

56 N.J.R. 1986(a)

VOLUME 56, ISSUE 19, OCTOBER 7, 2024

RULE ADOPTIONS

Reporter

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NJ - New Jersey Register > 2024 > OCTOBER > OCTOBER 7, 2024 > RULE ADOPTIONS > LAW AND PUBLIC SAFETY - DIVISION OF CONSUMER AFFAIRS

Agency

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

Administrative Code Citation

Adopted Amendments:

N.J.A.C. 13:47A-1.1, 1.2, 2.1, 2.11, 3.1, 3A.1, 5.2, 7.9, 7.10, 10.2, 10.3, 10.4, 13:47A-10 Appendix B, 12A.4, and 12A.8

Text

Fees

Proposed: June 3, 2024, at 56 N.J.R. 983(a).

Adopted: August 15, 2024, by Elizabeth M. Harris, Bureau Chief, New Jersey Bureau of Securities.

Filed: September 10, 2024, as R.2024 d.096, **without change**.

Authority: N.J.S.A. 49:3-47 et

seq., specifically 49:3-66.1.

Effective Date: October 7, 2024.

Expiration Date: June 13, 2029.

Summary of Public Comments and Agency Responses follows:

The official comment period ended August 2, 2024. The Bureau of Securities (Bureau) received comments from the following individuals:

1. Kyle R. Innes, Managing Director and Association General Counsel, Securities Industry and Financial Markets Association (SIFMA)
2. Amy McDonald, Associate General Counsel, Investment Company Institute

1. COMMENT: A commenter opposes the fee increases and contends that the Bureau and the New Jersey securities industry will not benefit from these increases. The commenter points to the State of New Jersey Fiscal 2025 Budget in Brief (2025 Budget in Brief), which indicated that the fee increases would "avert the need for further spending reductions" in New Jersey. The commenter also contends that the increases would be one of the largest in any state

and would make New Jersey an outlier. According to the commenter, the fee increases could lead to loss of revenue for New Jersey and reduce the ability of New Jersey businesses to raise capital. The commenter urges the Bureau not to adopt the fee increase and to consider more modest fee increases that will be used solely to support the Bureau.

RESPONSE: Pursuant to N.J.S.A. 49:3-66.1, the fees charged by the Bureau must be "reasonably related to the overall costs of carrying out the regulatory and administrative duties of the bureau ..." As explained in the notice of proposal, the Bureau's fees have remained static since 2019, while the scope and scale of the Bureau's regulatory, enforcement, and investor education activities have evolved and expanded. Those activities include, among other things, serving as a lead state in large-scale, multijurisdictional cases that resolved favorably for investors; stepping up investor protections for seniors by implementing the Safeguarding Against Financial Exploitation Act; and conducting investor education programs to combat fraud and maintain confidence in the securities markets.

The Bureau understands that the 2025 Budget in Brief refers to increases in the Bureau's fees. However, the Bureau is adopting the proposed fee increases to ensure that it is fully equipped to meet its regulatory,

enforcement, and investor education responsibilities. The proposed fee increases will enable the Bureau to keep pace with the demands of a constantly shifting regulatory and enforcement landscape while continuing to fulfill its traditional functions, including investigatory on-site and desk examinations of registrants; investigating complaints from investors and industry participants and referrals from other regulators; and monitoring the marketplace for fraudulent securities activity.

2. COMMENT: A commenter recognizes that the securities industry has an interest in ensuring that the Bureau is properly funded. The commenter contends that the fee increases are unlikely to support the Bureau, as fees collected by the Bureau will be diverted to the General Fund.

RESPONSE: As noted in the Response to Comment 1, the proposed fee increases are "reasonably related to the overall costs of carrying out the regulatory and administrative duties of the Bureau ..." See N.J.S.A. 49:3-66.1. Indeed, for the reasons set forth in detail in the notice of proposal, the proposed fee increases will ensure that the Bureau is equipped to keep pace with the demands of a constantly shifting regulatory and enforcement landscape. The Bureau's enforcement efforts include, but are not limited to, schemes involving market

manipulation; issues involving the securitization of digital asset and cryptocurrency products; misuse of investor funds; fraudulent sales of securities; firms' failure to reasonably supervise; dishonest and unethical practices by registrants; and the offer and sale of securities by unregistered firms and individuals. These efforts are resource-intensive, and the need to stay abreast of sophisticated, rapidly evolving technology in the securities industry will only make them more so in the years ahead. The proposed fee increases will help the Bureau maintain and expand these efforts.

3. COMMENT: A commenter contends that the proposed fee increases will exacerbate cost issues for the securities industry in New Jersey. The commenter points to data indicating that New Jersey has lost 2,000 securities jobs since 2013, while nationwide 250,400 jobs have been added. The commenter contends that the national average for state registration of broker-dealer agents is \$ 68.00. In addition, the commenter notes that the most common registration fee for broker-dealer agents is \$ 50.00; that only 10 states have a fee above \$ 100.00; and that currently, the most expensive fee is \$ 150.00.

RESPONSE: The Bureau recognizes that the proposed fee increases will make its registration fees among the highest in the country. However, the Bureau is mindful of

the need for states to continually update their registration fees to fulfill their ever-increasing enforcement and regulatory responsibilities. Indeed, the Bureau's fees may not remain among the highest in the country for long, and it is incumbent upon the Bureau to plan not just for the immediate future but for longer-term priorities and responsibilities as well.

4. COMMENT: A commenter points out that the Governor recently proposed a 2.5 percent Corporate Transit Fee, which would result in the nation's highest corporate tax of 11.5 percent. The proposed fee increases would impact the same entities that would be required to pay the proposed Corporate Transit Fee. The commenter opposes the proposed tax increase and maintains that the increased fees and taxes would be an attack on the securities industry in New Jersey.

RESPONSE: The proposed increase in the Corporate Transit Fee is outside the scope of this rulemaking. In establishing its fees, the Bureau must assess not whether the fees would add to the regulated industry's other financial burdens, but rather whether its fees are "reasonably related [page=1987] to the overall costs of carrying out the regulatory and administrative duties of the bureau ..." See N.J.S.A. 49:3-66.1. For the reasons set forth in the responses to prior comments, the proposed fee increases meet that standard.

5. COMMENT: A commenter contends that the Economic Impact statement in the notice of proposal failed to consider the impact on the securities industry or New Jersey. The statement did not recognize that fees are already high or that most registrations are for out-of-State advisors, many of which pay fees in all 50 states and could decide to de-register in the state with the most expensive fees. The commenter also contends that the statement did not recognize the Bureau's enforcement efforts, which have raised hundreds of millions of dollars for New Jersey.

RESPONSE: The Economic Impact statement recognized that the increased fees would have an impact on registrants. The Bureau has concluded, however, that the increased fees are important for ensuring that the Bureau can meet the demands of a shifting regulatory and enforcement landscape. The Bureau points out that penalties imposed as part of enforcement efforts are remedial in nature and cannot be relied on for budgetary purposes. Accordingly, the revenue that the Bureau has generated from enforcement cannot be used to offset its normal operating expenses. For those expenses, the Bureau must rely on the revenue it generates from fees.

6. COMMENT: A commenter opposes the increase in filing fees for Federally registered mutual funds and unit investment trusts. The commenter contends that the Bureau

has not articulated a reasonable justification for raising these fees and points out that the increased fees will be among the highest in the Northeast region of the United States. The commenter contends that the increased fees are not reasonably related to the costs of carrying out the Bureau's duties, as the Bureau's annual revenues already exceed expenditures from the Securities Enforcement Fund (Fund). The commenter contends that fee increases would only lead to an increase in the Fund's surplus. According to the commenter, publicly available information indicates that the Bureau spends roughly 20 percent of revenue paid into the Fund every year and points out that the Bureau has not indicated that it plans to increase expenditures or engage in other activities that would justify the fee increases.

RESPONSE: The Bureau must ensure that the Fund is sufficiently capitalized to enable the Bureau to fulfill its ever-expanding regulatory, enforcement, and investor education responsibilities. As noted in the response to prior comments, the Bureau must plan not only for the immediate future but for its long-term regulatory, administrative, and enforcement responsibilities as well. The proposed fee increases are reasonably related to achieving that objective.

Federal Standards Statement

A Federal standards analysis is not required because the adopted

amendments are governed by N.J.S.A. 49:3-47 et seq., and are not subject to any Federal requirements or standards.

Full text of the adoption follows:

SUBCHAPTER 1. BROKER-DEALERS

13:47A-1.1 Application for registration for FINRA members

(a) Any person who is a member of the Financial Industry Regulatory Authority (FINRA), desiring to transact business in the State of New Jersey as a broker-dealer shall file an application with the Bureau of Securities (the Bureau) by filing the application with the Central Registration Depository (CRD) on the form designated as Form BD, Uniform Application for Broker-Dealer Registration, or any successor form to the Form BD prescribed by the CRD for filing a broker-dealer application. The requisite registration fee shall be submitted with the application filed with the CRD in the amount of \$ 600.00 for a one-year registration term. Failure to pay the registration fee as above, within the billing time limits established by the Bureau or by the CRD, shall be a ground for immediate revocation of the registration. The applicant shall supplement the application filed with the CRD by directly filing with the Bureau the Broker-Dealer Supplement and any additional information that the Chief of the Bureau of Securities of the State of New Jersey (the Bureau Chief) requires. The 30-day time period

for review of an application will not commence until the applicant files all documents or material facts specified and required. The following additional information shall be filed with the Bureau for all broker-dealer applications and no application shall be deemed complete until all of the following are properly submitted, unless the requirements are waived by the Bureau Chief:

1.-4. (No change.)

(b)-(e) (No change.)

13:47A-1.2 Application for registration for persons not eligible for registration through the CRD

Any person desiring to transact business in the State of New Jersey who is not a member of FINRA or who is not otherwise eligible to register through the CRD pursuant to N.J.A.C. 13:47A-1.1, shall file all of the information required at N.J.A.C. 13:47A-1.1 and in the same form required by that section directly with the Bureau at its current office address. The application shall be accompanied by a check or money order payable to the State of New Jersey, Bureau of Securities, in the amount of \$ 600.00.

SUBCHAPTER 2. INVESTMENT ADVISERS

13:47A-2.1 Application for investment adviser registration

(a) (No change.)

(b) Such Form ADV shall be

accompanied by:

2.-4. (No change.)

1.-6. (No change.)

SUBCHAPTER 3. INVESTMENT ADVISER REPRESENTATIVES

7. The requisite registration fee in the amount of \$ 550.00 shall be submitted with the application filed with the IARD for electronic filers or to the Bureau in a check or money order payable to the State of New Jersey, Bureau of Securities, for paper filers; and

13:47A-3.1 Agents of broker-dealers

8. (No change.)

(a) Any person desiring to act in the State of New Jersey as an agent of a non-FINRA member broker-dealer registered in New Jersey directly with the Bureau or as an agent of an issuer shall file a complete and accurate application with the Bureau on the Uniform Application for Securities Industry Registration or Transfer, Form U4, as set forth at N.J.A.C. 13:47A-11.3. Such application shall be accompanied by:

(c) (No change.)

13:47A-2.11 Notice filing of Federally registered investment advisers

(a) Any person doing business in New Jersey who is registered or required to be registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-3), as amended, or is not exempted from making a notice filing at N.J.S.A. 49:3-56.g, shall file the following items with the Bureau, unless such person is not within the State definition of "investment adviser" set forth at N.J.S.A. 49:3-49.g:

1.-2. (No change.)

3. A check or money order made payable to the State of New Jersey, Bureau of Securities, in the amount of \$ 190.00. Issuers of securities pursuant to N.J.S.A. 49:3-50.b need not register as agents or qualify as issuers. However, a pattern of N.J.S.A. 49:3-50.b(12) offerings by the same person or group of persons may raise a presumption that the person or persons are acting as an unregistered broker-dealer requiring broker-dealer registration of the issuer and its agents.

1. In connection with an initial notice filing with the Bureau by the applicant, the applicant shall make a written notice filing in the form of the current Form ADV, or a successor form, as filed with the Securities and Exchange Commission, and file with the Bureau a check made payable to the State of New Jersey, Bureau of Securities in the amount of \$ 550.00;

(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 cards as required by the CRD; and payment in the form prescribed by the CRD of \$ 190.00 for each year of [page=1988] 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.-2. (No change.)

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

SUBCHAPTER 3A. INVESTMENT ADVISERS REPRESENTATIVES

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

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

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

1. (No change.)

2. A fee of \$ 210.00 shall be assessed for each initial application. The fee may be paid to the Bureau electronically through the CRD, or it may be paid by check or money order made payable to the State of New Jersey, Bureau of Securities, if the application was filed directly with the Bureau. 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 fee as provided above

within the billing time limits Securities.
established by the Bureau or by
the CRD.

(b)-(f) (No change.)

SUBCHAPTER 5. RENEWAL

13:47A-5.2 Application for
renewal

(a) A broker-dealer registered in New Jersey through the CRD may apply to renew its registration by filing the renewal forms prescribed by the CRD accompanied by payment of a \$ 600.00 renewal fee.

(b) A broker-dealer registered in New Jersey through direct registration with the Bureau may apply to renew its registration by filing Form BDR issued to the registrant by the Bureau accompanied by a check or money order for \$ 600.00 made payable to the State of New Jersey, Bureau of Securities.

(c) A registered investment adviser registered or notice filed in New Jersey through the IARD may apply to renew its registration by filing the renewal forms prescribed by the IARD by December 31 of each year, accompanied by payment of a \$ 550.00 renewal fee.

(d) A registered investment adviser registered in New Jersey through direct registration with the Bureau may apply to renew its registration by filing a current copy of the Form ADV, together with a check or money order for \$ 550.00 made payable to the State of New Jersey, Bureau of

(e) An agent registered in New Jersey through the CRD may apply to renew his or her registration by filing the renewal prescribed by the CRD accompanied by a \$ 190.00 renewal fee.

(f) A broker-dealer registered in New Jersey through direct registration with the Bureau may apply to renew its agents who are registered in New Jersey through direct registration with the Bureau by filing with the Bureau a list containing the name and social security number of each such agent together with a check or money order payable to the State of New Jersey, Bureau of Securities, in the amount of \$ 190.00 per agent per year.

(g) An issuer agent registered in New Jersey may apply to renew his or her registration with the Bureau by filing a completed Form ISR issued to the registrant by the Bureau accompanied by a check or money order in the amount of \$ 190.00, made payable to the State of New Jersey, Bureau of Securities.

(h) An investment adviser representative registered electronically in New Jersey through the CRD may apply to renew his or her registration by December 31 of each year by filing the renewal form prescribed by the CRD accompanied by a \$ 210.00 renewal fee.

(i) (No change.)

SUBCHAPTER 7. MISCELLANEOUS

13:47A-7.9 Notice filings for Renewals shall be effective from securities issued or offered by the expiration date of the notice Federally registered investment filing being renewed until 18 companies and unit investment months later. trusts

(a) (No change.)

(b) In addition to (a)1 or 2 above, issues of Federal covered securities as described at (a) above shall annually file with the Bureau:

1. (No change.)

2. A check made payable to the State of New Jersey, Bureau of Securities in the amount of \$ 3,500 for an investment company for the period from the date of receipt until the following June 30. Payment of fees shall be due and payable upon filing.

i.-ii. (No change.)

3. A check made payable to the State of New Jersey, Bureau of Securities, in the amount of \$ 1,800 for a unit investment trust. Payment of fees shall be due and payable upon filing. The notice filing for a unit investment trust shall become effective upon receipt by the Bureau of Securities and shall be effective for 18 months from the date of receipt by the Bureau of Securities. Notice filings pursuant to this section shall be renewed not later than 18 months after the effective date of the initial notice filing by filing the Form NF for unit investment trusts or the most recent form of registration statement, along with the payment of the fees as above.

(c) (No change.)

13:47A-7.10 Private placement filings

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

1.-5. (No change.)

6. A check made payable to the State of New Jersey, Bureau of Securities, in the amount of \$ 750.00.

(b) Rule 506 filings. An issuer offering a security pursuant to N.J.S.A. 49:3-60.1.b shall file with the Bureau, no later than 15 days after the first sale of such security in this State, the notice filing and \$ 750.00 filing fee in the manner described in this subsection.

1. (No change.)

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

i.-iii. (No change.)

iv. A check made payable to the State of New Jersey, Bureau of

Securities in the amount of \$ 750.00.

3. (No change.)

SUBCHAPTER 10. REGISTRATION OF SECURITIES

13:47A-10.2 Registration by coordination

(a) A person who seeks to register by coordination a security for which a registration statement has been filed pursuant to the Securities Act of 1933 shall file with the Bureau the following documents and information.

1. A completed application Form U-1, Uniform Application to Register Securities, which shall be accompanied by the following:

i.-xiii. (No change.)

xiv. A check or money order payable to the New Jersey Bureau of Securities, in the amount of \$ 5,000, for each registration statement filed with the Bureau. The Bureau may require the applicant to submit a money order or certified check in appropriate instances;

[page=1989] xv.-xvi. (No change.)

2.-3. (No change.)

(b)-(i) (No change.)

(j) In the case of "shelf" registrations, the initial filing with the Bureau shall cover the first takedown. Subsequent takedowns may be registered by filing Form U-1, Uniform

Application to Register Securities, together with any supplements or amendments to the registration statement, and a filing fee in the amount of \$ 5,000 for each registration statement filed with the Bureau. The subsequent filing will be expedited, provided the filing makes a clear reference to the original shelf filing by giving the name of the issuer, the securities registered, the New Jersey registration number, and the effective date of the prior registration. Subsequent takedowns which comply with the foregoing shall become effective upon notice by the filing of a supplement or an amendment to the registration statement.

13:47A-10.3 Registration by Qualification

(a) A person who seeks to register a security by Qualification shall file with the Bureau the following documents and information:

1. A completed application Form U-1, Uniform Application to Register Securities, which shall be accompanied by the following:

i.-xii. (No change.)

xiii. A check or money order payable to the New Jersey Bureau of Securities, in the amount of \$ 5,000, for each registration statement filed with the Bureau, the Bureau may require the applicant to submit a money order or certified check in appropriate instances;

xiv.-xvi. (No change.)

2.-3. (No change.)

(b)-(i) (No change.)

(j) Shelf registration may be permitted only in the discretion of the Bureau. Generally, shelf registrations will not be permitted unless the securities have been registered with the Securities and Exchange Commission. In the case of "shelf" registrations, the initial filing with the Bureau shall cover the first takedown. Subsequent takedowns may be registered by filing Form U-1, Uniform Application to Register Securities, together with any supplements or amendments to the registration statement, and a filing fee in the amount of \$ 5,000 for each registration statement filed with the Bureau. The subsequent filing will be expedited, provided the filing makes a clear reference to the original shelf filing by giving the name of the issuer, the securities registered, the New Jersey registration number, and the effective date of the prior registration. Subsequent takedowns which comply with the foregoing shall become effective upon notice by the filing of a supplement or an amendment to the registration statement.

13:47A-10.4 Registration by Notification

(a) A person who seeks to register securities by Notification shall file with the

Bureau the following documents and information:

1. A completed application Form U-1, Uniform Application to Register Securities, which shall be accompanied by the following:

i.-xii. (No change.)

xiii. A check or money order payable to the New Jersey Bureau of Securities, in the amount of \$ 5,000 for each registration statement filed with the Bureau. The Bureau may require the applicant to submit a money order or certified check in appropriate instances;

xiv.-xv. (No change.)

2.-3. (No change.)

(b)-(h) (No change.)

(i) Shelf registration may be permitted only in the discretion of the Bureau. Generally, shelf registrations will not be permitted unless the securities have been registered with the Securities and Exchange Commission. In the case of "shelf" registrations, the initial filing with the Bureau shall cover the first takedown. Subsequent takedowns may be registered by filing Form U-1, Uniform Application to Register Securities, together with any supplements or amendments to the registration statement, and a filing fee in the amount of \$ 5,000 for each registration statement filed with the Bureau. The subsequent filing will be expedited provided, the filing

makes a clear reference to the original shelf filing by giving the name of the issuer, the securities registered, the New Jersey registration number, and the effective date of the prior registration. Subsequent takedowns which comply with the foregoing shall become effective upon notice by the filing of a supplement or an amendment to the registration statement.

APPENDIX B

NEW JERSEY REGISTRATION STATEMENT FOR REGISTRATION BY NOTIFICATION

All items must be answered. Attach riders where necessary.

I.-V. (No change.)

VI. INFORMATION AND DOCUMENTS REQUIRED

(See N.J.S.A. 49:3-61.3(b)(10), 61.3(b)(12), and 61.3(b)(14)).

A.-G. (No change.)

H. EXHIBITS

Submitted herewith as part of this registration statement are the following documents. (Documents on file may be incorporated by reference.)

1.-6. (No change.)

7. The registration fee of \$ 5,000.00.

Name of Applicant

By: _____

(Name and Title)

Date: _____

STATE OF _____

COUNTY OF _____

The undersigned, _____, being first duly sworn, deposes and says:

That he has executed the foregoing application for and on behalf of the applicant named therein; that he is _____ of such applicant and is fully authorized to execute and file such application; that he is familiar with such application; and that to the best of his knowledge, information and belief the statements made in such application are true and the documents submitted therewith are true copies of the originals thereof.

Name

Subscribed and sworn to before me

this _____ day of _____, 20__

NOTARY PUBLIC

In and for the County of _____

State of _____

My Commission Expires: _____

(Notarial Seal) _____

SUBCHAPTER 12A. INTRASTATE
OFFERING (CROWDFUNDING) EXEMPTION

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

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

1. (No change.)

2. A check made payable to the State of New Jersey, Bureau of Securities, in the amount of \$ 1,800.

(b)-(e) (No change.)

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 \$ 1,800 made payable to the State of New Jersey, Bureau of Securities.

NEW JERSEY REGISTER

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