.

## 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, or its successor agent application form prescribed by the CRD, as set forth at N.J.A.C. 13:47A-11.3. Such application shall be accompanied by:

1.-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 through 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 data as required by the CRD; and payment in the form prescribed by the CRD of \$ 125.00 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.-viii. (No change.)

ix. Fingerprint data pursuant to N.J.S.A. 49:3-56.p;

x.-xii. (No change.)

2. (No change.)

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

#### SUBCHAPTER 3A. INVESTMENT ADVISER REPRESENTATIVES

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

(a) (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.-8. (No change.)

9. Fingerprint data processing pursuant to N.J.S.A. 49:3-56.p;

10.-13. (No change.)

(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 successfully passed the Securities Industry Essentials Exam (SIE), the appropriate agent registration examination as specified in FINRA Rule 1220, 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) Except as provided at (c) below, 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 at (a) above unless granted a waiver by the Bureau Chief pursuant to N.J.A.C. 13:47A-4.5(a).

(c) A person who terminates any of the representative or principal registration categories with FINRA and who satisfies the conditions of FINRA's Continuing Education Program for Persons Maintaining Their Qualification Following the Termination of a Registration Category (FINRA Rule 1240(c)) may maintain the person's examination qualification for any of the terminated registration categories for a period of five years following the termination of the registration category.

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

(a) An individual applying to be registered as an investment adviser 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. (No change.)
2. The Securities Industry Essentials Exam (SIE), the General Securities Representative Examination (Series 7 examination), and the Uniform Combined State Law Examination (Series 66 examination);
- 3.-7. (No change.)

[page=1878] (b) Except as provided at (c) below, 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 at (a) above or pass the required examinations, unless granted a waiver by the Bureau Chief pursuant to N.J.A.C. 13:47A-4.5(c).

(c) Any person whose registration has been terminated for a period of two or more years may maintain the person's examination qualification for registration for a period of five years following termination provided that the person:

1. Previously took and passed the examination(s) set forth at (a)1 or 2 above for which the individual seeks to maintain eligibility pursuant to this section;
2. Was registered as an investment adviser representative for at least one year immediately preceding the termination of the investment adviser representative registration;

3. Was not subject to a statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934 while registered as an investment adviser representative or at any point after termination of the registration;

4. Is not subject to an order of the SEC, FINRA, any other self-regulatory organization, or any other securities regulator requiring the individual to retake the qualifying examination;

5. Does not have a deficiency pursuant to the investment adviser representative continuing education program at the time the investment adviser representative registration becomes ineffective;

6. Elects to participate in NASAA's Exam Validity Extension Program (IAR EVEP) within two years from the effective date of the termination of the investment adviser representative registration; and

7. Completes the continuing education requirements at N.J.A.C. 13:47A-4.4(b) annually on or before December 31 of each calendar year in which the person participates in the IAR EVEP.

i. An individual who elects to participate in the IAR EVEP is required to complete the required continuing education credits for each calendar year that elapses after the individual's investment adviser representative registration became ineffective, regardless of when the individual elects to participate in the IAR EVEP.

ii. An individual who complies with FINRA's Continuing Education Program for Persons Maintaining Their Qualification Following the Termination of a Registration Category (FINRA Rule 1240(c)) shall be considered in compliance with N.J.A.C. 13:47A-4.4(b)2.

(d) Persons applying for registration as an agent who wish to act as an investment adviser representative, shall pass the Securities Industry Essentials Exam (SIE), the Series 7 and the Series 66 examinations, or their successor examinations, and persons applying for registration as investment adviser representatives, without otherwise registering as an agent, shall pass the Series 65 examination, or its successor examinations. Registered agents who have passed the Series 66 examination can give investment advice as part of their agent activities without registering separately as investment adviser representatives.

Recodify existing (d)-(e) as (e)-(f) (No change in text.)

13:47A-4.4 Investment adviser representative continuing education

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

"Approved IAR continuing education content" means the materials, written, oral, or otherwise, that have been approved by NASAA, or its designee, and which make up the educational program provided to an investment adviser representative pursuant to this section.

"Authorized provider" means a person that NASAA, or its designee, has authorized to provide continuing education content required by this section.

"Credit" means a unit that has been designated by NASAA, or its designee, as at least 50 minutes of educational instruction.

"Home state" means the state in which the investment adviser representative has its principal office and place of business.

"IAR ethics and professional responsibility content" means approved investment adviser representative continuing education content that addresses an investment adviser representative's ethical and regulatory obligations.

"IAR products and practice content" means approved investment adviser representative continuing education content that addresses an investment adviser representative's continuing skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry.

"NASAA" means the North American Securities Administrators Association or a committee designated by its Board of Directors.

"Reporting period" means one 12-month period as determined by NASAA. An investment adviser representative's initial Reporting Period with this State commences the first day of the first full Reporting Period after the individual is registered or required to be registered with this State.

(b) Every registered investment adviser representative shall complete the following continuing education requirements each reporting period as a condition of registration renewal:

1. Six credits of investment adviser representative ethics and professional responsibility content offered by an authorized provider, with at least three hours covering the topic of ethics; and

2. Six credits of investment adviser representative products and practice content offered by an authorized provider.

(c) An investment adviser representative who is also registered as an agent of a FINRA member broker-dealer and who complies with FINRA's continuing education requirements shall be deemed to satisfy the continuing education requirements at (b)2 above for each applicable reporting period, provided the FINRA continuing education content:

1. Focuses on compliance, regulatory, ethical, and sales practices standards;

2. Derives from state and Federal investment advisory statutes, rules, and regulations, securities industry rules and regulations, and accepted standards and practices in the financial services industry; and

3. Requires that its participants demonstrate proficiency in the subject matter of the educational materials.

(d) Credits of continuing education completed by an investment adviser representative who currently holds one of the certifications described at N.J.A.C. 13:47A-4.3(a) shall be deemed to satisfy the continuing education requirements at (b) above provided:

1. The investment adviser representative completes the credits of continuing education as a condition of maintaining the certification for the relevant reporting period;

2. The credits of continuing education completed during the relevant reporting period by the investment adviser representative are mandatory to maintain the certification; and

3. The continuing education content provided by the certifying organization during the relevant reporting period is approved IAR continuing education content.

(e) Every investment adviser representative is responsible for ensuring that the authorized provider reports the investment adviser representative's completion of the applicable IAR continuing education requirements.

(f) An investment adviser representative who completes credits of continuing education in excess of the amount required for the reporting period shall not carry forward excess credits to a subsequent reporting period.

(g) An investment adviser representative who fails to comply with this section by the end of a reporting period will renew as "Approved--Pending IAR CE" at the close of the calendar year in this State until the investment adviser representative completes and reports all required investment adviser representative continuing education credits



for all reporting periods as required by this section. An investment adviser who is Approved-Pending IAR CE at the close of the next calendar year shall not be eligible for investment adviser representative registration or renewal of an investment adviser representative registration.

(h) An investment adviser representative registered or required to be registered in this State who is registered as an investment adviser representative in the individual's home state is considered to be in compliance with this section provided:

1. The investment adviser representative's home state's continuing education requirements are, at a minimum, the same as those in this section; and

[page=1879] 2. The investment adviser representative is in compliance with the home state's investment adviser representative continuing education requirements.

(i) An investment adviser representative who was previously registered pursuant to the Act and became unregistered must complete investment adviser representative continuing education for all reporting periods that occurred between the time that the investment adviser representative became unregistered and when the person became registered again pursuant to the Act unless the investment adviser representative takes and passes the examination or receives an examination waiver as required at N.J.A.C. 13:47A-4.3(b) in connection with the subsequent application for registration.

13:47A-4.5 (No change in text.)

#### 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 at N.J.S.A. 49:3-47 et seq., specifically at N.J.S.A. 49:3-53.a(3) and 49:3-58.a(2)(vii), shall include the following:

1.-62. (No change.)

63. Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contravention of Section 206(4) of the Investment Advisers Act of 1940 (15 U.S.C. § 206(4)), notwithstanding the fact that such investment adviser is not registered or required to be registered pursuant to Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. § 203);

64. Failing to pay and fully satisfy any final judgment or arbitration award, resulting from an investment-related, customer-initiated arbitration, or court proceeding, unless alternative payment arrangements are agreed to between the customer and the investment adviser or investment adviser representative, or the broker-dealer or broker-dealer agent, in writing, and the investment adviser or investment adviser representative, or broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangement;

65. Attempting to avoid payment of any final judgment or arbitration award resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the investment adviser or investment adviser representative, or the broker-dealer or broker-dealer agent, in writing, and the investment adviser or investment adviser representative, or the broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangements;

66. Failing to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed, whether administratively or through court proceedings, upon the investment adviser or investment adviser representative, or the broker-dealer or agent by the Securities and Exchange Commission, a court of competent jurisdiction, the securities or other financial services regulator of any state or province, or any self-regulatory organization; or

67. (No change in text.)

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

13:47A-12.4 Manual exemptions

The manuals issued by Mergent's are recognized for the "manual" exemption pursuant to N.J.S.A. 49:3-50.b(2)(i)(B). This exemption encompasses both the printed manuals and the electronic data services of Mergent's.

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