

CHAPTER 128

AN ACT concerning exemption from registration for certain offers and sales of securities and amending and supplementing P.L.1967, c.93.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.49:3-77 Information provided to prospective investors.

1. In order for a transaction to meet the requirements of paragraph (14) of subsection (b) of section 3 of P.L.1967, c.93 (C.49:3-50), the issuer seeking to offer securities that meet those requirements and the Internet site through which the offering is made shall provide the following information to the prospective investors in writing on that site:

a. a copy of the legend required pursuant to subsection a. of section 3 of P.L.2015, c.128 (C.49:3-79);

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

c. a description of the company, its form and date of business organization, the address and telephone number of its principal office, its history, its business plan, a description of material agreements and 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;

d. the identity of all persons 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;

e. 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;

f. 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;

g. the minimum offering amount 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;

h. the time and date, which may be no more than 12 months from the date of the offering, by which the minimum offering amount must be reached before the funds will be returned to investors;

i. 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 subsection h. of this section 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;

j. 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;

k. a description of the consideration being paid for assistance to each person identified under subsection j. of this section;

l. a description of any litigation or legal proceedings involving the company or its management;

m. a discussion of significant factors that make the offering speculative or risky;

n. a description of any conflicts of interest;

o. financial statements, including a balance sheet, income statement, cash flow statement, and capitalization of issuer;

p. a statement of current liabilities outstanding, including obligations past due and obligations due within 12 months;

q. the Internet site address at which the quarterly report required by section 5 of P.L.2015, c.128 (C.49:3-81) will be made available; and

r. any additional information material to the offering.

C.49:3-78 Agreements relative to exempted transaction.

2. For any exempted transaction which meets the requirements of paragraph (14) of subsection (b) of section 3 of P.L.1967, c.93 (C.49:3-50), the 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, that provides that investor funds obtained pursuant to the provisions of P.L.2015, c.128 (C.49:3-77 et al.) will be deposited in that institution, and shall further provide that all offering proceeds will be released to the issuer only when the aggregate capital raised from all investors pursuant to P.L.2015, c.128 (C.49:3-77 et al.) is equal to or greater than the minimum offering amount specified in the issuer's business plan as necessary to implement the business plan. The agreement shall also provide that 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 to be set forth pursuant to P.L.2015, c.128 (C.49:3-77 et al.).

C.49:3-79 Promulgation of legend, investor certification.

3. a. The bureau shall promulgate a legend that the issuer shall be required to provide to all prospective investors in exempted securities offered pursuant to paragraph (14) of subsection (b) of section 3 of P.L.1967, c.93 (C.49:3-50), informing prospective investors that the securities have not been registered with the United States Securities and Exchange Commission or the bureau and that the securities are subject to limitations on resale, along with any other information the bureau finds relevant to be included in that legend.

b. The bureau shall promulgate an investor certification which, prior to the consummation of a purchase, the investor in the securities shall be required to 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 relating 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; and

- (5) Any additional information the bureau finds relevant.

C.49:3-80 Requirements for Internet site.

4. The following requirements apply to an Internet site through which an issuer offers or sells securities exempted pursuant to paragraph (14) of subsection (b) of section 3 of P.L.1967, c.93 (C.49:3-50):

a. The Internet site operator shall register with the bureau by filing an application for registration, accompanied by a filing fee to be determined by the bureau, that includes 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 paragraph (14) of subsection (b) of section 3 of P.L.1967, c.93 (C.49:3-50);

(3) The identity and location of, and contact information for, the Internet site operator; and

(4) Except as provided in subsections b. and c. of this section, that the Internet site operator is registered as a broker-dealer under P.L.1967, c.93 (C.49:3-47 et seq.).

If any change occurs in the information that an Internet site operator submits to the bureau pursuant to this subsection, the Internet site operator shall notify the bureau of the change within 30 days after the change occurs.

b. The Internet site operator shall not be required to register as a broker-dealer under P.L.1967, c.93 (C.49:3-47 et seq.) if all of the following apply with respect to the Internet site and its operator:

(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;

(7) It does not engage in other activities the bureau determines to be prohibited; and

(8) 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 C.F.R. s.230.506(d)(1)) that would disqualify an issuer under Rule 506 (d) adopted under the "Securities Act of 1933" (17 C.F.R. s.230.506(d)) from claiming an exemption specified in Rule 506 (a) to (c) adopted under the "Securities Act of 1933" (17 C.F.R. ss.230.506(a) to (c)).

c. The Internet site operator is not required to register as a broker-dealer under P.L.1967, c.93 (C.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. s.78o) or is a funding portal registered under the "Securities Act of 1933" (15 U.S.C. s.77d) and the Securities and

Exchange Commission has adopted rules under authority of section 3 (h) of the “Securities Exchange Act of 1934” (15 U.S.C. s.78c(h)) and Pub.L. 112-106, section 304, governing funding portals, and the Internet site operator files with the bureau chief those documents filed with the Securities and Exchange Commission that the bureau chief may by rule or otherwise require, and the Internet site operator consents to service or process and pays a fee to be established by the bureau. 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.”

d. The issuer and the Internet site operator shall maintain 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. The bureau may access, inspect, and review any Internet site registered under this section as well as its records.

e. Notwithstanding any law or regulation to the contrary, if the Securities and Exchange Commission adopts rules under authority of section 3(h) of the “Securities Exchange Act of 1934” (15 U.S.C. s.78c (h)) and Pub.L. 112-106, section 304, that authorize funding portals to receive commissions without registering as broker-dealers under the “Securities Exchange Act of 1934,” the bureau may promulgate rules authorizing Internet site operators registered with the bureau pursuant to this section to receive commissions without registering as broker-dealers.

C.49:3-81 Quarterly report to investors.

5. An issuer of securities exempted pursuant to paragraph (14) of subsection (b) of section 3 of P.L.1967, c.93 (C.49:3-50) shall provide, free of charge, a quarterly report to the issuer’s investors. An issuer may satisfy the reporting requirement of this section by making the information available on an Internet site 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. A written copy shall be provided to an investor upon request. The 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 options, other rights to receive securities of the issuer or any affiliate of the issuer, or any compensation received. The report shall also include an analysis by management of the issuer of the business operations and financial condition of the issuer.

C.49:3-82 Criteria for disqualifying issuers from claiming exemption.

6. The bureau shall establish by regulation criteria for disqualifying issuers of securities from claiming the exemption from registration pursuant to paragraph (14) of subsection (b) of section 3 of P.L.1967, c.93 (C.49:3-50). The criteria shall include, but not be limited to, the following disqualifying events:

a. 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;

b. 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 subsection (k) of section 9 of P.L.1967, c.93 (C.49:3-56);

c. United States Postal Service false representation orders; and

d. The issuer is subject to a bureau stop order.

C.49:3-83 Regulations.

7. The bureau chief, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), may adopt regulations to effectuate the purposes of P.L.2015, c.128 (C.49:3-77 et al.) and to comply with the requirements of applicable federal law; except that, notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the bureau chief may adopt, immediately upon filing with the Office of Administrative Law, those regulations as the bureau chief deems necessary to implement the provisions of P.L.2015, c.128 (C.49:3-77 et al.), which regulations shall be effective for a period not to exceed six months after the date of filing and may, thereafter, be amended, adopted or readopted by the commissioner in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

8. Section 2 of P.L.1967, c.93 (C.49:3-49) is amended to read as follows:

C.49:3-49 Definitions relative to Uniform Securities Law.

2. When used in this act, unless the context requires otherwise:

(a) "Bureau" means the agency designated in subsection (a) of section 19 of P.L.1967, c.93 (C.49:3-66);

(b) "Agent" means any individual other than a broker-dealer, who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in (1) effecting transactions in a security exempted by paragraph (1), (2), (3), or (11) of subsection (a) of section 3 of P.L.1967, c.93 (C.49:3-50); (2) effecting transactions exempted by subsection (b) of section 3 of P.L.1967, c.93 (C.49:3-50); (3) effecting transactions with existing employees, partners, or directors of the issuer, if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this State; or (4) a broker-dealer in effecting transactions in this State limited to those transactions described in paragraph (2) of subsection (h) of section 15 of the "Securities Exchange Act of 1934," 15 U.S.C. s.78o(h)(2); or (5) such other persons not otherwise within the intent of this subsection (b), as the bureau chief may by rule or order designate. A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition. The bureau chief may by rule or order, as to any transaction, waive the requirement of agent registration. The bureau chief may by rule define classes of persons as "agents," if those persons are regulated as "agents" by the Securities and Exchange Commission or any self-regulatory organization established pursuant to the laws of the United States;

(c) "Broker-dealer" means any person engaged in the business of effecting or attempting to effect transactions in securities for the accounts of others or for his own account. "Broker-dealer" does not include (1) an agent, (2) an issuer, (3) a person who effects transactions in this State exclusively in securities described in paragraphs (1) and (2) of subsection (a) of section 3 of P.L.1967, c.93 (C.49:3-50), (4) a bank, savings institution, or trust company, or (5) a person who effects transactions in this State exclusively with or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the "Investment Company Act of 1940," pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees or (iv) such other persons not otherwise within the intent of this subsection (c), as the bureau chief may by rule or order designate;

(d) "Capital" shall mean net capital, as defined and adjusted under the formula established by the Securities and Exchange Commission in Rule 15c3-1, 17 C.F.R. s.240.15c3-1, made pursuant to the "Securities Exchange Act of 1934," prescribing a minimum permissible ratio of aggregate indebtedness to net capital as such formula presently exists or as it may hereafter be amended;

(e) "Fraud," "deceit," and "defraud" are not limited to common-law fraud or deceit. "Fraud," "deceit" and "defraud" in addition to the usual construction placed on these terms and accepted in courts of law and equity, shall include the following, provided, however, that any promise, representation, misrepresentation or omission be made with knowledge and with intent to deceive or with reckless disregard for the truth and results in a detriment to the purchaser or client of an investment adviser:

(1) Any misrepresentation by word, conduct or in any manner of any material fact, either present or past, and any omission to disclose any such fact;

(2) Any promise or representation as to the future which is beyond reasonable expectation or is unwarranted by existing circumstances;

(3) The gaining of, or attempt to gain, directly or indirectly, through a trade in any security, a commission, fee or gross profit so large and exorbitant as to be unconscionable, unreasonable or in violation of any law, regulation, rule, order or decision of the Securities and Exchange Commission, or the bureau chief; or to the extent that such law, regulation, rule or order directly applies to the person involved, the gaining of, or attempt to gain, directly or indirectly, through a trade in any security, a commission, fee or gross profit so large and exorbitant as to be in violation of any law, regulation, rule, order or decision of any other state or Canadian securities administrator, or any self-regulatory organization established pursuant to the laws of the United States;

(4) Generally any course of conduct or business which is calculated or put forward with intent to deceive the public or the purchaser of any security or investment advisory services as to the nature of any transaction or the value of such security;

(5) Any artifice, agreement, device or scheme to obtain money, profit or property by any of the means herein set forth or otherwise prohibited by this act;

(f) "Guaranteed" means guaranteed as to payment of principal, interest or dividends;

(g) (1) "Investment adviser" means:

(i) any person who, for direct or indirect compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, selling or holding securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities; and

(ii) any financial planner and other person who provides investment advisory services to others for compensation and as part of a business or who holds himself out as providing investment advisory services to others for compensation.

(2) "Investment adviser" does not include:

(i) a bank, savings institution, or trust company;

(ii) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice or conduct of the profession and who does not hold himself out as providing investment advisory or financial planning services, and who receives no special compensation for those investment advisory or financial planning services;

(iii) a broker-dealer registered under this act;

(iv) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;

(v) a person whose advice, analyses, or reports relate only to securities exempted by paragraphs (1) and (2) of subsection (a) of section 3 of P.L.1967, c.93 (C.49:3-50);

(vi) a person whose only clients in this State are other investment advisers, any person that is registered as an "investment adviser" under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-3, or excluded from the definition of an "investment adviser" under paragraph (11) of subsection (a) of section 202 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-2(a)(11), broker-dealers, banks, bank holding companies, savings institutions, trust companies, insurance companies, investment companies as defined in the "Investment Company Act of 1940," pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;

(vii) any person that is registered as an "investment adviser" under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-3, or excluded from the definition of an "investment adviser" under paragraph (11) of subsection (a) of section 202 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-2(a)(11);

(viii) an investment adviser representative; or

(ix) such other persons not otherwise within the intent of this subsection (g) as the bureau chief may by rule or order designate.

Subject to applicable federal law, the bureau chief may by rule limit the exclusions set out in this paragraph (2), except for those exclusions provided in subparagraph (i) of paragraph (2).

For purposes of this act, "investment advisory services" means those services rendered by an "investment adviser" as defined in this subsection;

(h) "Issuer" means any person who issues or proposes to issue any security, except that (1) with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued; and (2) with respect to certificates of interest in oil, gas, or mining titles or leases, there is not considered to be any "issuer";

(i) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;

(j) (1) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security or investment advisory services for value;

(2) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of any offer to buy, a security or interest in a security or investment advisory services for value;

(3) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value;

(4) A purported gift of assessable stock is considered to involve an offer and sale;

(5) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security;

(6) The terms defined in this subsection (j) do not include (i) any bona fide pledge or loan; (ii) any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock; (iii) any act incident to a class vote by stockholders, pursuant to the certificate of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities, or sale of corporate assets in consideration of the issuance of securities of another corporation; or (iv) any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash;

(k) "Savings institutions" shall mean any savings and loan association or building and loan association operating pursuant to the "Savings and Loan Act (1963)," P.L.1963, c.144 (C.17:12B-2 et seq.), and any federal savings and loan association and any association or credit union organized under the laws of the United States or of any state whose accounts are insured by a federal corporation or agency;

(l) "Securities Act of 1933," 15 U.S.C. s.77a et seq.; "Securities Exchange Act of 1934," 15 U.S.C. s.78a et seq.; "Public Utility Holding Company Act of 1935," 15 U.S.C. s.79 et seq.; "Investment Advisers Act of 1940," 15 U.S.C. s.80b-1 et seq.; "Investment Company Act of 1940," 15 U.S.C. s.80a-1 et seq.; and "Commodity Exchange Act," 7 U.S.C. s.1 et seq. mean the federal statutes of those names;

(m) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement, including, but not limited to, certificates of interest or participation in real or personal property; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest in an oil, gas or mining title or lease; a viatical investment; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed or variable number of dollars either in a lump sum or periodically for life or some other specified period;

(n) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico;

(o) "Nonissuer" means secondary trading not involving the issuer of the securities or any person in a control relationship with the issuer;

(p) "Accredited investor" means any person who is an "accredited investor" as defined by subsection (15) of section 2 of the "Securities Act of 1933," 15 U.S.C. s.77b(a)(15), and 17 C.F.R. s.230.215 and s.230.501 or any successor rule promulgated pursuant to that act.

The bureau chief may rule, or order, waive or modify the conditions in this subsection (p) and shall interpret and apply this subsection (p) so as to effectuate greater uniformity and coordination in federal-state securities registration exemptions;

(q) "Direct participation security" means a security which provides for flow-through tax consequences (tax shelter), regardless of the structure of the legal entity or vehicle for distribution, including, but not limited to, a security representing an interest in gas, oil, real estate, agricultural property, cattle, a condominium, a Subchapter S corporation, a limited liability company and all other securities of a similar nature, regardless of the industry

represented by the security, or any combination thereof. Excluded from this definition are real estate investment trusts, tax qualified pension and profit-sharing plans pursuant to sections 401 and 403(a) of the Internal Revenue Code of 1986, 26 U.S.C. ss.401 and 403(a), and individual retirement plans under section 408 of the Internal Revenue Code of 1986, 26 U.S.C. s.408, tax sheltered annuities pursuant to the provisions of section 403(b) of the Internal Revenue Code of 1986, 26 U.S.C. s.403(b), and any company including separate accounts registered pursuant to the "Investment Company Act of 1940;"

(r) "Blind pool" means an offering of securities in which, as to 65% or more of the proceeds of the offering, the prospectus discloses no specific purpose to which the proceeds of the offering will be put, or the prospectus discloses no specific assets to be purchased, projects to be undertaken, or business to be conducted, except for:

(1) an offering of securities to provide working capital for an operating company (as opposed to a development stage company);

(2) an offering of securities by an investment company registered under the "Investment Company Act of 1940," including a business development company; or

(3) an offering of securities by a small business investment company licensed by the Small Business Administration or a business development company within the meaning of the "Investment Advisers Act of 1940;"

(s) "Investment adviser representative" means any person, including, but not limited to, a partner, officer, or director, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, who is employed by or associated with an investment adviser registered under this act, or who has a place of business located in this State and is employed by or associated with a person registered or required to be registered as an investment adviser under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-3; and who does any of the following:

(1) makes any recommendations or otherwise renders advice regarding securities if the person has direct advisory client contact;

(2) manages accounts or portfolios of clients;

(3) determines recommendations or advice regarding securities;

(4) solicits, offers or negotiates for the sale of or sells investment advisory services; or

(5) directly supervises any investment adviser representative or the supervisors of those investment adviser representatives. "Investment adviser representative" does not include a broker-dealer or an agent;

(t) "Institutional buyer" includes, but is not limited to, a "qualified institutional buyer" as defined in SEC Rule 144A, 17 C.F.R. s.230.144A;

(u) "Willful" or "willfully" means a person who acts intentionally in the sense that the person is aware of what he is doing;

(v) "Federal covered security" means any security described as a covered security in subsection (b) of section 18 of the "Securities Act of 1933," 15 U.S.C. s.77r(b);

(w) "Viatical investment" means the contractual right to receive any portion of the death benefit or ownership of a life insurance policy or certificate, for consideration that is less than the expected death benefit of the life insurance policy or certificate. Viatical investment does not include:

(1) any transaction between a viator and a viatical settlement provider as defined by the "Viatical Settlements Act", P.L.2005, c.229 (C.17B:30B-1 et al.);

(2) any transfer of ownership or beneficial interest in a life insurance policy from a viatical settlement provider to another viatical settlement provider as defined in the "Viatical Settlements Act", P.L.2005, c.229 (C.17B:30B-1 et al.) or to any legal entity formed solely

for the purpose of holding ownership or beneficial interest in a life insurance policy or policies;

(3) the bona fide assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan;

(4) the exercise of accelerated benefits pursuant to the terms of a life insurance policy issued in accordance with the provisions of Title 17B of the New Jersey Statutes; or

(5) a loan by a life insurance company pursuant to the terms of the life insurance contract;

(x) "Internet site operator" means a business entity organized under the laws of this State and authorized to do business in this State which makes available to the public through an Internet website any offering pursuant to the exemption in paragraph (14) of subsection (b) of section 3 of P.L.1967, c.93 (C.49:3-50). "Internet site operator" shall not include a broker-dealer.

9. Section 3 of P.L.1967, c.93 (C.49:3-50) is amended to read as follows:

C.49:3-50 Exemptions of certain securities.

3. (a) The following securities are exempted from the provisions of sections 13 and 16 of P.L.1967, c.93 (C.49:3-60 and 49:3-63):

(1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing;

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank, savings institution, or trust company organized and supervised under the laws of any state or under the laws of the United States;

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any savings institution;

(5) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state and authorized to do business in this State;

(6) (Deleted by amendment, P.L.1997, c.276.)

(7) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is (i) a registered holding company under the "Public Utility Holding Company Act of 1935" or a subsidiary of such a company within the meaning of that act; (ii) regulated in respect to its rates and charges by a governmental authority of the United States or any state; or (iii) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada or any Canadian province;

(8) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange or the American Stock Exchange, and such other exchanges as the bureau chief may from time to time designate by rule or order; any security designated or approved

for designation upon notice of issuance as a Nasdaq National Market security or any other national quotation system as the bureau chief from time to time may designate by rule or order; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing;

(9) Any security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any person, private stockholder, or individual;

(10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within 12 months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal;

(11) Any investment contract issued in connection with an employees' or professional stock purchase, savings, pension, profit-sharing, retirement or similar benefit plan and securities issued pursuant to an employee benefit plan;

(12) (a) The bureau chief by rule or order, as to a particular security or class of securities, may adopt a securities exemption (i) that will further the objectives of compatibility with the exemptions from securities registration authorized by the "Securities Act of 1933" and uniformity among the states, or (ii) if the bureau chief determines that the public interest does not require registration.

(b) The following transactions are exempted from the provisions of sections 13 and 16 of P.L.1967, c.93 (C.49:3-60 and 49:3-63):

(1) Any isolated nonissuer transaction, whether effected through a broker-dealer or not;

(2) (i) Any nonissuer transaction by a broker-dealer registered under this act of a security, which has been outstanding in the hands of the public for at least 90 days prior to the transaction and which is sold at a price reasonably related to the current market price of such securities, provided:

(A) the securities are of an issuer for which all reports required to be filed by section 13 or 15(d) of the "Securities Exchange Act of 1934," 15 U.S.C. s.78m or s.78o(d) have been filed; or

(B) the following information is published in a recognized securities manual: the names of the issuer's officers and directors; a balance sheet of the issuer as of a date not more than 18 months prior to the date of the sale; and profit and loss statements for a period of not less than two years next prior to the date of the balance sheet or for the period of the issuer's existence as of the date of the balance sheet if the period of existence is less than two years;

(ii) The exemption provided in this paragraph (2) does not apply if the sale constitutes a distribution and is made for the direct or indirect benefit of an issuer or controlling persons of that issuer or if those securities constitute the whole or part of an unsold allotment to, or subscription by, a broker-dealer as an underwriter of those securities. This exemption shall not be available for any securities which have been subject to a bureau stop order pursuant to section 17 of P.L.1967, c.93 (C.49:3-64), or a bureau order of denial of secondary trading pursuant to subsection (c) of this section;

(iii) Notwithstanding the foregoing, resale transactions by a sponsor of a unit investment trust registered pursuant to section 8 of the "Investment Company Act of 1940," 15 U.S.C. s.80a-8, shall be exempt from registration in this State.

(3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the bureau chief may by rule require that the customer acknowledge upon a form prescribed by the bureau chief that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period;

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(5) Any transaction on a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a single unit;

(6) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(7) Any transaction executed by a bona fide pledgee without any purpose of evading this act;

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the "Investment Company Act of 1940," pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(9) Any transaction which results in sales to not more than 10 persons (other than those persons designated in paragraph (8) of subsection (b) of this section in this State during any period of 12 consecutive months, whether or not the seller or any of the buyers is then present in this State, if (i) the seller reasonably believes that all buyers are purchasing for investment, and (ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this State, and (iii) the securities are not offered or sold by general solicitation or any general advertisement; but the bureau chief may by rule or order, as to any transaction or class of transactions, withdraw or further condition this exemption, or increase or decrease the number of buyers permitted, or waive the conditions in subparagraph (i), (ii) or (iii) of this paragraph;

(10) Any offer or sale of a preorganization certificate or subscription if (i) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (ii) the number of subscribers does not exceed 10, and (iii) no payment is made by any subscriber;

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this State;

(12) Any transaction by or on behalf of an issuer, or other person, if (i) the seller has reasonable grounds to believe and, after making reasonable inquiry, believes, immediately prior to making any sale, that there are no more than 35 purchasers of the issue in this State during any period of 12 consecutive months and that each purchaser, who is not an accredited investor, either alone or with his representative has the knowledge and experience in financial and business matters that he is or they are capable of evaluating the merits and risks of the prospective investment; (ii) a written offering statement or prospectus is furnished to each purchaser who is not an accredited investor containing substantially the same information as is required by subsection (b) of section 14 of P.L.1967, c.93 (C.49:3-61) or any applicable form of registration under federal law, and provided that if any purchaser is

furnished with a written offering statement or prospectus, then all purchasers shall be furnished therewith; (iii) the securities shall not be offered or sold by general solicitation or any general advertisement; and (iv) a report of the offering is filed with the bureau not later than 15 days after the first sale of those securities in this State, setting forth the name and address of the issuer, the total amount of the securities sold under this paragraph (12), the price at which the securities were sold, the total number of purchasers of the securities, and the names and addresses of the purchasers of the securities who reside in this State, indicating the number and amount of the securities each purchased. Supplemental reports shall be filed promptly after the initial filing with the bureau whenever there are material changes to the information contained in the initial filing until the closing of the offering. A final report shall be filed at the closing of the offering if the information in the final report would be materially different from the last prior filing. The fee for filing the report with the bureau shall be established by regulation of the bureau chief. The information in the report of sale shall be deemed confidential and shall not be disclosed to the public except by order of the court or in court proceedings. In calculating the number of purchasers permitted under this paragraph, accredited investors shall be excluded;

(13) The bureau chief, by rule or order, as to a particular transaction or class of transactions, may adopt a transactional exemption (i) that will further the objectives of compatibility with the exemptions from securities registration authorized by the "Securities Act of 1933" and uniformity among the states, or (ii) if the bureau chief determines that the public interest does not require registration;

(14) Any transaction by or on behalf of an issuer if the following conditions are met:

(i) the issuer is a business entity organized under the laws of this State and authorized to do business in this State;

(ii) the transaction meets the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the federal "Securities Act of 1933" (15 U.S.C. s.77c(a)(11)) and Rule 147 adopted under the "Securities Act of 1933" (17 C.F.R. s.230.147);

(iii) the sum of all cash and other consideration to be received for all sales of the security in reliance on the exemption under this section, excluding sales to any accredited investor or institutional investor, does not exceed \$1,000,000, except that 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 herein;

(iv) the offering is not a blind pool;

(v) the offering by the issuer is made exclusively through an Internet site which meets with the requirements of section 1 of P.L.2015, c.128 (C.49:3-77);

(vi) 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;

(vii) the investor in the securities is a resident of this State;

(viii) not less than 10 days prior to the commencement of an offering of the security, the information required to be posted pursuant to section 1 of P.L.2015, c.128 (C.49:3-77) is filed with the bureau, in a form to be prescribed by the bureau, with a filing fee which is to be established by the bureau; and

(ix) the issuer has never previously sold securities pursuant to this paragraph.

(c) The bureau chief may by order deny or revoke any exemption specified in paragraph (9), (10) or (11) of subsection (a) of this section or in subsection (b) of this section with respect to a specific security or transaction. These exemptions may be denied or revoked for

the grounds set forth in subsection (k) of section 9, section 11 and section 17 of P.L.1967, c.93 (C.49:3-56, 49:3-58 or 49:3-64). No such order may be entered without appropriate notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the bureau chief may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this subsection. Upon the entry of a summary order, the bureau chief shall promptly notify all interested parties that it has been entered and of the reasons therefor.

(1) Upon service of notice of the order issued by the bureau chief, the respondent shall have up to 15 days to respond to the bureau in the form of a written answer and written request for a hearing. The bureau chief shall, within five days of receiving the answer and a request for a hearing, either transmit the matter to the Office of Administrative Law for a hearing or schedule a hearing at the bureau. Orders issued pursuant to this subsection (c) shall be subject to an application to vacate upon 10 days' notice, and a preliminary hearing on the order shall be held in any event within 20 days after it is requested; and the filing of a motion to vacate the order shall toll the time for filing an answer and written request for a hearing.

(2) If a respondent fails to respond by either filing a written answer and written request for a hearing with the bureau or moving to vacate an order within the 15-day prescribed period, the respondent shall be deemed to have waived the opportunity to be heard. The order will remain in effect until it is modified or vacated upon notice to all interested parties by the bureau chief. No order under this subsection may operate retroactively.

(d) In any proceeding under this act, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

10. Section 9 of P.L.1967, c.93 (C.49:3-56) is amended to read as follows:

C.49:3-56 Registration required.

9. (a) It shall be unlawful for any person to act as a broker-dealer, agent, investment adviser or investment adviser representative or Internet site operator in this State unless that person is registered or exempt from registration under this act;

(b) A person shall be exempt from registration as a broker-dealer if, during any period of 12 consecutive months, that person (1) does not effect more than 15 transactions with persons other than those specified in paragraph (5) of subsection (c) of section 2 of P.L.1967, c.93 (C.49:3-49) located within New Jersey; (2) does not effect transactions in more than five customer accounts of New Jersey residents; or (3) effects transactions with persons who have no place of residence in New Jersey and who are temporarily located in the State; if at the time of the transactions described in paragraph (1), (2) or (3) of this subsection (b), the broker-dealer has no place of business in this State and is a member in good standing of a recognized self-regulatory organization and is registered in the state in which the broker-dealer is located;

(c) Agents who represent broker-dealers in transactions exempt pursuant to paragraph (1), (2) or (3) of subsection (b) of this section shall be exempt from registration for those transactions if they are members of a recognized self-regulatory organization and registered in the state in which they are located at the time of the transaction;

(d) The burden of proving an exemption from registration under this section shall be on the person claiming the exemption. A person claiming an exemption from registration under this section shall keep his books and records open to inspection by the bureau. If the bureau chief finds it is in the public interest and necessary for the protection of investors, the bureau

chief may deny any exemption specified in paragraph (1), (2) or (3) of subsection (b) or in subsection (c) of this section as to any broker-dealer or agent. The bureau chief may proceed in summary fashion or otherwise;

(e) The bureau chief may identify classes of customers, securities, transactions and broker-dealers for the purpose of increasing the number of transactions or accounts available under the exemptions specified in paragraph (1), (2) or (3) of subsection (b) or subsection (c) of this section;

(f) The bureau chief may by order identify the self-regulatory organizations recognized under subsections (b) and (c) of this section and may by rule or order define the conditions under which non-resident persons are temporarily in New Jersey under paragraph (3) of subsection (b) of this section;

(g) A person shall be exempt from registration as an investment adviser or from making a notice filing required by section 10 of P.L.1967, c.93 (C.49:3-57), if:

(1) The person has a place of business in this State and during any period of 12 consecutive months that person does not have more than five clients, who are residents of this State, other than those specified in subparagraph (vi) of paragraph (2) of subsection (g) of section 2 of P.L.1967, c.93 (C.49:3-49); or

(2) The person has no place of business in this State, and during any period of 12 consecutive months that person does not have more than five clients, who are residents of this State, other than those specified in subparagraph (vi) of paragraph (2) of subsection (g) of section 2 of P.L.1967, c.93 (C.49:3-49).

The bureau chief may by rule or order determine the availability of the exemptions provided by this subsection (g), including the waiver of the conditions in paragraphs (1) and (2) of this subsection;

(h) It shall be unlawful for any broker-dealer or issuer to employ an agent in this State unless the agent is registered. The registration of an agent is not effective during any period when he is not associated with a particular broker-dealer registered under this act or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the bureau. When an agent terminates his connection with a particular broker-dealer or issuer, his authorization to engage in those activities which make him an agent is terminated;

(i) It shall be unlawful for any person to transact business in this State as an investment adviser unless (1) he is so registered under this act, is exempt from registration under this act, or is excluded from the definition of investment adviser under this act, or (2) he is registered as a broker-dealer without the imposition of a condition under paragraph (5) of subsection (b) of section 11 of P.L.1967, c.93 (C.49:3-58);

(j) It shall be unlawful for any investment adviser required to be registered pursuant to this section to employ an investment adviser representative, unless the investment adviser representative is also registered pursuant to this section. It is unlawful for any person registered or required to be registered as an investment adviser under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-3, to employ, supervise, or associate with an investment adviser representative having a place of business located in this State, unless that investment adviser representative is registered under this act, or is exempt from registration. The registration of an investment adviser representative is not effective during any period when the investment adviser representative is not employed by an investment adviser registered pursuant to this section or registered under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-3. When an investment adviser representative

described in this subsection begins or terminates employment with an investment adviser, the investment adviser and the investment adviser representative shall promptly notify the bureau chief. When an investment adviser representative terminates his connection with a particular investment adviser, his authorization to engage in those activities which make him an investment adviser representative is terminated;

(k) The bureau chief may summarily bar, pending final determination of any proceeding under this subsection, any person, who has been convicted of any crime of embezzlement under state, federal or foreign law or any crime involving any theft, forgery or fraudulent practices in regard to any state, federal or foreign securities, banking, insurance, or commodities trading laws or anti-fraud laws, from being a partner, officer or director of an issuer, broker-dealer or investment adviser, or from occupying a similar status or performing a similar function or from directly or indirectly controlling or being under common control or being controlled by an issuer, broker-dealer or investment adviser, or from acting as a broker-dealer, agent or investment adviser in this State. Any person barred by this subsection shall be entitled to request a hearing by the same procedures as set forth in subsection (c) of section 3 of P.L.1967, c.93 (C.49:3-50);

(l) Notwithstanding any other provision of this act, the bureau chief may bring an administrative or court action pursuant to section 29 of P.L.1997, c.276 (C.49:3-70.1), to seek and obtain civil penalties for violations of this section;

(m) Every registration shall expire one year from its effective date unless renewed, except that the bureau chief may by rule provide that registrations shall all expire on the same date;

(n) Except with respect to advisers whose only clients are those described in subparagraph (vi) of paragraph (2) of subsection (g) of section 2 of P.L.1967, c.93 (C.49:3-49), it is unlawful for any person who is registered or required to be registered under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-3, as an investment adviser to conduct advisory business in this State, unless that person files those documents filed with the Securities and Exchange Commission with the bureau chief, as the bureau chief may by rule or otherwise require, and a fee and consent to service of process, as the bureau chief, by rule or otherwise, may require;

(o) Notwithstanding anything to the contrary in this act, until October 11, 1999, the bureau chief may require the registration of any person 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. s.80b-3, and who has failed to promptly pay the fees required by subsection (n) of this section after being notified in writing by the bureau chief of the non-payment or underpayment of those fees. A person shall be considered to have promptly paid those fees if they are remitted to the bureau chief within 15 days following that person's receipt of the written notification from the bureau chief;

(p) For the purposes of this section, each applicant for registration shall submit to the bureau chief, the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The bureau chief is hereby authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the bureau chief in the event a current holder of a license or prospective applicant, who was the subject of a criminal history record background check pursuant to this section,

is arrested for a crime or offense in this State after the date the background check was performed.

11. Section 10 of P.L.1967, c.93 (C.49:3-57) is amended to read as follows:

C.49:3-57 Obtaining initial, renewal registration.

10. (a) A broker-dealer, agent, investment adviser or investment adviser representative, or Internet site operator may obtain an initial or renewal registration by filing with the bureau an application together with a consent to service of process pursuant to subsection (a) of section 26 of P.L.1967, c.93 (C.49:3-73). Financial Industry Regulatory Authority, Inc. (FINRA) member broker-dealers and their agents shall file their applications for initial or renewal registration with the Central Registration Depository, or its successor organization, as appropriate and available. The application shall contain whatever information the bureau chief by rule requires concerning such matters as (1) the applicant's form and place of organization; (2) the applicant's proposed method of doing business; (3) the qualifications and business history of the applicant; in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser; and, in the case of an investment adviser or registered broker-dealer acting as an investment adviser, the qualifications and business history of any employee who is to give investment advice or who is an investment adviser representative; (4) any injunction or administrative order or conviction of a crime of the fourth degree or its equivalent in any other jurisdiction involving a security or any aspect of the securities or investment advisory business and any conviction of a crime of the first, second or third degree or its equivalent in any other jurisdiction; (5) the applicant's financial condition; and (6) in the case of an investment adviser, a copy of any information or brochure used by the adviser to comply with any rule of the bureau promulgated pursuant to subsection (b) of section 12 of P.L.1967, c.93 (C.49:3-59). If no denial, postponement or suspension order is in effect and no proceeding is pending under section 11 of P.L.1967, c.93 (C.49:3-58), registration becomes effective at noon of the thirtieth day after an application is filed. The bureau chief may by rule or order specify an earlier effective date, or he may by order defer the effective date until the first day of the next calendar month after the thirtieth day after the filing of the application. The bureau chief may by order defer the effective date for additional periods, as the applicant shall agree to in writing. The time limits herein provided shall run anew from the filing of any amendment;

(b) Every applicant for initial or renewal registration for broker-dealer, agent, investment adviser and investment adviser representative, and Internet site operator shall pay filing fees in the amounts as set by rule of the bureau chief. If an application is denied or withdrawn, the bureau shall retain the fee. Whenever any supplemental filing is made, for the purpose of keeping current the information furnished to the bureau chief, there may be a supplemental filing fee in an amount set by rule of the bureau chief;

(c) A registered broker-dealer, investment adviser, or Internet site operator may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the registration period. There shall be no filing fee, except as may be provided by rule of the bureau chief;

(d) (1) The bureau chief may by rule require a minimum capital for registered broker-dealers not to exceed the limitations provided in section 15 of the "Securities Exchange Act

of 1934," 15 U.S.C. s.78o. The minimum capital required for a registered broker-dealer shall be determined by rule of the bureau chief;

(2) The bureau chief may by rule establish minimum financial requirements for investment advisers, not to exceed the limitations provided in section 222 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-18a, which may include different requirements for those investment advisers who maintain custody of or have discretionary authority over clients' funds or securities and investment advisers who do not maintain such custody or discretionary authority;

(e) The bureau chief may by rule require registered investment advisers who have custody of clients' funds or securities to post bonds in amounts not to exceed the limitations provided in section 222 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-18a and registered broker-dealers to post bonds in amounts not to exceed the limitations provided in section 15 of the "Securities Exchange Act of 1934," 15 U.S.C. s.78o, and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. Every bond shall provide for suit thereon by any person who has a cause of action under section 24 of P.L.1967, c.93 (C.49:3-71). Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within two years after the sale or other act upon which it is based, or within two years of the time when the person aggrieved knew or should have known of the existence of his cause of action, whichever is later. The dollar amount of the bonds shall be set by rule of the bureau chief;

(f) (1) The bureau chief may by rule provide for an examination which may be written or oral or both, to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which make him an investment adviser;

(2) Each applicant for broker-dealer, agent, investment adviser or investment adviser representative who takes an examination provided pursuant to paragraph (1) of this subsection shall pay examination fees in the amounts as set forth by rule of the bureau chief;

(g) (1) Registration as a broker-dealer or agent under this act for the limited purpose of engaging in the business of effecting or attempting to effect transactions in direct participation securities for the accounts of others or for his own account shall be permitted. All the requirements of this act shall apply to these limited registrations; except that any examination or other evaluation of proficiency or knowledge required by the bureau for this registration shall be limited to matters relating to direct participation securities and to the requirements of laws and regulations applicable to this registrant.

(2) Any applicant for a limited registration shall acknowledge in writing to the bureau prior to registration that he understands (i) the limitations on the scope of his authority to do business pursuant to this limited registration; and (ii) that any activity which exceeds the limitations of the registration shall violate the provisions of this act and may result in disciplinary action by the bureau, prosecution under this act or other laws, or civil liability, to the same extent as if he was not registered under this act.

12. Section 11 of P.L.1967, c.93 (C.49:3-58) is amended to read as follows:

C.49:3-58 Denial, suspension, revocation of registration.

11. (a) The bureau chief may by order deny, suspend, or revoke any registration if he finds:

(1) that the order is in the public interest; and

(2) that the applicant or registrant or, in the case of a broker-dealer, investment adviser, or Internet site operator, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer, investment adviser, or Internet site operator:

(i) has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(ii) has willfully violated or willfully failed to comply with any provision of this act or any rule or order authorized by this act or has willfully, materially aided others in such conduct;

(iii) has been convicted of any crime involving a security or any aspect of the securities, commodities, banking, insurance or investment advisory business or any crime involving moral turpitude; however, where the applicant can show by proof satisfactory to the bureau chief that during the 10-year period preceding the application he has conducted himself in such a manner as to warrant his registration consistent with all other provisions of this act, the conviction shall not be a bar to registration;

(iv) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities, commodities, banking, insurance or investment advisory business;

(v) is the subject of an effective order of the bureau chief denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, investment adviser representative, securities offering registrant, or Internet site operator;

(vi) is the subject of an order entered within the past five years by any federal or state securities, commodities, banking, insurance or investment advisory administrator or self-regulatory organization denying or revoking a securities, commodities, banking, insurance or investment advisory license or registration under federal or state securities, commodities, banking, insurance or investment advisory law, including, but not limited to registration as a broker-dealer, agent, investment adviser, investment adviser representative or issuer, or the substantial equivalent of those terms as defined in this act, or is the subject of an order of the Securities and Exchange Commission, a self-regulatory organization, the Commodity Futures Trading Commission, an insurance regulator, or a federal or state banking regulator, suspending or expelling him from a national securities or commodities exchange or national securities or commodities association registered under the "Securities Exchange Act of 1934," or the "Commodity Exchange Act," or from engaging in the banking or insurance business, or is the subject of a United States Post Office fraud order; but (A) the bureau chief may not institute a revocation or suspension proceeding under this subparagraph (vi) more than two years from the date of the order relied on and (B) he may not enter an order under this subparagraph (vi) on the basis of an order under another state act unless that order was based on facts which would currently constitute a ground for an order under New Jersey law;

(vii) has engaged in dishonest or unethical practices in the securities, commodities, banking, insurance or investment advisory business, as may be defined by rule of the bureau chief;

(viii) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the bureau chief may not enter an order against a broker-dealer or investment adviser for insolvency without a finding of insolvency as to the broker-dealer or investment adviser;

(ix) is not qualified on the basis of such factors as character, training, experience and knowledge of the securities business, except as otherwise provided in subsection (b) of this section;

(x) has failed to pass an examination under subsection (f) of section 10 of P.L.1967, c.93 (C.49:3-57) if such an examination has been by rule provided for by the bureau chief;

(xi) has failed reasonably to supervise: his agents if he is a broker-dealer or issuer; the agents of a broker dealer or issuer for whom he has supervisory responsibility; or his employees who give investment advice if he is an investment adviser;

(xii) has failed to pay the proper fees, as set by rule of the bureau chief.

(b) The following provisions govern the application of subparagraph (ix) of paragraph (2) of subsection (a) of this section:

(1) The bureau chief may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than (i) the broker-dealer himself if he is an individual or (ii) an agent of the broker-dealer;

(2) The bureau chief may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than (i) the investment adviser himself if he is an individual or (ii) any other person who represents the investment adviser in doing any of the acts which make him an investment adviser;

(3) The bureau chief may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both;

(4) The bureau chief shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer;

(5) The bureau chief shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent. If he finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as an investment adviser, he may by order condition the applicant's registration as a broker-dealer upon his not transacting business in this State as an investment adviser.

(c) The bureau chief, for good cause shown, may by order summarily postpone, suspend, revoke or deny any registration pending final determination of any proceeding under this section. Upon entry of the order, the bureau chief shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or an investment adviser representative, that the order has been entered and of the reasons therefor.

(1) The bureau chief shall entertain on no less than three days' notice a written application to lift the summary postponement, suspension or revocation on written application of the applicant or registrant and in connection therewith may, but need not, hold a hearing and hear testimony, but shall provide to the applicant or registrant a written statement of the reasons for the summary postponement, suspension or revocation.

(2) Upon service of notice of the order issued by the bureau chief, the applicant or registrant shall have up to 15 days to respond to the bureau in the form of a written answer and written request for a hearing. The bureau chief shall, within five days of receiving the answer and a request for a hearing, either transmit the matter to the Office of Administrative Law for a hearing or schedule a hearing at the Bureau of Securities. Orders issued pursuant to this subsection to suspend or revoke any registration shall be subject to an application to vacate upon 10 days' notice, and a preliminary hearing on the order to suspend or revoke any registration shall be held in any event within 20 days after it is requested, and the filing of a motion to vacate the order shall toll the time for filing an answer and written request for a hearing.

(3) If an applicant or registrant fails to respond by filing a written answer and request for a hearing with the bureau or moving to vacate an order to suspend or revoke any registration within the 15-day prescribed period, the registrant shall have waived the opportunity to be heard and the order shall remain in effect until modified or vacated.

(d) If the bureau chief finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, investment adviser, investment adviser representative, or Internet site operator, or is subject to an adjudication of incapacity or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the bureau chief may by order summarily revoke or deny the registration or application;

(e) Withdrawal from registration as a broker-dealer, agent, investment adviser, investment adviser representative, or Internet site operator becomes effective 30 days after receipt of an application to withdraw or within such other period of time as the bureau chief may determine by rule or order. The bureau chief may nevertheless institute a revocation or suspension proceeding under subparagraph (ii) of paragraph (2) of subsection (a) of this section within two years after withdrawal becomes effective and enter a revocation or suspension order as of the last date on which registration was effective;

(f) (Deleted by amendment, P.L.1997, c.276).

(g) Every hearing which this act requires to be held shall be held in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

13. This act shall take effect immediately, and shall apply to any transaction entered into after the effective date of this act.

Approved November 9, 2015.