

**International (RCI) Controlled Therapeutic Medication Schedule (Schedule), version 2.1 (Revised April 17, 2014), which is incorporated herein by reference, as amended and supplemented. The Schedule can be accessed at <http://arcicom.businesscatalyst.com/assets/arci-controlled-therapeutic-medication-schedule---version-2.1.pdf>.**

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

(e) An external rub or innocuous compound is a single substance, mixture of substances, or compound [which] **that** does not contain any of the [13] examples of prohibited items as set forth in (b) above, or additionally, any other substance foreign to the natural horse [which] **that** alters its normal physiological state.

13:71-23.7 Penalties

(a)-(b) (No change.)

(c) Any individual suspended or disciplined in any fashion for [a second or subsequent violation of N.J.A.C. 13:71-23.6(a), (b), (d)] **multiple violations of this subchapter** or any comparable rule of any other racing commission or turf governing body [may] **shall** be deemed a [repetitive] **repeat** offender. A second or subsequent violation of 13:71-23.6 may constitute grounds for further disciplinary action by the Commission.] **and shall be subject to enhanced penalties pursuant to RCI Model Rule ARCI-025-020B(13), Multiple Medication Violations (MMV) (version 5.7, Approved April 9, 2014), which is incorporated herein by reference, as amended and supplemented, or as otherwise ordered by the Commission or its Board of Judges (see N.J.A.C. 13:71-8). RCI Model Rule ARCI-025-020B(13), Multiple Medication Violations (MMV) may be accessed at [http://ua-rtip.org/sites/ua-rtip.org/files/Harness%20Racing%20Chapters%20\(19-25\).pdf](http://ua-rtip.org/sites/ua-rtip.org/files/Harness%20Racing%20Chapters%20(19-25).pdf). The Commission may, at its discretion, consider evidence of compliance with the guidelines set forth in the “Dosing Specifications” and “Withdrawal Guideline” columns of the Schedule as mitigating factors, when appropriate, in determining the penalty to be imposed for a violation of the levels listed in the “Threshold” column.**

(d) Horses owned wholly or in part by persons suspended for violations [of N.J.A.C. 13:71-23.6(a), (b) or (d)] **of this subchapter or any comparable rule of any other racing commission or turf governing body** are ineligible to start during the period of such suspension **or as ordered by the Commission or its judges**, unless sold to a bona fide purchaser (see N.J.A.C. 13:71-8). Horses trained by a person suspended for such [a] violations, wherein the trainer does not have an ownership interest, are automatically eligible to start when placed in the hands of a licensed trainer approved by the judges. (See N.J.A.C. 13:71-3 for rules concerning appeals.)

13:71-23.8 Administering medication to respiratory bleeders; standards for the administration of non-steroidal anti-inflammatory drugs (NSAID) and anti-ulcer medications; environmental contaminants

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

(d) Post race urine and blood samples may be taken by or under the supervision of the State Veterinarian from all horses treated with Lasix® (furosemide) to control respiratory bleeding pursuant to the requirements set forth in (b) above. Post-race test results must show a detectable concentration of furosemide in the serum, plasma, or urine sample taken from a furosemide treated horse. Quantitation of furosemide in serum or plasma shall be performed and concentrations [may not exceed 100 nanograms of furosemide per milliliter of] **must be below** the serum or plasma **threshold levels authorized in N.J.A.C. 13:71-23.1(b)14**. In the event a post-race analysis of a blood sample reveals that the concentration of furosemide [exceeds a level of 100 nanograms per milliliter of serum or plasma (100ng/mL)] **is at or above the permitted serum or plasma threshold concentrations authorized in N.J.A.C. 13:71-23.1(b)14**, or in the event that a post-race analysis of a blood or urine sample reveals no detectable concentration of furosemide, the trainer and other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, shall be liable [to] **for** the penalties as set forth in (e) below.

(e) (No change.)

(f) Notwithstanding anything to the contrary [herein] **in this section** or in N.J.A.C. 13:71-23.1, no penalty shall be imposed where on the day of the race, a horse carries in its body either Phenylbutazone or Flunixin, both [NSAID(s)] **NSAIDs**, under the following conditions:

1. The NSAID level [does not exceed the following] **is below** the permitted serum or plasma threshold [concentrations] **levels authorized in N.J.A.C. 13:71-23.1(b)14**, which are consistent with administration by a single intravenous injection that follows the FDA-approved dose regimen for each product(s) at least 24 hours before the post time for the race in which the horse is entered[.];

i. Phenylbutazone (or its metabolite oxphenylbutazone) – two micrograms per milliliter (two µg/mL);

ii. Flunixin – 20 nanograms per milliliter (20 ng/mL);

2. (No change.)

3. The presence of more than one of the [two] approved NSAIDs or any unapproved NSAID(s) in the post-race serum or plasma sample is not permitted. The use of all but one of the approved NSAIDs shall be discontinued at least 48 hours before the post time for the race in which the horse is entered.

(g) In the event post-race testing determines that the threshold levels [set forth for the two permitted NSAID(s) were] **authorized in N.J.A.C. 13:71-23.1(b)14 have been met or exceeded**, there is evidence of more than one of the [two] permitted NSAID(s) present or there is evidence of an unapproved NSAID, the Board of Judges shall penalize[,] the trainer and other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, as follows, regardless of whether or not the same horse is involved:

1.-2. (No change.)

(h)-(k) (No change.)

13:71-23.16 Anabolic steroids

(a)-(b) (No change.)

(c) Test[s] results identifying the presence of boldenone, nandrolone[, stanozolol] and testosterone shall not constitute a violation of this section if the level of these permitted anabolic steroids test [at or] below the following **threshold** levels in blood plasma:

Boldenone - 200 picograms/milliliter (200 pg/mL);

Nandrolone - 200 picograms/milliliter (200 pg/mL);

Intact Male Horses: 500 picograms/milliliter (500 pg/mL);

All Other Horses: 200 picograms/milliliter (200 pg/mL);

[Stanozolol - 200 picograms/milliliter (200 pg/mL).]

Testosterone -

Intact Male Horses: 2,000 picograms/milliliter (2,000 pg/mL);

All Other Horses: 200 picograms/milliliter (200 pg/mL).

For the purposes of this section, “intact male horse” shall mean a male horse that has not been gelded.

(d) Any blood samples containing one of the [four] **three** anabolic steroids listed in (c) above that quantitatively measures **at or** above the threshold levels shall constitute a violation of this section. Any samples identifying the presence of more than one of the [four] **three** permitted anabolic steroids shall constitute a violation of this section regardless of the **threshold** levels identified in the sample. Any samples identifying the presence of one of the [four] **three** permitted anabolic steroids, even if it tests [at or] below the threshold level, shall constitute a violation of this section if the samples also indicate the presence of any other anabolic steroid.

(e)-(j) (No change.)

(a)

## NEW JERSEY RACING COMMISSION

### Exchange Wagering

### Proposed New Rules: N.J.A.C. 13:74C

Authorized By: New Jersey Racing Commission, Frank Zanzuccki,  
Executive Director.

Authority: N.J.S.A. 5:5-185.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2014-095.

Submit written comments by August 15, 2014, to:

Michael Vukceвич, Deputy Director  
Department of Law and Public Safety  
New Jersey Racing Commission  
P.O. Box 088  
Trenton, New Jersey 08625-0088

The agency proposal follows:

#### Summary

The primary objective of proposed new N.J.A.C. 13:74C is to establish the rules necessary for the implementation of exchange wagering in New Jersey, which was authorized by the Exchange Wagering Act (Act), P.L. 2011, c. 15 (N.J.S.A. 5:5-168 et seq.). The Act provides that the New Jersey Racing Commission (Commission) shall have full power to prescribe rules, regulations, and conditions under which exchange wagering may be conducted in this State.

Exchange wagering is a new type of pari-mutuel wager, to be conducted by the exchange wagering licensee (that is, the "New Jersey Sports and Exposition Authority" or "Authority"), subject to a license being issued to the Authority by the Commission. The exchange is the system operated by the exchange wagering licensee, through which it maintains one or more markets in which residents of this State, who have established an exchange wagering account, may wager on a selected outcome on horse races conducted within and outside this State.

More particularly, exchange wagering involves one or more persons offering to place a wager on a selected outcome occurring in relation to horse racing. This offered wager, known as the back, must occur in a given market. A market, in relation to a given horse race or set of horse races, means a particular outcome that is available for exchange wagering as determined by the exchange wagering licensee. There may be one market, or any number of markets, which are part of and form the exchange. The Authority, as the exchange wagering licensee, endeavors to match an offered back wager with an identically opposing wager in that same market (that is, a wager that the selected outcome will not occur), which wager is known as a lay. A valid matched wager is formed when two or more persons are confirmed by the exchange wagering licensee as having placed identically opposing wagers in a given market on the exchange. Conversely, an unmatched wager occurs when a wager placed in a given market within the exchange does not become part of a matched wager because there are not one or more available exchange wagers in that market with which to form one or more identically opposing wagers.

The proposed new chapter contains six subchapters, as follows.

Subchapter 1 includes general provisions and definitions. It provides that the proposed new rules are only applicable to exchange wagering, are applicable to all persons licensed by the Commission in connection with exchange wagering, and to every patron and exchange wagering account holder.

Subchapter 2 addresses the application procedure for an initial exchange wagering license and for the renewal of an exchange wagering license. The Authority is required to file an application for the initial exchange wagering license, together with a non-refundable \$2,500 filing fee. The application is to be accompanied by a certification, signed by a high managerial agent of the Authority, attesting that the disclosures within the application and attachments thereto are true, accurate and complete. The initial exchange wagering license shall be issued for a term of one year, which period the Commission may extend until December 31st of the year in which such license expires, where the Authority establishes to the Commission's satisfaction that to do so would not negatively impact the integrity of the exchange wagering system.

In order for an initial exchange wagering application to be found to be complete by the Commission Executive Director, certain prerequisites must be shown. The Authority must completely answer each question within the application and demonstrate that the requirements of the Act have been satisfied in all respects. Through its application, detailed information about the operation of the exchange wagering system (system) must be disclosed, including the participation of the Authority

therein, as well as the participation of other persons or entities. Information must be presented to establish that wagers placed through the system will be accurately processed, that sufficient safeguards will exist to maintain the integrity of the horse racing industry in this State, and that the Commission's grant of the initial exchange wagering license will serve to promote the economic future of the horse racing industry in this State, foster the potential for increased commerce, enhance the employment and recreational opportunities in this State, and preserve the State's open spaces. Additional disclosures to be made through the application include the location of all hardware and software of the system, the location of the administrative offices of the system, and whether or not the exchange wagering platform is intended to be stand-alone or is to integrate with a totalisator machine. Through its application, the Authority is further obligated to disclose the number of jobs which the system is expected to generate, as well as employ in terms of pre-existing jobs, and whether the related job functions are proposed to occur in this State or elsewhere.

The Authority is also required to attach to its application written internal control procedures that set forth how to implement the following: procedures to effectively operate and manage the system; procedures to insure that wagers placed through the system will be accurately processed and that all aspects of wagering integrity and wagering recordkeeping will be maintained; procedures to effectively insure that the system operates with fiscal soundness and technological reliability; and procedures to insure sufficient safeguards are in place to maintain the integrity of the horse racing industry in this State.

Through its initial exchange wagering application, the Authority must also explain whether it intends to conduct or operate the exchange itself, or whether, pursuant to and as authorized by N.J.A.C. 13:74C-3.2, it intends to enter into a management type agreement with an exchange management agent, and/or a technology provision type agreement with an exchange services agent. Where it elects to enter into such agreement or agreements, the Authority may satisfy its internal control procedure filing requirement by including sufficient internal control procedures of such agent or agents with its application. However, in such circumstance, the Authority's internal control procedures are at a minimum required to include sufficient provisions to insure that the Authority, as the exchange wagering licensee, maintains meaningful and adequate oversight controls with respect to both the system and its license. Further, the Authority must include with its application a certification that it has reviewed the internal control procedures of any employed agent, and finds them to be sufficient.

Following the Commission Executive Director's finding that an initial exchange wagering license application is complete, the Commission Executive Director, within 14 days of such finding, shall review the application to insure it is in due form and meets the requirements of law in all respects. Within 60 days of the determination that these requirements are satisfied, the Commission shall consider the Authority's application at a public meeting, and within 30 days of the closing of the record thereon, make a final determination on the application. The Commission's final determination may prescribe such conditions or terms as it deems appropriate. Within 14 days thereof, the Commission is required to submit its final determination to the Attorney General for review and approval. The Commission's determination shall be deemed approved by the Attorney General if not affirmatively approved or disapproved within 14 days of such submission. The Attorney General shall approve the Commission's determination where the Attorney General, in his or her discretion, finds that the Commission's determination was consistent with the Act and this chapter. The decision of the Attorney General shall be deemed a final decision, and he or she may prescribe such conditions or terms as deemed appropriate.

In order to receive the license applied for, the Authority bears the burden of proof to establish to the Commission, by clear and convincing evidence, that it and its employees are qualified in all aspects to hold the appropriate license, that the issuance of an exchange wagering license to it would not be inimical to the interests of the public and the horse racing industry in this State, that wagers placed through the system will be accurately processed, that there will be sufficient safeguards to maintain the integrity of the horse racing industry in the State, and that all of the requirements of the Act and the Commission's rules have been met.

N.J.A.C. 13:74C-2.2 sets forth procedures concerning the exchange wagering license application renewal process. These procedures apply where the Authority has been granted an initial exchange wagering license and seeks to renew that license, or where a proposed successor in interest to the exchange wagering license makes proper application to the Commission for the transfer or assignment of said license, or for the renewal of said transferred or assigned license. A complete renewal license application shall be filed no earlier than 90 days prior to the date upon which the applicant's issued and outstanding exchange wagering license is due to expire, and no later than 75 days prior to the date upon which its issued and outstanding exchange wagering license is due to expire. In the event the applicant requests a renewal license to be effective for two years, the Racing Commission may elect to grant a license for only one year, where it finds that any significant problems associated with or encountered by the exchange wagering system, which occurred between 12 months preceding the filing date of the applicant's renewal application and the date upon which the Commission considers such renewal application, require the imposition of a license condition for remedial action on the part of the applicant during the license renewal period.

The requirements that must be met for an exchange wagering renewal application to be considered complete are set forth at N.J.A.C. 13:74C-2.2(d) and are substantially similar to the requirements necessary for an initial exchange wagering license to be considered complete. However, a renewal application is required to: additionally set forth information concerning the participation of each racetrack permitholder in the sharing of "net exchange wagering revenues," which is not a requirement for inclusion in the initial exchange wagering license application; and include as an attachment a written report identifying any significant problems associated with or encountered by the system during the 12 months preceding the filing of such application.

N.J.A.C. 13:74C-2.2(e) sets forth the procedure, once the exchange wagering license renewal application is considered to be complete, concerning the review of the application by the Racing Commission. N.J.A.C. 13:74C-2.2(f) sets forth the criteria to be considered by the Commission in acting upon an exchange wagering license renewal application and sets forth what the applicant must demonstrate, by clear and convincing evidence, to receive the license applied for. N.J.A.C. 13:74C-2.2(g) sets forth the procedures to be followed by the Commission to submit its final determination on the exchange wagering license renewal application to the Attorney General for review and approval. The procedures and requirements of N.J.A.C. 13:74C-2.2(e), (f), and (g) are the same as those required in connection with an initial exchange wagering license.

Subchapter 3 addresses the transfer or assignment of the exchange wagering license to a successor in interest, the operation of the system by a person or entity other than the exchange wagering licensee, the in-State requirement for the system components, payment responsibility for regulatory costs associated with the system, and the revenue distribution of the system.

Any transfer or assignment of the exchange wagering license, from the Authority to a successor in interest, or from an approved successor in interest to a subsequent successor in interest, requires the prior approval of the Commission and Attorney General. In order to obtain the necessary approvals, the current license holder and a proposed successor in interest must file a written joint petition with the Commission, requesting a transfer or assignment of the license to the proposed successor in interest. The petition shall explain the proposed transaction between the parties and be accompanied by a completed exchange wagering license application of the proposed successor in interest.

Before acting upon the related exchange wagering license application of the proposed successor in interest, the Commission is required to initiate an investigation into the qualifications of such applicant. The Commission shall not approve a transfer or assignment of the license until it determines that the proposed successor in interest is qualified to hold the license, as well as qualified to engage in such activities, and that the proposed successor in interest demonstrates by clear and convincing evidence that the requirements of N.J.A.C. 13:74C-2.2(f) have been met. In approving a transfer or assignment of the exchange wagering license, the Commission may prescribe such conditions or terms as it deems

appropriate. Further, unless otherwise approved by the Commission, and in addition to the requirements imposed upon the holder of the exchange wagering license by the Act and this chapter, a successor in interest shall be responsible for any regulatory requirements or conditions that were imposed upon the prior exchange wagering licensee.

N.J.A.C. 13:74C-3.2 addresses the operation of the system by a person or entity other than the exchange wagering licensee, that is, by an exchange management agent (management agent) and/or exchange services agent (services agent). Notwithstanding its ability to employ a management agent and/or services agent, the exchange wagering licensee may conduct and operate all aspects of the system itself, provided the exchange wagering licensee is determined by the Commission to be qualified in all respects to perform such functions.

A management agent is a person or entity who conducts or operates the exchange for the exchange wagering licensee, and/or acts as its agent in all exchange wagering matters approved by the Commission. A services agent is a person or entity who specializes in the business of directly providing the computer hardware and software, technological services, as well as related support services, which services are necessary for the conduct of the system. Where determined by the Commission that it is qualified to perform such services, a licensed management agent may also, but is not required to, function as a separately licensed services agent. Notwithstanding the ability of the exchange wagering licensee to employ a management agent and/or services agent, exchange wagering shall only be conducted by the exchange wagering licensee pursuant to a valid license issued by the Commission, which license is held only by said licensee.

The written agreement between the exchange wagering licensee and any management or services agent must designate, with specificity, which functions related to the system shall be maintained or retained by the exchange wagering licensee, and which functions related to the system shall be performed by the management agent or services agent. Each written agreement is also required to set forth provisions which clearly provide for the portion of exchange wagering revenues payable to the management agent or services agent as compensation.

In the event the exchange wagering licensee intends to employ a management agent, services agent, or both, the parties to the respective proposed agreement (that is, the exchange wagering licensee and management agent, or the exchange wagering licensee and services agent) shall file a joint petition with the Commission seeking approval of the written agreement proposed to establish such relationship. The joint petition concerning any management agent shall designate with specificity whether the management agent is to conduct or operate the system for the exchange wagering licensee, whether the management agent will act as agent for the exchange wagering licensee in all matters approved by the Commission, whether the management agent will employ other persons or entities to perform any of its duties, and the compensation to be paid to the management agent. The petition concerning any services agent shall designate with specificity which technological and related functions concerning the system shall be maintained or retained by the exchange wagering licensee, which technological and related functions related to the system shall be performed by the services agent, and the compensation to be paid to the services agent. Once approval is received from the Commission in either case, the written agreement may be entered into by the parties.

Where the exchange wagering licensee employs a management agent who has been approved by the Commission, which management agent does not also function as a separately licensed services agent, the management agent may directly enter into a written agreement with a services agent for the provision of such services in connection with the exchange wagering system, if such action is authorized as part of the agreed-to duties that the management agent performs on behalf of the exchange wagering licensee. In such event, the exchange wagering licensee, management agent, and services agent shall jointly file a petition with the Commission seeking approval of the services agent. The petition, in such circumstance, shall include as an attachment the written agreement to be entered into between the management agent and services agent, which must be approved by the Commission, as well as the internal control procedures and certifications required by N.J.A.C. 13:74C-3.2(c). The written agreement is required, with specificity, to

designate which functions related to the system shall be maintained or retained by the management agent, and which functions related to the system shall be performed by the services agent, and must also contain provisions that clearly provide for the compensation payable to the services agent.

The Commission shall not approve any written agreement concerning the employ of a management agent or services agent unless it is demonstrated, by clear and convincing evidence, that both the written agreement and the written internal control procedures of the exchange wagering licensee set forth sufficient provisions to insure that the exchange wagering licensee maintains meaningful and adequate oversight controls with respect to both the system and its license. Additionally, the written internal control procedures required to be maintained by the management agent and services agent must set forth procedures to be implemented, as may be appropriate, considering the functions to be performed by either: to effectively operate the exchange wagering system; to effectively insure that all wagers placed through the system will be accurately processed and that all aspects of wagering integrity and wagering recordkeeping will be maintained; to effectively insure that the system operates with fiscal soundness and technological reliability; to effectively insure that there will be sufficient safeguards to maintain the integrity of the horse racing industry in this State; and to effectively insure compliance with the Act and this chapter. Moreover, in accordance with N.J.A.C. 13:74C-2.1(b)8 and 2.2(d)8, the internal control procedures of the exchange wagering licensee shall contain a certification that it has reviewed the internal control procedures of any management agent, as well as any services agent, and finds them to be sufficient. Where a management agent directly enters into the written agreement with a services agent, a certification from the management agent shall be included within its internal control procedures evidencing that the internal control procedures of the service agent have been incorporated within its own internal control procedures.

Prior to acting upon a joint petition to approve a written agreement concerning a management agent or services agent, the Commission is required to initiate and conduct an investigation into the qualifications of the person or entity subject of the related management agent license application or services agent license application, which licensure is in each case required by N.J.A.C. 13:74C-6.1(d), at cost to such person or entity. The Commission shall not approve the written agreement unless the respective management or services agent demonstrates, by clear and convincing evidence, both that the background and qualifications of it and its employees are suitable to perform the functions detailed in the written agreement and that it is qualified to hold a license by the Commission to engage in such activities. The Commission may prescribe such conditions and terms, as it deems appropriate, in approving any such agreement. Unless otherwise determined by the Commission, any Commission-approved management agent or Commission-approved services agent shall be responsible for any regulatory requirements or conditions that were previously imposed upon the exchange wagering licensee as concerns the particular functions assumed by such.

N.J.A.C. 13:74C-3.3 establishes an in-State requirement for exchange wagering administrative offices and the components of the system, and sets forth criteria to waive aspects of the latter requirement. The exchange wagering licensee, and any Commission-approved management or services agent, are each required maintain an in-State office, which may comprise a single location, and the Commission shall have unrestricted access to such premise or premises at all times. All business activities and functions related to the system shall be conducted and situated at such in-State location or locations, unless the Commission, upon application to it as specified in the rule, waives this requirement as to particular activities and/or functions. Prior to the Commission's grant of any waiver of the in-State requirement, the Commission Executive Director or his or her designee(s) is required to conduct an investigative on-site inspection of each location outside this State where any business activity or function is proposed to be conducted and/or situated. Following such inspection, the Commission Executive Director shall cause a written report, detailing the results of the on-site inspection, to be filed with the Commission. The Commission shall grant such a waiver where it determines that the petitioner or petitioners have established, by clear and convincing evidence, that the business activity or function proposed to be conducted

outside this State: may be conducted at such location consistent with law in all respects; will not prevent or negatively implicate the ability of exchange wagers to be accurately processed; is not inconsistent with maintaining the integrity of horse racing industry in this State; will not unreasonably negatively impact employment opportunities in this State; may be monitored and reviewed by the Commission from an in-State location selected by the Commission, to the satisfaction of the Commission; and will not be inconsistent with the Commission's ability to readily investigate any related aspect of the system.

However, in the event the technological requirements of system require integration with a totalisator, the totalisator situated in the in-State hub facility, which is licensed by the Commission pursuant to N.J.A.C. 13:74-8.1, shall be utilized. While this rule is not subject to waiver, it does not prohibit the exchange wagering system from utilizing technology not requiring integration with a totalisator system, and therefore comprising a stand-alone system that does not include a totalisator as one of its components. As noted above, however, any stand-alone system not requiring integration with a totalisator must be physically located within this State, unless the Commission grants a waiver of such requirement.

N.J.A.C. 13:74C-3.4 requires the reimbursement of Commission regulatory costs related to the investigation, regulatory oversight, and administration of the system. The costs associated with any out-of-State inspections discussed above, the Commission's in-State monitoring of any business activity and function approved by the Commission to be conducted out-of-State, and the Commission's investigation and travel expenses related to any matter reasonably resulting or relating to the business activities and functions approved to be conducted out-of-State, are required to be paid by the person or entity directly seeking to provide, or approved to provide, those services. The exchange wagering licensee, except as otherwise provided in Chapter 74C, is directly responsible for the timely payment to the Commission of all other costs and expenses related to the investigation, regulatory oversight, and regulatory administration of the system. Such costs are to be reimbursed to the exchange wagering licensee, from exchange revenues as authorized pursuant to N.J.A.C. 13:74C-3.5(a).

N.J.A.C. 13:74C-3.5 sets forth how distributions of exchange revenues and net exchange wagering revenues are to be made and also imposes audit requirement responsibilities as concerns the system.

One year from the date the system first becomes operational, the exchange wagering licensee is required to commence a comprehensive audit regarding the exchange revenues accumulated during such time period, which audit is to be performed by an outside and independent certified public accountant acceptable to the Commission. Such comprehensive audit shall accurately disclose the exchange revenues accumulated and distributed or available for distribution pursuant to N.J.A.C. 13:74C-3.5(a) during the first year of operation of the system. As part of this audit requirement, the exchange wagering licensee must file with the Commission, no later than eight months from the date when the system first became operational, a written petition identifying the proposed outside certified public accountant to conduct the required audit, as well as an alternative certified outside public accountant, for approval by the Commission. The Commission-approved certified public accountant shall conclude its work within one year and three months from the date when the system was first operational, and on or before such date, shall file a written report with the exchange wagering licensee (with a copy to the Commission). The Commission may, if it so chooses, require additional audits of any aspect of the exchange wagering system to be performed as part of the license conditions it imposes on said licensee.

The exchange revenues are required to be distributed, by the exchange wagering licensee, in accordance with specific priority categories, as follows: to the Commission, for those regulatory costs the exchange wagering licensee is responsible for; as fees to any person or entity it retained to conduct any audit of the system as described above; as fees to any person or entity it engages as a management agent or services agent; and, from any remainder, the exchange wagering licensee shall retain its reasonable and necessary actual expenses incurred in administering, marketing, and operating the system. After each of the payments are made from the exchange revenues, it shall then distribute from any

remaining balance 50 percent as payments to overnight purses pursuant to the formula described below, and 50 percent as net exchange wagering revenues, as also described below.

N.J.A.C. 13:74C-3.5(c) sets forth how the portion of exchange revenues dedicated to overnight purses are to be shared between the standardbred and thoroughbred industry. Specifically, of such total available for distribution between the two horse breeds, all moneys derived from exchange wagering on thoroughbred races shall be paid to overnight purses for thoroughbred races at each permitted racetrack in the State where such racing is conducted, and all moneys derived from exchange wagering on standardbred races shall be paid to overnight purses for standardbred races at each permitted racetrack in the State where such racing is conducted. This subsection also provides, however, that three years following the effective date of this chapter, this formula for allocating overnight purse monies may be modified by mutual written agreement of the Standardbred Breeder's and Owner's Association of New Jersey, Inc., and the New Jersey Thoroughbred Horseman's Association, Inc., provided such agreement does not include provisions for the exchange revenues to be used, either directly or indirectly, for purposes other than overnight purses, and provided that such agreement does not exclude the use of such funds in connection with any permitted racetrack in this State.

N.J.A.C. 13:74C-3.5(d) provides that, within one year from the date the exchange wagering system becomes operational, the exchange wagering licensee shall enter into a written business agreement with all racetrack permitholders to address the manner for the distribution of any net exchange revenues. N.J.A.C. 13:74C-3.5(e) provides that in the event the licensee and the permitholders are unable to timely arrive at a fully executed business agreement, the exchange wagering licensee is required to notify the Commission in writing of such inability within one year and 10 days from the date the system first became operational. In such event, the Commission shall assume permanent responsibility for annually distributing any net exchange revenues amongst the exchange wagering licensee and the racetrack permitholders. Although the exchange wagering licensee and racetrack permitholders may in such case present, for the Commission's consideration and approval, a fully executed written business agreement recommending how the net exchange revenues should be distributed amongst them, where such an agreement is not presented within one year from the date the system first became operational, any such agreement shall not be binding on the Commission when rendering its determination on how to distribute the net exchange.

Prior to rendering its decision on how to distribute the net exchange wagering revenues in any year, the Commission may retain an outside expert, whose services shall be paid for by the exchange wagering licensee, which costs shall be reimbursed to the exchange wagering licensee from exchange revenues pursuant to N.J.A.C. 13:74C-3.5(a)1. Any retained outside expert shall conduct proceedings and/or mediate between the exchange wagering licensee and racetrack permitholders, and render to the Commission a non-binding written recommendation on how the net exchange revenues should be allocated. The Commission shall provide the licensee and racetrack permitholders with a copy of the written recommendation of any retained outside expert. Regardless of whether or not an outside expert was employed, the Commission shall provide the exchange wagering licensee and each racetrack permitholder with opportunity to submit written comment in advance of its decision on the distribution of the net exchange revenues.

In arriving at its decision, the Commission shall distribute the net exchange revenues between the exchange wagering licensee and those racetrack permitholders who offer exchange wagering on their race product to the public, considering the following factors. First, the Commission shall consider that the exchange wagering licensee is entitled to a reasonable profit as a result of offering exchange wagering to the wagering public. After any such allocation to the exchange wagering licensee, the net exchange wagering revenues are to be divided by the Commission, between the standardbred racing industry and thoroughbred racing industry breeds, based upon the proportionate total net exchange wagering revenues actually wagered on each horse breed. In next determining the amount of net exchange wagering revenues each eligible racetrack permitholder is to receive, from the total available to each horse racing breed of which each permitholder is a part, the Commission shall

consider three factors. First, the number of live race dates conducted by each eligible permitholder during the year where the exchange wagering revenues were accumulated. Second, of the total net exchange wagering revenue available for distribution within each horse breed, the percentage amount thereof placed on the race product offered by each eligible racetrack permitholder. Third, the Commission shall consider the respective contribution made by each racetrack permitholder during the year where the net exchange revenues were accumulated, considering the total operations of each racetrack permitholder in this State, including its operation of Commission-licensed off-track wagering facilities, and the impact of such total operations to: promoting the economic future of the New Jersey horse racing industry; fostering the potential for increased commerce, employment and recreational opportunities in the State; and preserving the State's open spaces.

Subchapter 4 sets forth standards for the establishment and maintenance of exchange wagering accounts. It includes rules concerning how eligible New Jersey residents may establish an exchange wagering account (account), restrictions on the placing and accepting of exchange wagers once an account is properly established, how credits and debits to accounts are to be made, and how accounts are to be maintained by the licensee. This subchapter also includes rules that address how an account may be closed, how overpayment and underpayment errors associated with exchange wagering are to be addressed by the licensee, how patron disputes are to be addressed by the licensee, and the procedure by which an account holder may file a complaint with the Commission concerning the system.

Accounts may be established by individual residents of the State of New Jersey, who are at least 18 years old. An individual may only hold one account at any time, which may not be assigned or otherwise transferred. A person ineligible to participate in horse race wagering, as a result of such person's decision to be on the self-exclusion list established pursuant to N.J.S.A. 5:5-65.1, as well as any person not in good standing with the Commission, is ineligible to open or maintain an account. Persons excluded by the Commission from appearing at any premises subject to its jurisdiction are also prohibited from participating in exchange wagering, as well as holding or maintaining an account. At any time, the Commission may initiate a hearing in regard to an account holder whose continued participation in the system would be inimical to the integrity of exchange wagering or racing, or who is in violation of the Act, this chapter or the Commission's rules, for the purpose of excluding the account holder from participating in racing, maintaining an exchange wagering account, and appearing at any premises subject to the jurisdiction of the Commission.

An account must be established through the exchange wagering licensee. The exchange wagering account application form is to be developed by the exchange wagering licensee and is required to be processed and maintained in-State. The application form must include the prospective account holder's principal residence address, a signed certification including proof of age and residency of the applicant, and a signed certification which provides that a false or misleading statement made in regard to such application may subject the applicant to prosecution, to an enforcement action initiated by the Commission, and to rejection of the application or cancellation of the exchange wagering account by the exchange wagering licensee.

The exchange wagering licensee and account wagering licensee may develop a single application form that would allow an eligible New Jersey resident to establish separate exchange wagering and account wagering accounts, which latter form of wagering is permissible pursuant to the Off-Track and Account Wagering Act, P.L. 2001, c. 199, and N.J.A.C. 13:74. Alternatively, the exchange wagering licensee and account wagering licensee may create a single application form that would allow an eligible New Jersey resident to establish a single exchange wagering account from which both exchange wagers and account wagering wagers may be made. In either instance, Commission approval of the form of application shall be forthcoming where, by clear and convincing evidence, it is demonstrated that each of the requirements of the Act and this chapter, and each of the requirements of the Off-Track and Account Wagering Act and N.J.A.C. 13:74, have been satisfied.

The exchange wagering licensee is required to provide a prospective account holder with the following: the operation rules adopted by it

concerning account deposits and withdrawals; the disclosure requirements of N.J.A.C. 13:74C-5.8(b) concerning matched wagers and declared or scratched entries; a non-accumulation of interest disclosure as to accounts; maintenance requirements of the account, including rules concerning dormant accounts and credit or debit card usage rules; a procedure to amend an application to update the account holder's address or other information required by the licensee; any reporting obligations of the licensee for taxation purposes; the requirement that exchange wagers be placed by account holders from a location within this State; the dispute resolution procedure adopted by the licensee; the complaint procedure to the Commission, including the mailing and email address of the Commission; and any other aspects of the operation of the account as determined by the exchange wagering licensee. The account holder shall be deemed to have accepted the rules of account operation upon opening or not closing the account. The exchange wagering licensee must also notify the account holder whenever its rules governing accounts are changed, prior to the effective date of such change, to allow the account holder sufficient opportunity to close the account in advance of those new rules becoming effective.

Following its receipt and review of an application, the licensee shall accept or reject an application for an account, and it may reject an application at its discretion. In acting upon an application, the licensee shall verify compliance with the Act and this chapter, the identification, residence, and age of the account applicant using methods approved by the Commission; and compliance with its internal control procedures. Any applicant who provides false or misleading information on the application is subject to rejection of the application or suspension or closing of the account, by the exchange wagering licensee, without prior notice.

An established account may be suspended or closed for reasons including where an account holder attempts to place an exchange wager or wagers with an insufficient account balance. The decision to reject an application, or suspend or close an existing account, is not appealable to the Commission and constitutes a final decision on the part of the exchange wagering licensee. However, where the exchange wagering licensee suspends an existing account for 48 hours or more, or closes an existing account, it is required to file a written report with the Commission Supervisor of Mutuels identifying the name and address of the account holder, the date of the suspension or closure of the account, and the reason for such action.

When making an account deposit or account withdrawal, an account holder must first provide his or her confidential account number and confidential personal identification number to the exchange wagering licensee, to be chosen in a manner subject to the discretion of the licensee and consistent with its Commission-approved internal control procedures. When making any other account inquiry or requesting any other account transaction, the exchange wagering account holder must provide his or her confidential personal identification number and such other information as the exchange wagering licensee may require, which could include the account holder's account number. Except to the Commission, or as otherwise authorized by law, information related to an account and the individual account holder, without the consent of the account holder, is confidential and may not be released to others by the exchange wagering licensee.

The exchange wagering licensee is required to maintain complete records of every deposit, withdrawal, wager, and winning payoff for each exchange wager. Exchange wagers may be placed in person, by direct telephone call, or by communication through a computer or other electronic media approved by the Commission. For wagers or transactions made by an account holder in-person, the licensee shall maintain a printable record of the entire transaction and shall not accept any such exchange wager or transaction if the printable record system is inoperable. Additionally, the record of the finalization of the wager shall be deemed to be the actual wager or record of the transaction, regardless of what wager was entered by and into the system. For exchange wagers and other transactions made by direct telephone call, the exchange wagering licensee shall make a voice recording of the entire transaction and shall not accept any such exchange wager or transaction if the voice recording system is inoperable. The voice recording of the exchange wagering account holder's finalization of a wager shall be deemed to be

the actual wager or record of transaction, regardless of what wager was entered by and into the system. For exchange wagers or transactions made by computer or other electronic means approved by the Commission, the exchange wagering licensee shall maintain a printable record of the entire transaction and shall not accept any such wager or transaction if the printable record system is inoperable. The record of the finalization of the wager shall be deemed to be the actual wager or record of the transaction, regardless of what wager was entered into the system. No exchange wager may be accepted after the time for taking the particular type of exchange wager ends.

The exchange wagering licensee is required to provide each account holder, upon reasonable request and consistent with its internal control procedures, with a statement of account showing each deposit, withdrawal, credit, and debit made during the time period reported in the statement. An account holder may dispute any transaction in accordance with the exchange wagering licensee's dispute resolution procedure, which shall be set forth in its internal control procedures. In any dispute initiated in accordance with such procedures, or as otherwise permitted by the exchange wagering licensee in its discretion, the account holder shall have the right to review the voice recording or printable record of his or her account transactions or exchange wagers. The decision of the exchange wagering licensee as to any dispute shall not be subject to any appeal to the Commission, and shall constitute a final decision on the part of the licensee.

The exchange wagering licensee must also retain account records for a period of time consistent with the ability of an account holder to dispute a transaction consistent with the exchange wagering licensee's internal control procedures and, except as otherwise noted below, for a period of not less than six months from the date of the related transaction. All account applications or amendments thereto shall be retained for a minimum of one year following the rejection of said application by the licensee, or, where an exchange wagering account has been established, for a minimum period of one year following the closure of the related account.

The exchange wagering licensee may not accept an exchange wager, or series of wagers, in an amount in excess of the cleared funds on deposit and available in the account, and it may not directly extend credit to an account holder. An account holder may not place an exchange wager drawn upon sums deposited into his or her account, regardless of the manner of deposit of those funds, unless the deposit has first been administratively processed by the exchange wagering licensee, the funds have been deposited and credited to the account, the funds have satisfied any banker's or other required clearance, and the funds are actually available in the account. Funds may be deposited into an account through one or more of the following forms: by cash deposit utilizing a properly completed and executed deposit slip approved by the Commission; by credit or debit card in a maximum amount consistent with the internal control procedures of the exchange wagering licensee, as specifically approved by it, upon the account holder's direct and personal instruction; by check, money order, negotiable order of withdrawal utilizing a properly executed deposit slip approved by the Commission; or by wire transfer or electronic transfer. A receipt for such a deposit shall be issued to the account holder but need not reflect the current account balance. The exchange wagering account shall not bear interest to an account holder and any interest accrued shall be disbursed as exchange revenues, in accordance with the exchange wagering licensee's internal control procedures and N.J.A.C. 13:74C-3.5.

Upon receipt by the exchange wagering licensee of an exchange wager placed in accordance with the Act, this chapter, and the internal control procedures of the licensee, the licensee shall promptly debit the account holder's account in the amount of the wager. As condition precedents to debiting any account, the exchange wagering licensee shall first be satisfied that there are sufficient funds in the account to cover the amount of the exchange wager, as well as any additional applicable transaction or other fees due it as provided for or authorized by this chapter, and that the exchange wager is of a type that can be identically matched within a given market to an identically opposing exchange wager or wagers. Following the exchange wagering licensee's proper debit of an account, for an exchange wager or wagers properly accepted, the net winnings due shall be credited to the account of the account holder who won the wager,

less any applicable transaction or other fees due to the exchange wagering licensee. Credit for winnings from wagers placed with funds in an exchange wagering account, and credits for refunded exchange wagers, shall be posted promptly to the account by the exchange wagering licensee.

As concerns overpayment or underpayment errors in the payment of exchange wagers, the exchange wagering licensee is responsible for such overpayment or underpayment regardless of the cause. Notwithstanding this obligation, the exchange wagering licensee may enter into a written agreement, with another person or entity, including any management agent or services agent, requiring reimbursement to the licensee for its overpayment or underpayment of exchange wagers.

An account holder may request a withdrawal of available funds in his or her account, or any portion thereof, by providing the exchange wagering licensee with a properly completed and executed written withdrawal form. If there are sufficient funds in the account to cover the withdrawal amount requested, the exchange wagering licensee shall disburse to the account holder the amount requested no later than three days following the receipt of the withdrawal form. However, where a withdrawal is requested via telephone, or by other electronic means as approved by the Commission, a written withdrawal form will not be required where the account holder has previously, and in writing, authorized the exchange wagering licensee to accept withdrawal requests by such approved electronic means. The withdrawal amount may be disbursed by cash, check, or electronic transfer at the discretion of the exchange wagering licensee. If disbursed by check, the check shall be sent to the mailing address specified in the account holder's application (or amended account application). All other methods of withdrawal payments shall be properly recorded by the exchange wagering licensee, consistent with its internal control procedures.

However, notwithstanding its receipt of a properly completed account withdrawal request, the exchange wagering licensee shall suspend an exchange wagering account, or decline to fulfill a withdrawal request, where: it reasonably suspects fraud; that the account holder was ineligible to make one or more of the exchange wagers made from the account; or in the event the Commission Executive Director has notified it that the Commission is conducting an investigation into the account, or the system itself, and in writing directs it to suspend the account, or not to fulfill any withdrawal requests associated with the particular account.

The exchange wagering licensee has discretion to close an exchange wagering account that becomes dormant, as defined in its internal control procedures, and consistent with the requirements of this chapter. No later than 30 days before the date on which a dormant account is to be closed, the exchange wagering licensee is required to forward, by regular and certified mail to the address of the exchange wagering account holder as set forth in the account holder's application (or properly amended application), notice of the date on which the exchange wagering account shall be closed. The notice shall specify that, upon any closure of an account, the funds within the account shall be forfeited. The notice shall further provide what actions the account holder must take, consistent with the internal control procedures of the exchange wagering licensee, in order for the account holder to secure the funds in the account prior to its closure, or alternatively and subject to the discretion of the licensee, to cause the account not to be closed and remain an active account. Where an account is closed due to dormancy, the funds that were within the closed account shall be disbursed as exchange wagering revenues, for distribution as provided in N.J.A.C. 13:74C-3.5.

Commission licensees, other than those employed by the exchange wagering licensee, or any management agent or services agent, are not precluded from holding an account. However, such licensees are prohibited from placing an exchange wager, directly or indirectly, in connection with a race or races in which he or she has performed any service for whatsoever, or will participate in, pursuant to the Commission license he or she possesses. Individuals employed by the exchange wagering licensee, or any management agent or services agent, are not permitted to have or maintain an account.

Subchapter 5 sets forth rules and procedures incident to wagering through the system. This subchapter specifies which market types are permissible, and the procedure by which new market types may be approved for exchange wagering by the Commission. It also includes

rules and procedures in the event of or relating to: technological breakdowns of the system; market suspension and market voiding; the placement of corrective wagers; the finalization of wagers and cancellation of unmatched wagers; non-starters and declared or scratched entries; the formation of wagering pools; the imposition of surcharges on exchange wagers; hardware or software changes to the system; and race-related information that may be provided to account holders.

A market, in relation to a horse race or set of horse races, is a particular outcome that is available for account holders to wager upon within the exchange. The particular market or markets that are made available for exchange wagering are to be determined by the exchange wagering licensee, but any market offered must be authorized by this subchapter. N.J.A.C. 13:74C-5.1 sets forth three permissible market types that may be offered, within the exchange, for purposes of exchange wagering by account holders: the off-time market, the antepost market, and the finish market.

An off-time market allows an account holder to back or lay a selected outcome on horse races, and closes for exchange wagering at race off-time. An antepost market closes for wagering at the time of the close of entries, is placed in advance of the closing of entries, and includes both that the selected horse will actually run the race and that the selected horse will finish the race in the selected position of win, place, or show. In a finish market, the market remains open after off-time, and it closes for exchange wagering at the official finish of the race. Additional markets may only be offered by the licensee upon the filing of a petition with the Commission, and findings incident to any Commission approval that the proposed new market is in compliance with the Act and this chapter, that exchange wagers placed within the new market will be accurately processed, that all aspects of wagering integrity and wagering recordkeeping will be maintained, that the offering of the new market will not negatively impact the fiscal soundness and technological reliability of the system, that the new market will not create undue confusion to the wagering public, and that the new market will not be inimical to the best interests of racing.

However, before any market, including the three permissible markets described above, may be offered for exchange wagering for the first time within the exchange, the exchange wagering licensee is required to file a written petition with the Commission. Such petition must identify the type of market for which Commission approval is sought, and shall include the following: a narrative description of the exchange wagers that can be placed within the market, including a statement of rules for such exchange wagers; a statement as to whether the same market has been offered to the public in any other jurisdiction, by any other person or entity, and whether such offering encountered any known technological or practical problems; a statement as to whether any services agent employed by the exchange wagering licensee has itself offered the market in another jurisdiction and, if so, whether any problems were encountered with the market; the minimum and maximum dollar amount of the exchange wagers that will be accepted for the market; a certified statement that the hardware and software components of the system have been successfully tested to handle the market; the particular race or races in connection with which the market is proposed; and a certified statement by the petitioner that the market is in compliance with all laws that may be implicated thereby. In considering any petition filed pursuant to this section, the Commission may impose such conditions to any approval as it deems reasonable and necessary to insure the integrity of the system and the horse racing industry in this State, which may include that the system be subject to independent testing for technological and wagering data reliability, before the market is approved, at cost to the exchange wagering licensee.

Once the Commission approves a market for the first time, the Commission Executive Director or designee shall have discretion to subsequently approve written applications of the exchange wagering licensee to offer that same market in connection with other races or groups of races, provided that the market subject of such application comprises the same exchange wager (including the rules for the exchange wager to be offered within the given market) as previously approved by the Commission. In its written application to the Commission Executive Director, the exchange wagering licensee or exchange management agent shall: identify the market type; submit documentation showing that the

Commission has previously approved the market; provide documentation showing that the market is comprised of the same exchange wager (including the rules for the exchange wager to be offered within the given market) as previously approved; identify the races for which exchange wagering will be offered in the market, and include a statement as to whether any technological or other problems arose in connection with the offering of such market in the matter previously approved by the Commission or Commission Executive Director. In acting on such application, the Commission Executive Director may approve the application with any conditions deemed reasonable and necessary to insure the integrity of the system and horse racing industry in this State, refer the application to the Commission for consideration, or deny the application for good cause. Approved markets may be discontinued, by the Commission or Commission Executive Director, where to do so is consistent with the integrity concerns contained within N.J.A.C. 13:74C-5.2(e).

N.J.A.C. 13:74C-5.3 addresses the procedure to be followed in the event of a minor technological breakdown of the system, and where the exchange wagering licensee determines that the nature and degree thereof does not require a suspension or voiding of the market. The exchange wagering licensee, in such case, shall cause all unmatched wagers to be canceled. Matched wagers, as of the time of the failure, are to remain matched, and be paid in accordance with the established prices for such wagers and the internal control procedures of the exchange wagering licensee applicable to matched wagers. In such event, the exchange wagering licensee is required to promptly file with the Commission Supervisor of Mutuels a written report detailing the action taken, and the reasons supporting such action.

As authorized by N.J.A.C. 13:74C-5.4(a), the exchange wagering licensee may suspend an entire market on its own accord at any time for good cause, including after the race is declared official but before winning exchange wagers are credited. In this respect, good cause shall exist where: reasonable cause exists to suspect that fraud or any other action or inaction by any person connected with the race raises questions about the integrity and fairness of the market; reasonable cause exists to conclude that a material technological breakdown associated with the system exists or has occurred, and such technological breakdown of such magnitude that the implementation of the minor breakdown system failure procedures detailed in N.J.A.C. 13:74C-5.3 would be inadequate. The exchange wagering licensee may also suspend a market for other reasons where, upon emergent application, it demonstrates to the satisfaction of the Commission Supervisor of Mutuels that a failure to suspend a market will likely negatively impact the integrity of the system and the horse racing industry in this State. In the event the exchange wagering licensee suspends a market, it is required to immediately notify the Commission Supervisor of Mutuels of such action in writing, by electronic mail. Additionally, it is also required to promptly file a written report with the Commission Supervisor of Mutuels which, at a minimum, identifies the market suspended, the date and time of suspension, the reason for the suspension, the reasons why the implementation of the procedure set forth in N.J.A.C. 13:74C-5.3 would have been insufficient, the results of the related due diligence investigation conducted by the exchange wagering licensee, and a proposal for settling the market. Upon satisfactory review by the Commission Supervisor of Mutuels and his or her written authorization, the exchange wagering licensee shall settle the market.

An entire market may be voided only upon application to the Commission Executive Director or designee, and where the exchange wagering licensee demonstrates to the satisfaction of the Commission Executive Director or designee that a material and irreparable technological breakdown of the system occurred, and that due to the nature thereof and circumstances present, it would prove insufficient for the procedure set forth in either N.J.A.C. 13:74C-5.3 or 5.4(a) or (b) to be followed. In approving any such application, the Commission Executive Director or designee may impose conditions as he or she deems reasonable and necessary to insuring the integrity of the system and the horse racing industry.

The exchange wagering licensee may cause corrective wagers to be placed within the system, under circumstances set forth in its Commission-approved internal control procedures. Such wagers may be

placed in a given market in the limited circumstances where the placement of such wager is necessary to address the impact on that market of the cancellation of a given wager or given part of a matched wager, where the cancellation of such given wager is due to the exchange wagering licensee's mistaken acceptance thereof, and where the placement of the corrective wager will not result in any exchange revenues accruing to the exchange wagering licensee, or any management agent or services agent. In the event the exchange wagering licensee causes a corrective wager to be placed, it shall promptly cause to be filed with the Commission Supervisor of Mutuels a written report detailing the action taken and the reasons in support of such action.

The exchange wagering licensee may cancel an unmatched wager at any time, without cause, before it is matched to form one or more identically opposing wagers. In the event it does so, it shall promptly cause to be filed with the Commission Supervisor of Mutuels a written report detailing the action taken and the reasons in support of such action. An exchange wagering account holder who offers an unmatched wager, may also cancel that unmatched wager at any time, without cause, before it is matched by the exchange licensee to form one or more identically opposing wagers. However, the suspected abuse of this cancellation policy by an account holder, including, but not limited to, where any such cancellation is made pursuant to or in furtherance of fraudulent activity related to horse racing or to the system, or where the frequency of such cancellations is determined by the exchange wagering licensee to negatively impact the exchange or any given market, shall serve as a basis for the closure or suspension of the exchange wagering account pursuant to N.J.A.C. 13:74C-4.2.

Once an unmatched wager is confirmed by the licensee as having been matched to an identically opposing wager in a given market on the exchange, such matched wager shall be final and may not be cancelled unless certain conditions precedent are met. The exchange wagering licensee may only cancel a matched wager, or part of a matched wager, if such cancellation is ordered by the Commission, or in the event the exchange wagering licensee determines that one or more of four specific circumstances exist: a technological failure of the system occurred and the entire market, within which the exchange wager was made, must as a result be voided in accordance with the procedure at N.J.A.C. 13:74C-5.4(c); good cause exists to suspect that a person placing a wager through the system has acted in violation of the terms and conditions entered into with the exchange wagering licensee at the time such person's account was established, or at the time such terms were amended; it is in the interest of maintaining the integrity and fairness in a particular market, including as concerns non-starters and declared or scratched entries in non-antepost markets, as discussed below; or if human error by the exchange wagering licensee in the recording of the exchange wager has occurred. In the event the exchange wagering licensee cancels a matched wager as authorized by this section, it is required to promptly file a written report detailing the action taken, and the reasons such action was taken, with the Commission Supervisor of Mutuels.

Except in the case of an antepost market, matched wagers on non-starters and declared or scratched entries, are required to be voided. In the event of a non-starter or declared or scratched entry, the price of all other matched wagers existing at the time the declared or scratched entry occurred or the non-starter declared, may be reduced proportionally by the exchange wagering licensee in accordance with its internal control procedures, to reflect the increased probability that those outcomes will become winning outcomes.

The exchange wagering licensee is neither required to include any pools of exchange wagers in the wagering pools at the track conducting the races, or to retain, withhold, or takeout any amount from any exchange wagers. However, in the event it determines to do either, including as a result of the imposition of surcharges associated with exchange wagering accounts and exchange wagers, Commission approval must be obtained in advance.

Where approved by the Commission, and where the exchange wagering licensee demonstrates by clear and convincing evidence that a proposed interstate exchange pool is consistent with the law in all respects, an interstate exchange pool may be offered. An interstate exchange pool may be established in this State, in another state, or a foreign nation. Regardless of where an interstate exchange pool is



established, the unmatched exchange wagers of New Jersey account holders shall be matched with unmatched exchange wagers within the interstate exchange pool, to form identically opposing matched wagers.

No change may be made to the exchange wagering hardware or software infrastructure components unless the exchange wagering licensee first submits to the Commission Supervisor of Mutuels a certified written statement setting forth, with specificity, the proposed change made to such infrastructure, and a certification that the proposed change was the subject of successful testing. The Commission Supervisor of Mutuels, in consultation with the Commission Executive Director and where to do so would be consistent with the integrity of the system, may require additional testing to be conducted by the exchange wagering licensee before the change is implemented.

The exchange wagering licensee's internal control procedures shall set forth what race information, if any, it shall make available to exchange wagering account holders. In the event it elects not to provide race information to account holders, or if the Commission determines that the race information the exchange wagering licensee elects to make available to the account holders is insufficient, the Commission may, in its discretion, impose a license condition requiring that race information, including the nature and extent of such race information, be provided by the exchange wagering licensee to the account holders. In considering whether to impose such a condition, the Commission shall consider whether such provision will foster and enhance the system, alleviate the potential for confusion amongst the account holders, whether the race information is otherwise reasonably and readily available to the account holders from another source, and the position of the exchange wagering licensee.

Subchapter 6 sets forth rules concerning licensing requirements and responsibilities for persons and entities involved in, or providing services in connection with, the system. It includes penalties that may be imposed for violations of Chapter 74C, as well as procedures concerning hearings and appeals. All license applicants must be 18 years of age or older, are required to be photographed, and are responsible for the costs of fingerprinting and the related criminal history check. License fee costs are required to be paid at the time the license application is filed, and are non-refundable. The Commission may request that an applicant provide his or her Social Security number for use in determining eligibility for licensure, and as a secondary internal identifier for credit checks, background checks, or other such investigations. However, no license application shall be denied for failure to comply with such a request provided that a person may be required to submit such other information, as the Commission may require, in order to determine eligibility for licensure. In granting a license, the Commission may impose conditions to effectuate the purposes of the Act and Chapter 74C. All licenses issued pursuant to Chapter 74C are effective January 1 to December 31 of the same year, except as provided in N.J.A.C. 13:74C-2.1(a) and 2.2(b).

The exchange wagering licensee shall be licensed in accordance with the Act, and Chapter 74C, and any appeal of a final decision on such a license application or renewal license application shall be to the Superior Court of New Jersey, Appellate Division. A successor in interest, to whom an initial exchange wagering license or renewed license is to be transferred or assigned, shall be licensed in the same capacity, and at the same license application filing fee cost, as the holder of the license subject of transfer or assignment.

All employees of the exchange wagering licensee who perform duties in connection with the system, including those with supervisory or oversight responsibilities, regardless of location are required to take out an exchange wagering identification license at an annual fee of \$25.00. Any exchange management agent or exchange services agent must also be licensed by the Commission at an annual fee of \$50.00, and the employees of either are required to hold an exchange wagering identification license, also at an annual fee of \$25.00.

Unless the Commission or Commission Executive Director determines the issuance of a license to be unnecessary, based upon the filing of a petition of a prospective applicant for an exemption from the exchange wagering vendor license requirements of N.J.A.C. 13:74C-6.1(f) and (g), and in consideration of the nature of the services to be provided and the volume of business proposed to be conducted by said petitioner, the following vendors shall be required to take out a vendor's license from

the Commission at an annual fee of \$50.00: any vendor who maintains an on-site presence at either the premises of the exchange wagering licensee, any exchange management agent, or any exchange services agent; and any vendor who supplies racing-related or system-related equipment, supplies, information, or data to the exchange wagering licensee, management agent, or services agent in connection with the system. The Commission shall have the discretion to require, based upon the nature or service provided or volume of business, that any other vendor take out such a license. The licensee, as well as any management agent or services agent, by March 15 of each year, shall each file with the Commission a report identifying the name of each non-licensed vendor with whom it did business in an aggregate amount of \$10,000 or more for the preceding calendar year, the nature of the vendor's business, the principal address and telephone number of the vendor, and whether or not the business relationship is continuing in nature.

Notwithstanding the above license requirements, where an individual or vendor is presently licensed by the Commission pursuant to either N.J.A.C. 13:70, 71, 72, or 74, and where the Executive Director determines that the job responsibilities for which the existing license was issued by the Commission are substantially similar to those that are to be performed as concerns exchange wagering, such person or vendor shall not be required to take out a license pursuant to Chapter 74C. However, to qualify under N.J.A.C. 13:74C-6.1(h), such individual or vendor must first have his or her presently issued license properly endorsed by the Commission at no cost, and where this requirement is satisfied, the individual or vendor is still required to comply with all the requirements of Chapter 74C. Likewise, as set forth at N.J.A.C. 13:74C-6.1(i) and subject to compliance with the similar requirements therein, any license issued to an individual or vendor pursuant to Chapter 74C, where such licensed individual or vendor has first had his or her license properly endorsed by the Commission, may participate in racing pursuant to N.J.A.C. 13:70, 71, 72, or 74 without having to secure a separate license from the Commission.

All Commission-licensed personnel employed either at the premises of the exchange wagering licensee, any exchange management agent, or any exchange services agent, are required to wear an identification badge, which may be devised or authorized by the exchange wagering licensee, as approved by the Commission, and to carry on their person and produce to the Commission upon request, the authorized badge containing picture identification supplied by the Commission. In the event the exchange wagering licensee elects not to devise or authorize such an identification badge, all such Commission-licensed personnel shall instead be required to wear upon their outside apparel, in a prominent position, the picture identification badge supplied by the Commission. Should any such employees already be required to wear Commission-identification badges or the equivalent, as a result of licensure by the Commission in another capacity, the required exchange wagering identification badge shall be endorsed to reflect the other category of Commission licensure, in a uniform manner acceptable to the Commission. The penalty for individuals for failure to comply with this rule shall be \$15.00 for a first violation; \$25.00 for a second violation; \$50.00 for a third violation; and a \$100.00 fine and seven day license suspension for each and every violation thereafter. These requirements may be waived by the Commission as concerns employees who conduct any functions in connection with the system, where those functions are performed out-of-State, as approved by the Commission pursuant to N.J.A.C. 13:74C-3.3.

The burden of proof rests on each applicant to show that he or she is qualified in every respect to receive the license applied for. The applicant must clearly show ability, good character, and integrity in order to receive a license. Any person making any false, untrue, or misleading statements on a license application, or in connection with any written or oral examination in connection with an application for a license, shall be denied a license and is subject to the additional penalties set forth at N.J.A.C. 13:74C-6.10.

The Commission may investigate the applicant or any person named in the application, with respect to such person's background, good character, qualifications, financial responsibility, criminal record, subversive record, and other reports concerning such person, in order to determine whether the applicant is qualified for the license applied for. The Commission or Commission Executive Director may require that the

applicant appear for an interview in connection with the license application. An applicant has the unqualified duty to cooperate with the Commission in connection with its investigation into any application for a license, and the license shall be denied where the applicant fails to do so.

The Commission may refuse to issue or renew a license, or may suspend a license issued pursuant to this chapter, if it shall find that the applicant is not of good character, is not qualified to hold the license applied for, or that the applicant, or any person who is a partner, agent, or employee or associate of the applicant, has been convicted of a crime in any jurisdiction; is associating or consorting with any person or persons who has been convicted of a crime or crimes in any jurisdiction; is consorting with, or has consorted with bookmakers, touts, or persons of similar pursuits; is financially irresponsible; has been guilty of, or attempted any fraud or misrepresentation in connection with racing, breeding, or otherwise; has violated or attempted to violate any law with respect to racing in any jurisdiction or any rule, regulation, or order of the Commission; shall have violated any rule of racing which shall have been approved or adopted by the Commission; or has been guilty of or engaged in similar, related or like practices. Where a license is denied, the Commission Executive Director shall cause a ruling to be issued reflecting the license denial. An applicant whose application has been denied may appeal such decision in accordance with N.J.A.C. 13:74C-6.12, as discussed below.

A licensee has a duty to fully cooperate in any investigation being conducted by the Commission, including as concerns the Act and Chapter 74C. Commission licensees are required to give every possible cooperation, aid, and assistance to any person connected with the United States government or with this State, or who may be acting in cooperation therewith, who may be investigating or prosecuting any matter involving a violation of law, or any other rules or regulations of the Commission. A licensee that comes into possession of knowledge concerning either any violation of the Commission's rules set forth in N.J.A.C. 13:70, 71, 72, 73, or 74, or the rules of racing or any violation of law in connection with the Act and Chapter 74C, the running of a race, or the wagering or exchange wagering conducted in connection with the running of a race, is required to immediately report the information to the Commission for investigation and such action as the case may warrant.

A license issued to any person, considering the particular facts present and the nature of the violation, may, following a hearing, be suspended for a finite period of time, suspended indefinitely, or permanently revoked, and a monetary fine imposed, or a letter of reprimand issued, at any time for: misconduct or malfeasance; conduct detrimental to the sport of horse racing; failure to comply with any license condition; violation of any rule or order of the Commission; failure to comply with the requirements of the Act and Chapter 74C; fraudulent activity; bribery; financial irresponsibility, meaning the accumulation of unpaid obligations, or the issuance of drafts or checks that are dishonored or on which payment is refused, or other conduct displaying financial irresponsibility reflecting on the exchange wagering system; failure to cooperate with the Commission in any investigation; or any attempt to commit, or participation in any conspiracy to commit, any of the aforementioned acts. Where a penalty is imposed as a result of a violation of Chapter 74C, the Commission Executive Director shall cause a ruling to be issued reflecting the violation and penalty ordered.

Any fine imposed as a result of a violation of Chapter 74C shall not exceed \$5,000 per violation. Where the violation is ongoing in nature, a fine not to exceed \$5,000 per day may be imposed. A penalty of revocation may only be ordered by the Commission. Where a license suspension or license revocation is imposed, the licensee subject to the action shall be ordered not to appear at any premises subject to the jurisdiction of the Commission. The imposition of remedial conditions may be imposed when imposing any penalty.

A licensee, subject to compliance with the requirements and procedures set forth in N.J.A.C. 13:71-26.9, may have his or her license suspended immediately when indicted in this State for a crime of the first, second, third, or fourth degree, or where indicted for a similar crime under Federal law or the law of another state or country.

Pursuant to N.J.A.C. 13:74C-6.12(a), the Commission may directly conduct a hearing to determine if a violation of its rules has occurred.

Upon a finding of a violation or violations, the Commission may directly impose penalties. Alternatively, the Commission or Commission Executive Director may refer any matter not the subject of a Commission final decision to the Office of Administrative Law for a recommended decision. A final decision from the Commission, as it relates to a license denial or imposed penalty, may be appealed to the Superior Court of New Jersey, Appellate Division. The applicant for a license, or licensee, is responsible for any costs incurred in connection with any hearing or appeal proceeding.

Where a penalty has been issued or adopted in a Commission final decision, the licensee may submit a written request to the Commission Executive Director for a stay of the imposed penalty pending appeal to the Appellate Division, which written request shall set forth all facts and arguments in support of the stay request. The Commission Executive Director may deny the stay request if he determines that the grant thereof would be adverse to the best interests of exchange wagering, adverse to the best interests of racing, or inimical to the integrity of racing. The decision of the Commission Executive Director on the stay request shall constitute a final decision that may be appealed to the Appellate Division.

N.J.A.C. 13:74-6.14 addresses reciprocity and provides that full force and effect shall be given to the denial, revocation, or suspension of any license by any other racing commission, or other regulatory body, with the responsibility to oversee the conduct of racing, off-track wagering, account wagering or exchange wagering.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

#### Social Impact

The implementation of exchange wagering should foster the potential for increased commerce, employment, and recreational opportunities in this State. In any event, any resulting social impact is due to the legislative decision to authorize the described activities and not the promulgation of this chapter. Exchange wagering is expected to increase the number of persons who choose to participate in legalized horse race wagering in New Jersey, as it provides an expanded recreational opportunity in the form of a new form of pari-mutuel wagering. Because it is also expected that persons who presently participate in horse race wagering will open exchange wagering accounts, exchange wagering is likely to result in a net increase of the overall amount of wagering on horse racing. It would be highly speculative to attempt to estimate the degree to which any of these increases may occur, particularly since the number of individuals who elect to establish an exchange wagering account is unknown.

It is anticipated that the implementation of this chapter will promote the economic future of the horse racing industry in New Jersey and, consequently, serve to promote the ancillary or service industries that support the industry. As a portion of the revenues resulting from exchange wagering will accrue to the benefit of purse moneys and participating racetrack permitholders, increased racing opportunities may result. In such event, industries supportive of horse racing, such as blacksmiths, feed providers, breeding farms, and tack providers, will benefit. Also, because a portion of the funds derived through exchange wagering is to be used for overnight purses, demand may increase for horse race offerings, and as a beneficial consequence, the devotion of land for horse breeding and training may be encouraged. To the extent this occurs, because the devotion of land for such purposes positively impacts the preservation of the State's open spaces, a positive social impact arises.

It is unknown whether or not business facilities specific to exchange wagering will be established. However, the rules do require the exchange wagering licensee, as well as any exchange management agent and exchange services agent, to maintain an office location within the State. Further, unless a waiver of the requirement is granted by the Commission, all business activity and functions associated with the system must be conducted in-State. Additionally, should the exchange wagering system require integration with a totalisator machine, the licensee is required to utilize the same totalisator situated in the hub facility located in New Jersey and licensed by the Commission. Although the degree of the impact is not presently measurable, these requirements

overall should have a positive social impact as they will serve to promote jobs and enhance the State's commerce.

The Commission anticipates that the proposed exchange wagering rules will result in both positive and negative public comment, on social impact grounds. Horse race players generally favor exchange wagering because it results in a flexible wagering platform, which can result in unique wagering opportunities presently unavailable to the wagering public in our State. For example, pursuant to N.J.A.C. 13:74C-5.1(b), the exchange wagering licensee may offer an antepost market, which allows one to wager that a selected horse will actually participate in the race, and finish the race in the win, place, or show position. Additionally, exchange wagering allows for the possibility of fixed odds pricing, meaning that a properly placed and accepted exchange wager may be subject to set as opposed to fluctuating odds. Further, pursuant to N.J.A.C. 13:74C-5.2(d), subject to Commission approval, the exchange wagering licensee may offer new types of markets. While the ability to offer such markets is viewed by many horse players as desirable, some individuals may view such as potentially problematic. For example, the exchange wagering licensee may propose to offer a new market that encompasses wagering on an outcome requiring that a certain horse lose the race. While some may view this as a desirable bet, others may believe that such a wager would implicate integrity concerns because it might result in a bribe being paid to a race participant to purposely lose the race. However, the proposed new rules not only require Commission pre-approval for the three permissible markets set forth at N.J.A.C. 13:74C-5.1 to be offered for public wagering, but further require pre-approval of any new market that may be proposed pursuant to N.J.A.C. 13:74C-5.1(d). A new market can only be approved by the Commission if it can be demonstrated, as required by N.J.A.C. 13:74C-5.1(d) and 5.2, that the offering of exchange wagering through the market will be accurately processed, that all aspects of wagering integrity and wagering recordkeeping will be maintained, that the new market will not negatively impact the fiscal soundness and technological reliability of the system, that it will not create undue confusion to the wagering public, and that the new market will not be inimical to the best interests of racing. Additionally, as authorized by N.J.A.C. 13:74C-5.2(e), the Commission or Commission Executive Director may order that an approved market be discontinued where its continuance would be inconsistent with the integrity of the system, the wagering and technological reliability of the system, or the maintenance of the integrity of the horse racing industry in this State. Thus, the Commission believes that the proposed new rules incorporate sufficient safeguards to insure that offered markets are consistent with horse race wagering integrity concerns.

As with any expansion of legalized gambling, a potential does exist for negative implications to those with a compulsive gambling addiction. The Act, through its requirement that the Commission regulate exchange wagering, seeks to limit the potential for such implications. The proposed new rules, for example, make individuals ineligible to participate in horse race wagering, as a result of such person's decision to be on the self-exclusion list established pursuant to N.J.S.A. 5:5-65.1, from opening or maintaining an exchange wagering account. The Commission believes that such requirement will reduce the potential for such negative social implications.

#### **Economic Impact**

It is impossible to estimate, with precision, the economic impact of the proposed new rules. However, assuming the exchange wagering is implemented, several economic impacts should result.

Because it stands to profit as a result of offering exchange wagering, a positive economic impact will likely result to the exchange wagering licensee as a result of the implementation of this chapter. However, any such profit will be off-set with the costs associated with implementing, operating, and maintaining the exchange wagering system. The exchange wagering licensee may choose to install the system at an existing in-State premise, it may choose to build a new in-State facility and install it there, or it may elect to seek Commission approval to waive the in-State requirement that all exchange wagering business activities and functions occur within New Jersey. In the event the exchange wagering licensee chooses to develop a new location in-State, there will likely be substantial costs in the construction of said facility and offices, which would benefit

construction companies, equipment supply vendors, and their employees. In the event it chooses to utilize an existing facility within New Jersey, although the economic benefit to the State would not be as pronounced, the purchase of the equipment associated with the system will benefit equipment supply vendors and their employees. Moreover, once exchange wagering is established, an economic benefit should arise to suppliers and vendors of the related in-State facilities.

In the event the Commission were to waive the requirement that all exchange wagering business activities and functions be conducted in-State, which it can do only if the criteria set forth at N.J.A.C. 13:74C-3.3 are satisfied by clear and convincing evidence, these potential positive economic impacts to New Jersey would be diminished. However, to the extent that the Commission were to approve any business activities and functions being located outside New Jersey, and where such an approval authorized the exchange wagering licensee to utilize an established exchange wagering infrastructure existing outside New Jersey, cost savings would likely inure to the benefit of the exchange wagering licensee and any exchange services agent or any exchange management agent acting on behalf of the exchange wagering licensee. However, even should the Commission waive the in-State requirement, the exchange wagering licensee, as well as any exchange management agent or exchange services agent, are required to maintain a physical office in this State, which should yield a positive economic impact within the State.

Exchange wagering will of course have an economic impact on those residents of New Jersey who choose to establish an exchange wagering account. The extent of this impact is not readily measurable, as it is dependent upon the amount an account holder elects to wager, and whether or not the account holder wins or loses exchange wagers placed. It should be noted that, subject to Commission approval, the exchange wagering licensee is permitted to impose surcharges in connection with exchange wagering, which could include surcharges on wagers placed, as well as winnings exchange wagers. In the event such surcharges are imposed, following approval by the Commission, the collection of such surcharges would have a negative economic impact upon account holders because it would result in a reduction of the actual wager amount and/or amount of any winnings. As any such surcharges are to constitute exchange revenues and are to be distributed in accordance with N.J.A.C. 13:74C-3.5, the potential recipients of such funds, as identified in said rule, would stand to benefit from an economic perspective.

The implementation of exchange wagering will result in an increase in regulatory costs to the Commission, the degree of which is dependent on the scope of industry initiatives. As explained below, Commission regulatory costs related to its oversight of the exchange wagering system are to be paid largely by the exchange wagering licensee, which costs are to be reimbursed to the licensee from exchange revenues. However, costs associated with the Commission's investigation of the exchange wagering license application itself, as well as any application for licensure by any exchange management agent or exchange services agent, are to be borne directly by such respective applicant. Additionally, costs associated with the investigation of any application to the Commission seeking approval for any exchange wagering business activities or functions to be conducted outside New Jersey are the responsibility of the person or entity who is proposed to directly provide such out-of-State services. Further, in the event of approval by the Commission of such an application, such person or entity is directly responsible for those regulatory costs associated with Commission's monitoring of such out-of-State business activities and functions from within New Jersey, as well as regulatory costs associated with the Commission's investigation into any matter reasonably resulting or associated with any such functions or activities approved to be conducted outside this State.

Notwithstanding the ability of the Commission to waive the in-State requirement, in the event the exchange wagering system requires integration with a totalisator system, N.J.A.C. 13:74C-3.3(c) requires that the totalisator situated at the in-State hub facility be utilized. Although the utilization of the in-State hub facility would likely overall benefit the hub facility operator from an economic perspective, in such case, the operator would be required to establish and maintain records related to exchange wagering, which will require appropriate staffing and administrative costs. It would also likely be required to create or modify existing software to accommodate the integration of the exchange

wagering system with the totalisator. In the event the exchange wagering system utilizes technology not requiring integration with a totalisator, and therefore comprises a stand-alone system that does not include a totalisator as one of its components, it is not required that the totalisator situated at the hub facility be utilized in connection with the exchange wagering system. In such case, the operator of the hub facility could experience a negative economic impact as a result of not deriving business from the exchange wagering system. However, nothing within the chapter precludes the hub operator from also functioning in the capacity of an exchange services agent.

The implementation of the proposed new rules should benefit racetrack permitholders, as well as the thoroughbred and standardbred racing itself, because revenues from exchange wagering will be devoted to overnight purses at New Jersey live race meetings. Additionally, as noted above, to the extent an enhancement to overnight purses arises, the potential for increased racing opportunities arises, and any increase in racing opportunities should positively impact the many ancillary industries that support the State's horse racing industry. However, certain regulatory costs of the Commission as defined within the proposed new rules, costs associated with a required auditing of the exchange wagering system, fees due any exchange management and exchanges services agent, and the administrative and marketing fees incurred by the exchange wagering licensee, are to be paid before revenues are to be distributed ultimately to: the benefit of overnight purses; to the exchange wagering licensee as profit; and to the eligible participating racetrack permitholders as shared profits. Accordingly, the costs described above will have a direct bearing upon the remaining monies available for allocation both to overnight purses and to the described industry groups.

In order to establish an exchange wagering system and related facilities and/or equipment, non-refundable filing fees must be submitted with each application for an initial or renewed license. Additionally, the costs associated with the hearings to be held following the submission of such applications is to be borne by the respective applicant, that is, either the applicant for the exchange wagering license, exchange management agent license, or exchange services agent license. Moreover, each licensee is required to establish and maintain internal control procedures, and to maintain various records as defined in the chapter related to their respective operations, which will require appropriate staffing and administrative costs. Individuals employed in connection with the exchange wagering system, as well as certain vendors who provide goods or services in connection with the system, are also required to be licensed by the Commission. Such persons and entities are required to pay the non-refundable license application fees, and related costs, as set forth at N.J.A.C. 13:74C-6.1 and 6.5.

The chapter provides for penalties that may be imposed, following the conduct of a hearing, upon persons who act in violation of Chapter 74C. A fine not to exceed \$5,000 per violation may be imposed, which penalty may be imposed for each day the violation is ongoing. Additionally, a license revocation or license suspension may also be imposed as part of any penalty. To the extent a license suspension or revocation results in a person's inability to work in connection with the exchange wagering system, or otherwise participate in racing, a negative economic impact would result.

In a general sense, although anticipated that the introduction of exchange wagering will increase horse race wagering overall, its implementation has the potential to reduce the amount of funds wagered with regard to the existing form of parimutuel wagering at permitted racetracks. This is because persons who now wager on horse racing may have limited budgets or funds to devote to recreational horse race wagering, and the placement of exchange wagers may be made in lieu of other presently permitted parimutuel wagering types. Accordingly, those entities and industry interest groups who benefit from such wagering, to the extent such benefit is not provided for or off-set by exchange wagering, may experience a limited negative economic impact.

#### **Federal Standards Statement**

The proposed new rules do not contain any standards or requirements that exceed standards or requirements imposed by Federal law, specifically, the provisions of the Interstate Horse Racing Act of 1978, 15 U.S.C. §§ 3001-3007, as amended. The proposed new rules relate to

exchange wagering by residents of this State on the results of horse races conducted in this State, or jurisdictions outside this State, which shall be conducted pursuant to and in compliance with the provisions of the Interstate Horse Racing Act of 1978, as well as the Act and the proposed new rules. As a result, an explanation or analysis of the proposed new rules pursuant to N.J.S.A. 52:14B-22 et seq./Executive Order No. 27 (1994) is not required.

#### **Jobs Impact**

As noted above, the implementation of exchange wagering, as authorized by the proposed new rules, will create employment opportunities and result in the generation of jobs at facilities necessary for the operation and administration of the exchange wagering system. The exact number of potential jobs to be created cannot however reasonably be estimated: because many of the employment opportunities are dependent upon technological innovation associated with the system, which will not be known until the license applications necessary to be acted upon, to establish the exchange wagering system, are filed and investigated by the Commission; and because some of the potential job opportunities will likely be absorbed as additional work responsibilities to existing industry employees. In addition, job opportunities will likely arise in terms of ancillary industries, which will be needed to supply such facilities with goods and services.

The location of those employment opportunities is highly dependent upon the location of the exchange wagering system infrastructure, including the administrative offices thereof. Although the proposed new rules require that the exchange wagering licensee, as well as exchange management agent or exchange services agent, maintain an office in this State, the rules do authorize under certain circumstances for the Commission to approve business activities and functions related to the exchange wagering system to be conducted out-of-State. To the extent that the Commission is requested to consider such, and to the extent the Commission determines to approve such request or any part thereof, the opportunity for such in-State employment and job opportunities will likely be reduced.

#### **Agriculture Industry Impact**

The adoption of these rules, and the implementation of exchange wagering in this State, may have a positive impact on agriculture. Since horse racing involves the participation of animals, which require farmland for breeding, development, and training, the requirement of the Act that a portion of the funds derived from exchange wagering be devoted to overnight purses for live racing in this State may indirectly result in an incentive to expand the devotion of land for such purposes. This potential would likely arise if exchange wagering is successful, and if its enhancement to overnight purse levels is sufficient to foster demand for additional live race offerings, and therefore, demand for additional quality horses to compete in those expanded race opportunities.

#### **Regulatory Flexibility Analysis**

With respect to racetrack permitholders, none of which qualifies as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as each has over 100 full-time employees, no regulatory flexibility analysis is required.

The rules set forth licensing requirements as concern vendors, who may operate as small businesses, who furnish goods and services to the exchange wagering licensee. Unless an exemption is applied for and granted, vendors are required to be licensed where they maintain a presence at the premises of the exchange wagering licensee, or where they supply horse racing related or pari-mutuel related equipment, supplies, information, or data to the exchange wagering licensee or in connection with the exchange wagering system. These vendors would be required to file a petition with the Racing Commission seeking an exemption on the basis that licensure is unnecessary, or submit a license application to secure a license. An exchange management agent and exchange services agent may also operate as a small business, and are required to meet stringent regulatory requirements, including the maintenance of internal control procedures. These requirements are each consistent with the policies of the Act and, in addition to being amply warranted, are necessary to the integrity of exchange wagering. The reporting, recordkeeping, and compliance requirements are discussed in

the Summary above and any costs are discussed in the Summary and Economic Impact statements above.

It is not anticipated that small businesses will have to employ professional services in order to comply with this chapter.

#### **Housing Affordability Impact Analysis**

The proposed new rules will not impact affordable housing in New Jersey and would not evoke a change in average costs associated with housing because the proposed new rules authorize a new form of pari-mutuel wagering on horse races. The proposed new rules regulate the sport of horse racing and have no impact on the affordability of housing in New Jersey.

#### **Smart Growth Development Impact Analysis**

The proposed new rules have no impact on the achievement of Smart Growth Development in the State of New Jersey and would not evoke a change in housing or other types of development recommended for Planning Areas 1 or 2, or designated centers, under the State Development and Redevelopment Plan because the proposed new rules authorize a new form of pari-mutuel wagering on horse races and, therefore, only regulate the sport of horse racing.

**Full text** of the proposed new rules follows:

### CHAPTER 74C EXCHANGE WAGERING

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 13:74C-1.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Act” means the Exchange Wagering Act, P.L. 2011, c. 15 (N.J.S.A. 5:5-168).

“Authority” means the New Jersey Sports and Exposition Authority created by section 4 of P.L. 1971, c. 137 (N.J.S.A. 5:10-4).

“Back” means to wager on a selected outcome occurring in a given market.

“Commission” means the New Jersey Racing Commission, created by section 1 of P.L. 1940, c. 17 (N.J.S.A. 5:5-22).

“Commission Executive Director” means the Executive Director of the Commission.

“Corrective wager” means an exchange wager placed by the exchange wagering licensee in a given market, under circumstances approved by the Commission, in order to address the impact on that market of the cancellation or voiding of a given matched wager or given part of a matched wager.

“Dormant account” means an exchange wagering account, established pursuant to the Act and this chapter, which has remained inactive for a continuous period of 24 months in that, during such 24-month continuous period, no valid exchange wagers were made utilizing funds in that account, no valid deposits or credits were made to the exchange wagering account, and no valid debits or withdrawals were made to the exchange wagering account.

“Exchange” means a system operated by the exchange wagering licensee in which the exchange wagering licensee maintains one or more markets in which residents of this State may back or lay a selected outcome on horse races conducted within and outside this State.

“Exchange management agent” means a qualified person or entity who the exchange wagering licensee enters into a written management agreement with, to conduct or operate the exchange for it, and/or to act as its agent in all exchange wagering matters approved by the Commission. An exchange management agent may also, but is not required to, directly provide the services of an exchange services agent.

“Exchange revenues” means all charges and fees of any kind assessed or collected by the exchange wagering licensee, in connection with the submission of any exchange wagers to the exchange wagering licensee, by residents of this State.

“Exchange services agent” means a qualified person or entity who the exchange wagering licensee, or exchange management agent on behalf of the exchange wagering licensee, enters into a written services agreement with, to directly provide the computer hardware and software,

technological services, and related support services, which services are necessary for aspects of the conduct or operation of exchange wagering.

“Exchange wagers” means wagers, by residents of this State, on the results of horse races conducted in this State or jurisdictions outside this State, which wagers are submitted (in person, by direct telephone call, or by communication through computer or other electronic media approved by the Commission) to and accepted by the exchange wagering licensee to be posted, that is, matched and pooled, in a market or markets on an exchange.

“Exchange wagering” means the form of parimutuel wagering, authorized by this chapter, in which two or more persons place identically opposing wagers in a given market, and which wagering is conducted by the exchange wagering licensee pursuant to a valid exchange wagering license issued by the Commission, and pursuant to and in compliance with the Act, this chapter, any conditions established by the Commission therefor, and the provisions of the Interstate Horse Racing Act of 1978, 15 U.S.C. §§ 3001-3007, as amended.

“Exchange wagering account” means the account established with the exchange wagering licensee by a person, who is a New Jersey resident, through which exchange wagers may be made by the account holder.

“Exchange wagering licensee” means the Authority, provided that the Commission has granted its approval for the Authority to establish an exchange as provided for in this chapter. “Exchange wagering licensee” may also mean a successor in interest to the Authority, as defined in this subchapter.

“Exchange wagering system” means a system through which exchange wagers are processed.

“Hub facility” means a facility in this State that acts as an intermediary between each in-State wagering track or wagering outlet, and an in-State sending track or host facility or out-of-State sending track or host facility, with respect to the transmission of parimutuel wagering data and other information related to pari-mutuel wagering, in connection with the type of pari-mutuel wagering conducted pursuant to N.J.A.C. 13:70, 71, 72, 73, 74, and 74B.

“Identically opposing wagers” means wagers in which one or more persons offer to lay a selected outcome at the same price at which one or more persons offer to back that same outcome, with the amount subject to the lay being proportionately commensurate to the amount subject to the back.

“Internal control procedures” means the written procedures required to be maintained and updated as necessary, for Commission approval, by the exchange wagering licensee, any exchange management agent employed by the exchange wagering licensee, and any exchange services agent employed by the exchange wagering licensee or exchange management agent, that set forth procedures to effectively operate and manage the exchange wagering system as provided for in this chapter, including: to insure that wagers placed through the exchange wagering system will be accurately processed and that all aspects of wagering integrity and wagering recordkeeping will be maintained; to effectively insure that the exchange wagering system operates with fiscal soundness and technological reliability; and to effectively insure that there will be sufficient safeguards to maintain the integrity of the horse racing industry in this State. Where an exchange management agent or exchange services agent is employed in connection with the exchange wagering system, the internal control procedures of the exchange wagering licensee shall also include meaningful and adequate oversight controls with respect to both the exchange wagering system and its exchange wagering license.

“Interstate exchange pool” means an exchange wagering system established within this State or in another state or foreign nation within which is combined unmatched wagers on one or more horse races in order to form identically opposing wagers.

“Lay” means to wager on a selected outcome not occurring in a given market.

“Market” means, in relation to a given horse race or a given set of horse races, a particular outcome that is subject to exchange wagering as determined by the exchange wagering licensee.

“Matched wager” means the wager that is formed when two or more persons are confirmed by the exchange wagering licensee as having placed identically opposing wagers in a given market on the exchange.

“Net exchange revenues” means those exchange wagering revenues that remain after certain deductions are made from exchange revenues, as required by N.J.A.C. 13:74C-3.5(a)1 through 5, and which are to be distributed between and amongst the exchange wagering licensee and racetrack permitholders pursuant to N.J.A.C. 13:74C-3.5(a)6.

“Net winnings” means the aggregate amounts payable to a person, through an exchange wagering account established by that person consistent with this chapter, as a result of that person’s winning matched wagers in a pool, less the aggregate amount paid by that person as a result of that person’s losing matched wagers in that pool.

“Off-time” means the official time when wagering is ceased prior to the start of a horse race, or in the event the transmission of data conveying the official time of cessation of wagering to the exchange wagering licensee is interrupted or corrupted, the time wagering ceases in accordance with the internal control procedures of the exchange wagering license.

“Parimutuel” means any system whereby wagers with respect to the outcome of a horse race are placed with, or in, a wagering pool conducted by an authorized person or entity, and in which the participants are wagering with each other and not against the person or entity conducting the wagering pool.

“Pool” means the total of all matched wagers in a given market.

“Price” means the odds for a given exchange wager.

“Racetrack permitholder” means an entity, which holds a racetrack permit, issued by the Commission, to operate the Atlantic City Race Course, Freehold Raceway, Monmouth Park, New Meadowlands Racetrack, or any other racetrack for which a permit to lawfully conduct racing may be issued by the Commission, who are each eligible to enter into a business agreement with the exchange wagering licensee, pursuant to this chapter, as concerns participation in exchange wagering and the distribution of net exchange wagering revenues.

“Successor in interest” means the person or entity to whom, with the prior approval of the Commission and Attorney General, the initial exchange wagering license, or the renewed exchange wagering license, has been transferred or assigned.

“Supervisor of Mutuels” means the Commission employee, who reports to the Commission Executive Director, and who acts on behalf of the Commission in overseeing the conduct of parimutuel wagering in this State, including exchange wagering.

“Totalisator” means a computer situated within the in-State hub facility that, among other things, directly or indirectly through one or more totalisators receives parimutuel wagering information, calculates payoffs for winning parimutuel tickets, generates reports with respect to such information, and in the event that the transmission of data from a sending or host racetrack has been interrupted, automatically ceases wagering in accordance with the internal control procedures of the hub facility, in connection with the type of parimutuel wagering conducted pursuant to N.J.A.C. 13:70, 71, 72, 73, 74, and 74B.

“Unmatched wager” means a wager or portion of a wager placed in a given market within an exchange that does not become part of a matched wager because there are not one or more available exchange wagers in that market with which to form one or more identically opposing wagers.

### 13:74C-1.2 Applicability

The rules in this chapter are applicable only to exchange wagering. This chapter shall be applicable to all persons licensed by the Commission in connection with exchange wagering, and every patron and account holder of the exchange wagering system.

## SUBCHAPTER 2. APPLICATION FOR INITIAL EXCHANGE WAGERING LICENSE; APPLICATION FOR RENEWAL OF EXCHANGE WAGERING LICENSE

### 13:74C-2.1 Exchange wagering initial license application process

(a) The Authority shall make an application for an initial exchange wagering license, on a form prescribed by the Commission, accompanied by a non-refundable filing fee of \$2,500. The initial exchange wagering license shall be issued for a term of one year, which in the Commission’s discretion, may be extended until December 31st of the year within which

the initial exchange wagering license expires. The Commission shall extend the initial license period where the Authority, by clear and convincing evidence, establishes to the Commission’s satisfaction that to do so would not negatively impact the integrity of the exchange wagering system.

(b) An application for an initial exchange wagering license shall not be considered complete unless:

1. The Authority demonstrates, and the Commission investigation into the application confirms, that the requirements of the Act have been satisfied;

2. The Authority has completely answered each question within the application and complied with the requirements of this section;

3. The Authority sets forth information about the operation of the exchange, the Authority’s participation therein, the participation of other persons or entities in the operation of the exchange, information to establish that wagers placed through the exchange wagering system will be accurately processed, and information to establish that there will be sufficient safeguards to maintain the integrity of the horse racing industry in this State;

4. The Authority sets forth information establishing that the Commission’s grant of the exchange wagering license to the Authority will serve to promote the economic future of the horse racing industry in this State, foster the potential for increased commerce, the employment and recreational opportunities in this State, and to preserve the State’s open spaces;

5. The Authority discloses whether it shall conduct or operate the exchange itself, or whether, pursuant to and as authorized by N.J.A.C. 13:74C-3.2, it intends to enter into a written agreement with an exchange management agent and/or exchange services agent;

6. The Authority discloses the physical location of all hardware and software, and administrative offices of the exchange wagering system, and whether or not the exchange wagering platform shall be stand-alone or shall integrate with a totalisator system;

7. The Authority discloses the number of jobs which the exchange wagering system is expected to generate, as well as employ in terms of pre-existing jobs, and whether the related job functions are proposed to occur in this State or outside the State;

8. The Authority attaches written internal control procedures of the Authority that set forth the procedures to be implemented: to effectively operate and manage the exchange wagering system; to insure that wagers placed through the exchange wagering system will be accurately processed and that all aspects of wagering integrity and wagering recordkeeping will be maintained; to effectively insure that the exchange wagering system operates with fiscal soundness and technological reliability; and to effectively insure that there will be sufficient safeguards to maintain the integrity of the horse racing industry in this State. Where the Authority intends to enter into a written agreement with an exchange management agent and/or exchange services agent, the Authority may satisfy this requirement by including the internal control procedures of each such person or entity with its application. However, in such case, the Authority shall include with its application its own internal control procedures, which at a minimum include a certification that it has reviewed the internal control procedures of such exchange management agent, and/or exchange services agent, and finds them to be sufficient, and such internal control procedures of the Authority shall further include sufficient provisions to insure that the Authority, as the exchange wagering licensee, maintains meaningful and adequate oversight controls with respect to both the exchange wagering system and its exchange wagering license; and

9. The initial application shall be accompanied by a certification, signed by a high managerial agent of the Authority, attesting that the disclosures within the application and within its attachments are true, accurate, and complete.

(c) Following a determination that the application for an initial exchange wagering license is complete, the Commission Executive Director shall within 14 days review the application in accordance with the Act to insure that the application is in due form and meets the requirements of law in all respects. Upon the Commission Executive Director being satisfied that these requirements are met, the Commission shall within 60 days thereof consider the application at a public meeting,

and no later than 30 days from the closing of the record of the public meeting where the Commission considers the application, the Commission shall make a final determination on the application. The Commission's final determination may prescribe such conditions or terms as the Commission deems appropriate.

(d) The Commission may refuse to issue a license if it shall find that the Authority has failed to demonstrate its suitability for a license by clear and convincing evidence. The Authority shall bear the burden of establishing to the Commission, by clear and convincing evidence, that:

1. It and its employees are qualified in all aspects to hold the appropriate license;

2. The issuance of an exchange wagering license to the Authority will not be inimical to the best interests of the public and the horse racing industry in this State;

3. Wagers placed through the exchange wagering system will be accurately processed and that there will be sufficient safeguards to maintain the integrity of the horse racing industry in this State; and

4. All of the requirements of the Act and this chapter have been met, including the approval of the Attorney General.

(e) The Commission's determination on the application shall be submitted to the Attorney General for review and approval, within 14 days following the Commission's determination. The determination of the Commission shall be deemed approved by the Attorney General if not affirmatively approved or disapproved by the Attorney General within 14 days of the date of submission. The Commission shall issue the license to the Authority, to establish the exchange, upon approval of the Attorney General. The Attorney General shall approve the Commission's determination where the Attorney General, in his or her discretion, finds that the Commission's determination was consistent with the Act and this chapter. The decision of the Attorney General shall be deemed a final decision, and the Attorney General may prescribe such conditions or terms as he or she deems appropriate.

#### 13:74C-2.2 Exchange wagering license application renewal process

(a) The procedures in this section shall apply where the Authority has been granted an initial exchange wagering license, and seeks to renew that license, or where a successor in interest to the exchange wagering license makes proper application to the Commission for the transfer or assignment of said license, or for the renewal of said transferred or assigned license.

(b) The applicant may apply for a renewal license of either a one-year or two-year duration, on a form prescribed by the Commission, accompanied by a non-refundable filing fee of \$2,500 for each year that the license is to be effective. In the event the applicant requests a renewal license to be effective for two years, the Racing Commission may elect to grant a license for only one year, where it finds that any significant problems associated with or encountered by the exchange wagering system, which occurred between 12 months preceding the filing date of the applicant's renewal application and the date upon which the Commission considers such renewal application, require the imposition of a license condition for remedial action on the part of the applicant during the license renewal period. In such event, the applicant shall be reimbursed \$2,500 of the \$5,000 filing fee paid in connection with such application.

(c) The applicant shall file with the Commission a complete exchange wagering renewal application, on a form prescribed by the Commission, no earlier than 90 days prior to the date upon which it is issued and outstanding exchange wagering license is due to expire, and no later than 75 days prior to the date upon which it is issued and outstanding exchange wagering license is due to expire. The renewed exchange wagering license shall expire on the 31st of December during the last year for which it is effective.

(d) An application for a renewal exchange wagering license shall not be considered complete unless:

1. The applicant demonstrates that the requirements of the Act have been satisfied;

2. The applicant has completely answered each question within the application and complied with the requirements of this section;

3. The applicant sets forth information about the operation of the exchange, the applicant's participation therein, the participation of other

persons or entities in the operation of the exchange, the participation of each racetrack permitholder in the sharing of net exchange revenues, information to establish that wagers placed through the exchange wagering system will be accurately processed, and information to establish that there will be sufficient safeguards to maintain the integrity of the horse racing industry in this State;

4. The applicant sets forth information establishing that the Commission's grant of the exchange wagering license to the applicant will serve to promote the economic future of the horse racing industry in this State, foster the potential for increased commerce, employment, and recreational opportunities in this State, and preserve the State's open spaces;

5. The applicant discloses whether it shall conduct or operate the exchange itself, or whether, pursuant to and as authorized by N.J.A.C. 13:74C-3.2, it intends to enter into a written agreement with an exchange management agent and/or exchange services agent;

6. The applicant discloses the physical location of all hardware and software, and administrative offices of the exchange wagering system, and whether or not the exchange wagering platform shall be stand-alone or shall integrate with a totalisator system;

7. The applicant discloses the number of jobs that the exchange wagering system has generated or is expected to generate, as well as employ in terms of pre-existing jobs, and whether the related job functions are proposed to occur in this State or outside this State;

8. The applicant attaches a written internal control procedures of the applicant, which set forth the procedures to be implemented: to effectively operate and manage the exchange wagering system; to insure that wagers placed through the exchange wagering system will be accurately processed and that all aspects of wagering integrity and wagering recordkeeping will be maintained; to effectively insure that the exchange wagering system operates with fiscal soundness and technological reliability; and to effectively insure that there will be sufficient safeguards to maintain the integrity of the horse racing industry in this State. Where the applicant with prior Commission approval has entered into, or intends to enter into, a written agreement with an exchange management agent and/or exchange services agent, the applicant may satisfy this requirement by including the sufficient internal control procedures of each such agent with its application. However, in such case, the applicant shall include with its application its own internal control procedures, which at a minimum include a certification that it has reviewed the internal control procedures of such exchange management agent, and/or exchange services agent, and finds them to be sufficient, and such internal control procedures of the applicant shall further include sufficient provisions to insure that the applicant, as the exchange wagering licensee, maintains meaningful and adequate oversight controls with respect to both the exchange wagering system and its exchange wagering license;

9. The applicant attaches a written report to its application identifying in detail any significant problems associated with or encountered by the exchange wagering system during the 12-month period preceding the date of the filing of the application with the Commission;

10. The application form shall be accompanied by a certification, signed by a high managerial agent of the applicant, attesting that the disclosures within the application and within its attachments are true, accurate, and complete.

(e) Following a determination that the application for the exchange wagering license is complete, the Commission Executive Director shall within 14 days review the application in accordance with the Act to insure that the application is in due form and meets the requirements of law in all respects. Upon the Commission Executive Director being satisfied that these requirements are met, the Commission shall within 60 days thereof consider the application at a public meeting, and no later than 30 days from the closing of the record of the public meeting where the Commission considers the application, the Commission shall make a final determination on the application. The Commission's final determination may prescribe such conditions or terms as the Commission deems appropriate.

(f) The Commission may refuse to issue a license if it shall find that the applicant has failed to demonstrate its suitability for a license by clear

and convincing evidence. The applicant shall bear the burden of establishing to the Commission, by clear and convincing evidence, that:

1. It and its employees are qualified in all aspects to hold the appropriate license;

2. The issuance of an exchange wagering license to the applicant will not be inimical to the best interests of the public and the horse racing industry in this State;

3. Wagers placed through the exchange wagering system will be accurately processed and that there will be sufficient safeguards to maintain the integrity of the horse racing industry in this State; and

4. All of the requirements of the Act and this chapter have been met, including the approval of the Attorney General.

(g) The Commission's determination on the license renewal application shall be submitted to the Attorney General for review and approval, within 14 days following the Commission's determination. The determination of the Commission shall be deemed approved by the Attorney General if not affirmatively approved or disapproved by the Attorney General within 14 days of the date of submission. The Commission shall issue the renewal license to the applicant, to establish the exchange, upon approval of the Attorney General. The Attorney General shall approve the Commission's determination where the Attorney General, in his or her discretion, finds that the Commission's determination was consistent with the Act and this chapter. The decision of the Attorney General shall be deemed a final decision, and the Attorney General may prescribe such conditions or terms, as he or she deems appropriate.

**SUBCHAPTER 3. TRANSFER OR ASSIGNMENT OF EXCHANGE WAGERING LICENSE TO A SUCCESSOR IN INTEREST; OPERATION OF EXCHANGE WAGERING SYSTEM BY PERSON OR ENTITY OTHER THAN THE EXCHANGE WAGERING LICENSEE; IN-STATE REQUIREMENT FOR EXCHANGE WAGERING SYSTEM COMPONENTS; REGULATORY COSTS; EXCHANGE WAGERING SYSTEM REVENUE DISTRIBUTION**

**13:74C-3.1 Transfer or assignment of exchange wagering license**

(a) The initial exchange wagering license, or the renewed exchange wagering license, may not be transferred or assigned from the Authority to a successor in interest, or from an approved successor in interest to a subsequent successor in interest, absent compliance with this section, and the prior approval of the Commission and Attorney General.

(b) The current licensee, and a proposed successor in interest to the exchange wagering license, shall file a written joint petition with the Racing Commission, requesting that the exchange wagering license be transferred or assigned to the proposed successor in interest. The petition shall explain the proposed transaction between the current licensee and successor in interest, including any consideration between the parties directly or indirectly related to the transaction, and shall set forth any experience of the proposed successor in interest in racing and exchange wagering. The joint petition shall be accompanied by a completed exchange wagering license application of the proposed successor in interest, as provided for in N.J.A.C. 13:74C-2.2.

(c) Prior to acting upon an application for the transfer or assignment of the exchange wagering license to a successor in interest, the Commission shall initiate an investigation into the qualifications of the proposed successor in interest as it determines appropriate, at cost to the proposed successor in interest. The Commission shall not approve such a transfer or assignment unless the proposed successor in interest is determined as qualified to hold a license by the Commission to engage in such activities.

(d) The Commission shall not approve a transfer or assignment of the exchange wagering license to a successor in interest unless the successor in interest demonstrates, by clear and convincing evidence, that the requirements of N.J.A.C. 13:74C-2.2(f) have been met.

(e) The Commission may prescribe such conditions or terms, as the Commission deems appropriate, in approving a transfer or assignment of the exchange wagering license to a successor in interest.

(f) Unless otherwise approved by the Commission, and in addition to the requirements imposed upon the holder of the exchange wagering license by the Act and this chapter, a successor in interest to such license shall be responsible for any regulatory requirements or conditions that were imposed upon the prior exchange wagering licensee before the transfer or assignment of the exchange wagering license to the successor in interest.

**13:74C-3.2 Operation of exchange wagering system by person or entity other than the exchange wagering licensee; exchange management agent; exchange services agent**

(a) The exchange wagering licensee may employ an exchange management agent, subject to the following requirements:

1. In the event the exchange wagering licensee intends to enter into a written agreement with an exchange management agent, the parties to the proposed agreement shall file a joint petition with the Commission seeking approval for such. Through the petition, the parties shall specify whether the exchange management agent is to conduct or operate the exchange wagering system for the exchange wagering licensee, whether the exchange management agent will act as agent for the Authority in all matters approved by the Commission, and whether the exchange management agent will employ other persons or entities to perform any of its duties. With the prior approval of the Commission, the exchange wagering licensee and exchange managing agent may enter into such a written agreement. Notwithstanding this ability, exchange wagering shall only be conducted by the exchange wagering licensee pursuant to a valid exchange wagering license issued by the Commission, which shall at all times be held by the exchange wagering licensee.

2. The Commission shall not approve such a written agreement unless it is demonstrated, by clear and convincing evidence, that: both the written agreement and the written internal control procedures of the exchange wagering licensee set forth sufficient provisions to insure that the exchange wagering licensee maintains meaningful and adequate oversight controls with respect to both the exchange wagering system and its exchange wagering license; and that the written internal control procedures of the exchange management agent set forth procedures to be implemented, as may be appropriate considering the functions to be performed by the exchange management agent, to effectively operate the exchange wagering system; to insure that wagers placed through the exchange wagering system will be accurately processed and that all aspects of wagering integrity and wagering recordkeeping will be maintained; to effectively insure that the exchange wagering system operates with fiscal soundness and technological reliability; to effectively insure that there will be sufficient safeguards to maintain the integrity of the horse racing industry in this State; and to effectively insure compliance with this chapter. As required by N.J.A.C. 13:74C-2.1(b)8 and 2.2(d)8, the internal control procedures of the exchange wagering licensee shall include a certification that it has reviewed the internal control procedures of the exchange management agent and finds them to be sufficient.

3. The written agreement between the exchange wagering licensee and exchange management agent shall with specificity designate which functions related to the exchange wagering system shall be maintained or retained by the exchange wagering licensee, and which functions related to the exchange wagering system shall be performed by the exchange management agent.

4. The written agreement between the exchange wagering licensee and exchange management agent shall contain provisions that clearly provide for the portion of exchange wagering revenues payable to the exchange management agent as compensation.

5. Prior to acting upon a joint petition to approve such a written agreement, the Commission shall initiate and conduct an investigation into the qualifications of the person or entity subject of the exchange management agent license application, at cost to such person or entity. The Commission shall not approve any such written agreement unless the exchange management agent demonstrates, by clear and convincing evidence, that it and its employees are suitable, in terms of background and qualifications, to perform the functions subject of the written agreement, and to hold a license by the Commission to engage in such activities.



6. The Commission may prescribe such conditions and terms, as the Commission deems appropriate, in approving any written agreement pursuant to this section.

7. Unless otherwise approved by the Commission, a person or entity approved by the Commission as an exchange management agent shall be responsible for any regulatory requirements or conditions previously imposed upon the exchange wagering licensee, as concerns the particular functions assumed by such person or entity.

(b) The exchange wagering licensee may employ an exchange services agent, subject to the following requirements:

1. In the event the exchange wagering licensee intends to enter into a written agreement with an exchange services agent, the parties to the proposed agreement shall file a joint petition with the Commission seeking approval for such. Through the petition, the parties shall specify the services that the exchange services agent is to furnish. With the prior approval of the Commission, the exchange wagering licensee and exchange services agent may enter into such a written contract or written agreement. Notwithstanding this ability, exchange wagering shall only be conducted by the exchange wagering licensee pursuant to a valid exchange wagering license issued by the Commission, which shall at all times be held by the exchange wagering licensee.

2. The Commission shall not approve such a written agreement unless it is demonstrated, by clear and convincing evidence, that: the written agreement, and the written internal control procedures of the exchange wagering licensee, set forth sufficient provisions to insure that the exchange wagering licensee maintains meaningful and adequate oversight controls with respect to both the exchange wagering system and its exchange wagering license; and that the written internal control procedures of the exchange services agent set forth procedures to be implemented, as may be appropriate considering the functions to be performed by the exchange services agent, to effectively operate the exchange wagering system; to insure that wagers placed through the exchange wagering system will be accurately processed and that all aspects of wagering integrity and wagering recordkeeping will be maintained; to effectively insure that the exchange wagering system operates with fiscal soundness and technological reliability; to effectively insure that there will be sufficient safeguards to maintain the integrity of the horse racing industry in this State; and to effectively insure compliance with this chapter. As required by N.J.A.C. 13:74C-2.1(b)8 and 2.2(d)8, the internal control procedures of the exchange wagering licensee shall include a certification that it has reviewed the internal control procedures of the exchange wagering services agent and finds them to be sufficient.

3. The written agreement between the exchange wagering licensee and exchange services agent shall with specificity designate which functions related to the exchange wagering system shall be maintained or retained by the exchange wagering licensee, and which functions related to the exchange wagering system shall be performed by the exchange services agent.

4. The written agreement between the exchange wagering licensee and exchange services agent shall contain provisions that clearly provide for the portion of exchange wagering revenues payable to the exchange services agent as compensation.

5. Prior to acting upon a joint petition to approve such a written agreement, the Commission shall initiate and conduct an investigation into the qualifications of the person or entity subject of the exchange services agent license application, at cost to such person or entity. The Commission shall not approve any such written agreement unless the exchange services agent demonstrates, by clear and convincing evidence, that it and its employees are suitable, in terms of background and qualifications, to perform the functions subject of the written contract or agreement, and to hold a license by the Commission to engage in such activities.

6. The Commission may prescribe such conditions and terms, as the Commission deems appropriate, in approving any written agreement pursuant to this section.

7. Unless otherwise approved by the Commission, and in addition to the requirements imposed upon the holder of the exchange wagering license by the Act and this chapter, a person or entity approved by the Commission as an exchange services agent shall be responsible for any

regulatory requirements or conditions previously imposed upon the exchange wagering licensee, as concerns the particular functions assumed by such person or entity.

(c) Where the exchange wagering licensee employs an exchange management agent, and such person or entity does not also function as an exchange services agent, nothing contained in this section shall be interpreted to prohibit the exchange management agent from entering into a written agreement with an exchange services agent, for the provision of such services in connection with the exchange wagering system, if such action is authorized as part of the agreed-to duties it performs on behalf of the exchange wagering licensee. In such event, the exchange wagering licensee, exchange management agent, and exchange services agent shall participate as joint parties to the petition required to be filed with the Commission required by (b)1 above, and it must be demonstrated to the Commission that the exchange services agent is qualified to perform its proposed functions. In such event, the joint petition shall additionally include the written agreement intended to be entered into between the exchange management agent and exchange services agent, which written agreement must be approved by the Commission. The written agreement shall, with specificity, designate which functions related to the exchange wagering system shall be maintained or retained by the exchange management agent, which functions related to the exchange wagering system shall be performed by the exchange services agent, and it shall also contain provisions that clearly provide for the compensation payable to the exchange services agent. In such case, the joint petition shall additionally include: the internal control procedures of the exchange services agent; a certification of the exchange management agent that said internal control procedures have been incorporated within its own internal control procedures; and the certification of the exchange wagering licensee required by (b) above and N.J.A.C. 13:74C-2.1(b)8 and 2.2(d)8.

(d) Nothing contained in this section shall be interpreted from prohibiting an exchange management agent from also functioning as an exchange services agent, provided it demonstrates to the Commission, by clear and convincing evidence, that it is qualified to perform both the functions of an exchange management agent and exchange services agent, and provided that each aspect of this section is complied with. A person or entity approved by the Commission to provide both such services shall be licensed by the Commission as both an exchange management agent and as an exchange services agent, as required by N.J.A.C. 13:74C-6.1(d).

(e) Nothing contained in this section shall be interpreted to prohibit the exchange wagering licensee from conducting or operating the exchange itself, from acting in all exchange wagering matters approved by the Commission itself, and from providing exchange wagering service provider services itself, where the Commission finds that the exchange wagering licensee is qualified in all respects to perform such functions.

13:74C-3.3 In-State requirement for exchange wagering administrative offices and components of exchange wagering system; waiver criteria

(a) The exchange wagering licensee, and any person or entity approved by the Commission as an exchange management agent or exchange services agent, shall each maintain an office or offices in this State, which office may comprise a single location. The Commission shall have unrestricted access to such premise or premises at all times. All business activities and functions related to the exchange wagering system, including the performance of job responsibilities incident to the exchange wagering system, the maintenance and keeping of all records related to the exchange wagering system, and all hardware or software components necessary for the operation of the exchange wagering system, shall be conducted and situated at such in-State location or locations. However, the exchange wagering licensee, or the exchange wagering licensee and any exchange management agent or exchange services agent, may respectively file a written petition or written joint petition with the Racing Commission to waive the requirement that all such exchange wagering business activities and functions be conducted and situated in-State. The Commission shall grant such a waiver, as to a particular business activity and function related to the exchange wagering

system, where the Commission determines that the petitioner has established, by clear and convincing evidence, that:

1. The business activity and function proposed to be conducted outside this State may be conducted at such location consistent with law in all respects;

2. The business activity and function proposed to be conducted outside this State will not prevent or negatively implicate the ability of wagers placed through the proposed exchange wagering system to be accurately processed;

3. The business activity and function proposed to be conducted outside this State is not inconsistent with maintaining the integrity of the horse racing industry in this State;

4. The business activity and function proposed to be conducted outside this State will not unreasonably negatively impact employment opportunities in this State;

5. The business activity and function proposed to be conducted outside this State may be monitored and reviewed by the Commission, by electronic or other means from an in-State location selected by the Commission, to the satisfaction of the Commission; and

6. The business activity and function proposed to be conducted out-of-State shall not be inconsistent with the Commission's ability to readily investigate any related aspect of the exchange wagering system.

(b) Prior to the Commission's grant of any waiver of the in-State requirement of (a) above, the Commission Executive Director or his or her designee(s) shall conduct an investigative on-site inspection of each location outside this State where business activities and functions are proposed to be conducted and/or situated. Following such inspection, the Commission Executive Director shall cause to be filed a written report on the results of the investigative on-site inspection with the Commission.

(c) Notwithstanding (a) and (b) above, in the event the technological requirements of the exchange wagering system require integration with a totalisator system, the totalisator shall be located in this State and, in such case, the exchange wagering system shall utilize the same totalisator situated in the hub facility licensed by the Commission pursuant to N.J.A.C. 13:74-8.1. Nothing contained in this subsection shall be interpreted to prohibit the exchange wagering system from utilizing technology not requiring integration with a totalisator system, and therefore comprising a stand-alone system that does not include a totalisator as one of its components.

#### 13:74C-3.4 Racing Commission regulatory costs

(a) Except as provided in (b) and (c) below, or as otherwise provided in this chapter, the exchange wagering licensee shall be directly responsible for the timely payment of all Commission costs and expenses related to the investigation, regulatory oversight, and regulatory administration of the exchange wagering system. Such costs shall be reimbursed to the exchange wagering licensee, from exchange revenues, as authorized by N.J.S.A. 5:5-180a and 5:5-171.b and N.J.A.C. 13:74C-3.5.

(b) Notwithstanding the provisions of (a) above, in the event the business activity and functions associated with the exchange wagering system are proposed to be conducted or situated outside this State, and a petition is filed with the Commission for such approval consistent with N.J.A.C. 13:74C-3.3, the person or entity who is proposed to directly provide those out-of-State services in connection with the exchange wagering system shall be responsible for the payment to the Racing Commission of the regulatory costs associated with compliance with N.J.A.C. 13:74C-3.3(b).

(c) Notwithstanding the provisions of (a) above, provided that the Commission grants a related waiver of the in-State requirement for business activities and functions pursuant to N.J.A.C. 13:74C-3.3, the person or entity who is to directly provide those services outside this State, in connection with the exchange wagering system, shall be responsible for the direct payment to the Commission of all regulatory costs associated with compliance with N.J.A.C. 13:74C-3.3(a)5. Such person or entity shall additionally be responsible for any investigative and travel-related costs associated with the Commission's investigation into any matter reasonably resulting or associated with the business activities and functions approved by the Commission to be conducted or situated outside this State.

13:74C-3.5 Required distributions of certain exchange revenues and net exchange wagering revenues; audit requirement

(a) The exchange wagering licensee shall distribute the exchange revenues in accordance with the following priority categories:

1. The exchange wagering licensee shall be entitled to reimbursement, for regulatory costs paid to or on behalf of the Commission, as required by N.J.A.C. 13:74C-3.4;

2. The exchange wagering licensee shall pay any person or entity it retained to conduct any audit required by (b) below;

3. Pursuant to any Commission approved written agreement, authorized by N.J.A.C. 13:74C-3.2, the exchange wagering licensee shall pay the reasonable and necessary fee due any person or entity it engages as an exchange wagering agent and/or exchange wagering services agent;

4. The exchange wagering licensee shall retain its reasonable and necessary actual expenses incurred in administering, marketing, and operating the exchange wagering system;

5. After each of the payments pursuant to (a)1 through 4 above are made from the exchange revenues, the exchange wagering licensee shall distribute 50 percent of the remaining exchange revenues as payments to overnight purses pursuant to the formula set forth in (c) below; and

6. The balance of the exchange revenues remaining after the distribution of the payments described in (a)1 through 5 above, that is, the net exchange revenues, shall be distributed pursuant to (d) or (e) below, as appropriate.

(b) One year from the date when the exchange wagering system first became operational, the exchange wagering licensee shall cause a comprehensive audit to commence regarding the exchange revenues accumulated during such time period, to be performed by an outside and independent certified public accountant acceptable to the Commission. The exchange wagering licensee shall file with the Commission, no later than eight months from the date when the exchange wagering system first became operational, a written petition identifying the proposed outside certified public accountant, as well as an alternative, for approval by the Commission. The Commission shall find the outside certified public accountant, proposed by the exchange wagering licensee, to be acceptable where the licensee establishes by clear and convincing evidence that the proposed outside certified public accountant is qualified to perform the audit, and that there are no conflicts of interest present that would preclude it from performing the audit. Such comprehensive audit shall accurately disclose the exchange revenues accumulated and distributed or available for distribution pursuant to (a)1 through 5 above during the first year of operation of the exchange wagering system, as well as the net exchange revenues available for distribution pursuant to (a)6 above. The certified public accountant shall conclude his or her work within one year and three months from the date when the exchange wagering system first became operational, and on or before such date, shall file a written report with the exchange wagering licensee with a copy to the Commission. The Commission may, in its discretion, require additional audits of any aspect of the exchange wagering system, to be performed by an outside and independent certified public accountant, and to be paid for by the exchange wagering licensee as required by (a)2 above, as part of the license conditions it imposes on the exchange wagering licensee.

(c) The portion of exchange revenues, to be distributed to overnight purses pursuant to (a)5 above, shall be distributed between the standardbred and thoroughbred overnight races as follows. Of such monies distributed to overnight purses, all moneys derived from exchange wagering on thoroughbred races shall be paid to overnight purses for thoroughbred races at each permitted racetrack in the State where such racing is conducted, and all monies derived from exchange wagering on standardbred races shall be paid to overnight purses for standardbred races at each permitted racetrack in the State where such racing is conducted, and none of these funds may be used, directly or indirectly, for purposes other than overnight purses. However, starting (three years from the effective date of these rules), this formula for allocating overnight purse monies from exchange wagering may be modified by the mutual written agreement of the Standardbred Breeder's and Owner's Association of New Jersey, Inc., and the New Jersey Thoroughbred Horsemen's Association, Inc., provided that such agreement does not include provisions that allow for these funds to be used, directly or indirectly, for purposes other than overnight purses, and

provided that such agreement does not exclude the use of such funds in connection with any permitted racetrack in this State.

(d) Within one year from the date when the exchange wagering system first became operational, the exchange wagering licensee shall enter into a written business agreement with all racetrack permitholders for the distribution of the net exchange revenues remaining after the distributions required by (a)1 through 5 above.

(e) In the event that the exchange wagering licensee and racetrack permitholders are unable to arrive at a fully executed business agreement within one year from the date when the exchange wagering system first became operational, as set forth in (d) above, the exchange wagering licensee shall notify the Commission in writing of such inability, within one year and 10 days from the date that the exchange wagering system first became operational. The Commission, in such event, shall assume permanent responsibility for annually distributing the net exchange wagering revenues amongst the exchange wagering licensee and the permitholders. Prior to rendering its decision, the Commission, in its discretion, may retain an outside expert, with knowledge of standardbred racing and thoroughbred racing, and the wagering incident thereto, for the purposes of conducting proceedings and/or mediating between the exchange wagering licensee and racetrack permitholders, and rendering to the Commission a non-binding written recommendation on how the net exchange revenues should be allocated amongst the exchange wagering licensee and racetrack permitholders. The services of such expert shall be paid for by the exchange wagering licensee, and such costs shall be reimbursed to it from exchange revenues, as regulatory costs pursuant to (a)1 above. After providing the exchange wagering licensee and each racetrack permitholder with a copy of the written recommendation of any retained outside expert, and the opportunity to provide comment in writing to the Commission regardless of whether the Commission retains such an expert, the Commission shall at a public meeting render a decision distributing the net exchange revenues amongst the exchange wagering licensee and the racetrack permitholders, as it deems appropriate. In arriving at its decision, the Commission shall consider the following factors:

1. That the exchange wagering licensee is entitled to a reasonable profit as a result of its offering of exchange wagering to the wagering public;

2. That, after any allocation of net exchange revenues to the exchange wagering licensee pursuant to (e)1 above, the portion of net exchange wagering revenues remaining shall be allocated for distribution between the standardbred racing industry and thoroughbred racing industry based upon the proportionate total net exchange wagering revenues wagered on each horse breed. For example, if \$1,000 of the net exchange revenues remains available for distribution pursuant to this subsection, and \$600.00 of that amount was derived from exchange wagering placed on thoroughbred races, and \$400.00 was derived from exchange wagers placed on standardbred races, \$600.00 shall be allocated to the thoroughbred racing industry and \$400.00 shall be allocated to the standardbred industry, for further distribution as set forth in (e)3 below;

3. The amount of net exchange wagering revenues available to the thoroughbred industry and standard industry, as determined by the application of the formula set forth in (e)2 above, shall be distributed to those permitholders within each breed who offer exchange wagering to the public. In determining the amount of net exchange wagering revenues to be distributed between the eligible permitholders within each horse breed, the following factors shall be considered:

i. The number of live race dates conducted by each permitholder during the year where the net exchange revenues were accumulated;

ii. Of the total exchange wagering available for distribution within each horse breed, the percentage amount thereof placed on the race product offered by each eligible permitholder, during the year where the net exchange wagering revenues were accumulated; and

iii. The respective contribution that each eligible racetrack permitholder has made, during the year where the net exchange revenues were accumulated, considering the total operations of each eligible permitholder in this State, including its operation of Racing Commission licensed off-track wagering facilities, and the impact of such operations, to: promoting the economic future of the horse racing industry in this State, to fostering the potential for increased commerce, employment and

recreational opportunities in this State, and to preserve the State's open spaces.

(f) Nothing contained in this section shall be interpreted as prohibiting the exchange wagering licensee and racetrack permitholders from presenting for the Commission's consideration at any time, a fully executed written business agreement recommending how the net exchange wagering revenues should be distributed amongst them, for any year or years. However, where such an agreement is not presented within one year from the date that the exchange wagering system first became operational, pursuant to (d) above, such agreement shall not be binding on the Commission in its determination on how to distribute the net exchange revenues.

#### SUBCHAPTER 4. STANDARDS FOR EXCHANGE WAGERING SYSTEM

##### 13:74C-4.1 Establishment of an exchange wagering account

(a) A person may only place an exchange wager, from a location within this State, if he or she has established an exchange wagering account in accordance with the Act and this chapter. To establish an exchange wagering account, a person must be a New Jersey resident and 18 years of age or older. An exchange wagering account shall be established in the name of a natural person only, and shall not be assigned or otherwise transferred. A natural person may only hold and maintain one exchange wagering account at any time. An exchange wagering account shall be established with and through the exchange wagering licensee, and no person or entity other than the exchange wagering licensee shall accept an exchange wager from a person within this State. An exchange wagering account shall not be assignable or transferrable.

(b) A person on the self-exclusion list established pursuant to N.J.S.A. 5:5-65.1 is prohibited from establishing an exchange wagering account. Any person not in good standing with the Commission shall not be entitled to open or maintain an exchange wagering account. The exchange wagering application form shall include questions directed toward determining if the applicant is qualified to receive an account in view of this section.

(c) An exchange wagering account may be established by a prospective account holder completing an application form developed by the exchange wagering licensee, and approved by the Commission. The application is to be submitted, together with the prospective account holder's principal residence address and a signed certification including proof of age and residency of the applicant, to the exchange wagering licensee for processing consistent with its internal control procedures, the Act, and this chapter. The exchange wagering licensee shall have discretion to accept an exchange wagering application from an applicant either appearing in-person, by telephone, sent by mail, or by electronic media approved by the Commission, including the internet and by wireless devices, to any of the following locations in this State: the in-State premises of the exchange wagering licensee; or such other location approved by the Commission. All account wagering applications shall be processed and maintained at a location as required by N.J.A.C. 13:74C-3.3.

(d) The signed certification of an applicant, which shall accompany an application to establish an exchange wagering account, shall include a statement that a false or misleading statement made in regard to an application may subject the applicant to prosecution, to an enforcement action initiated by the Commission consistent with this chapter, and to rejection of the application or cancellation of the exchange wagering account by the exchange wagering licensee without notice.

(e) An exchange wagering account application shall include or be accompanied by notice, as approved by the Commission, that the address provided by the prospective account holder in the application shall be deemed the proper address for the purposes of mailing checks, account withdrawals, notices, including as concerns dormant accounts, and the mailing of other materials.

(f) The exchange wagering licensee shall provide the prospective account holder, at the time of the opening of an exchange wagering account, with the operation rules adopted by the exchange wagering licensee concerning exchange wagering account deposits, exchange wagering account withdrawals, the disclosure requirements of N.J.A.C.

13:74C-5.8(b), a non-accumulation of interest disclosure as to exchange wagering accounts, maintenance requirements of the exchange wagering account including rules concerning dormant accounts, credit or debit card usage rules, a procedure to amend an exchange wagering account application to update the exchange wagering account holder's address or other information required by the exchange wagering licensee, any reporting obligations of the exchange wagering licensee for taxation purposes, the requirement that exchange wagers be placed by exchange wagering account holders from a location within this State, the dispute resolution procedure adopted by the exchange wagering licensee pursuant to N.J.A.C. 13:74C-4.7, the complaint procedure to the Commission as set forth in N.J.A.C. 13:74C-4.9, and any other aspects of the operation of the exchange wagering account as determined by the exchange wagering licensee. The exchange wagering account holder shall be deemed to have accepted the rules of exchange wagering account operation upon opening or not closing the account. The exchange wagering licensee shall notify the exchange wagering account holder whenever the rules governing the exchange wagering account are changed, which notification shall occur before the new rules become effective, so as to allow sufficient opportunity for the exchange wagering account holder to close his or her exchange wagering account in advance of those new rules becoming effective.

(g) Nothing contained in this section shall be interpreted to disallow the exchange wagering licensee and account wagering licensee from developing and submitting to the Racing Commission for approval: a single application form that would allow an eligible New Jersey resident to establish, by and through such application, separate account wagering and exchange wagering accounts; or a single application form, which would allow an eligible New Jersey resident to establish a single exchange wagering account from which both exchange wagers and account wagering wagers could be made. The Commission shall in either case approve such an application where, by clear and convincing evidence, it is demonstrated that each of the requirements of the Act and this chapter, and each of the requirements of the Off-Track and Account Wagering Act, P.L. 2001, c. 199, and N.J.A.C. 13:74, have been satisfied.

13:74C-4.2 Review of exchange wagering account application by exchange wagering licensee; discretionary suspension or closure of exchange wagering account by exchange wagering licensee

(a) The exchange wagering licensee shall accept or reject an application for an exchange wagering account after receipt and review of the application for compliance with the Act and this chapter. The exchange wagering licensee shall verify the identification, residence, and age of the exchange wagering account applicant using methods and technologies approved by the Commission, and shall insure that the acceptance of such application would be consistent with the Act, this chapter, and the internal control procedures of the exchange wagering licensee. Any prospective account holder who provides false or misleading information on the application is subject to rejection of the application or suspension or closing of the exchange wagering account, by the exchange wagering licensee, without prior notice.

(b) The exchange wagering licensee may additionally reject an exchange wagering application at its discretion. The exchange wagering licensee may, as permitted pursuant to (a) above, suspend or close an exchange wagering account, including where the exchange wagering account holder attempts to place an exchange wager or exchange wagers with an insufficient account balance, where the exchange wagering account holder acts contrary to N.J.A.C. 13:74C-5.6(b), or where the exchange wagering licensee otherwise determines that such action would be consistent with its proper conduct and operation of the exchange wagering system.

(c) The decision of the exchange wagering licensee to reject an application for an exchange wagering account, or to suspend or close an account, shall not be the subject of any appeal to the Commission, and shall constitute a final decision on the part of the exchange wagering licensee.

(d) Where the exchange wagering licensee suspends an exchange wagering account for a period of 48 hours or longer, or closes an exchange wagering account pursuant to this chapter, it shall file a written

report with the Commission Supervisor of Mutuels identifying: the name of the exchange wagering account holder; the address of the exchange wagering account holder; the date of the suspension or closure of the exchange wagering account; and the reason for the suspension or closure of the exchange wagering account.

13:74C-4.3 Restrictions on placing and accepting exchange wagers

(a) The exchange wagering licensee shall only accept wagers from New Jersey residents who have established an exchange wagering account in accordance with the Act and this chapter. Only the holder of an exchange wagering account shall place an exchange wager, and an exchange wagering account holder shall only place an exchange wager from a location within the physical borders of this State. Prior to making any account inquiry or requesting any exchange wagering account transaction, other than for an account deposit or account withdrawal, an exchange wagering account holder shall provide his or her confidential personal identification number, to be selected in a manner subject to the discretion of the exchange wagering licensee consistent with its internal control procedures, and such other information as required by the exchange wagering licensee, which may include the account holder's confidential exchange wagering account number. The exchange wagering licensee shall not provide any account information or consummate any such account transaction unless the exchange wagering account holder first provides the correct confidential personal identification number and satisfies any other requirements of the exchange wagering licensee. The exchange wagering licensee may not accept a wager, or series of wagers, in an amount in excess of the cleared funds on deposit and available within the exchange wagering account of the exchange wagering account holder who desires to place the exchange wager. The exchange wagering licensee may not, directly or indirectly, itself extend credit to an exchange wagering account holder.

(b) Unless otherwise approved by the Commission, or authorized by this chapter, no person, corporation, or other entity shall directly or indirectly act as an intermediary, transmitter, or agent in the placing of wagers for a holder of an exchange wagering account. An exchange wagering account holder may place exchange wagers in person, by direct telephone call, or by communication through computer or other electronic media approved by the Commission.

(c) Unless a waiver of such requirement is granted by the Commission, all persons or entities accepting exchange wagers on behalf of the exchange wagering licensee shall do so at a location within this State, as required by N.J.A.C. 13:74C-3.3.

(d) No exchange wager may be accepted after the time for taking the particular type of exchange wagers ends, which time shall be specified in the exchange wagering licensee's petition to the Commission for approval of that particular type of market, to be filed pursuant to N.J.A.C. 13:74C-5.2.

(e) The exchange wagering licensee, its employees, and agents shall not disclose any information related to the placing of any exchange wager or wagers, or any information related to a person's exchange wagering account, without the consent of the exchange wagering account holder, except to the exchange wagering account holder as authorized by this chapter, to the Commission, or as otherwise required by law.

13:74C-4.4 Credits to an exchange wagering account and payments on winning exchange wagers

(a) Subject to the right of the exchange wagering licensee to refuse for any reason all or any part of any deposit to an exchange wagering account, and consistent with the internal control procedures of the exchange wagering licensee, an exchange wagering account holder may make a deposit into his or her exchange wagering account by remitting funds to the exchange wagering licensee.

(b) Any funds intended for deposit by an exchange wagering account holder into his or her exchange wagering account shall be made payable to the exchange wagering licensee in the form of: cash deposit utilizing a properly completed and executed deposit slip approved by the Commission; a credit or debit card or cards specifically approved by the exchange wagering licensee, upon the account holder's direct and personal instructions (which instructions may be given by telephone or other electronic means); check, money order, negotiable order of withdrawal utilizing a properly executed deposit slip approved by the

Commission, or wire transfer or electronic transfer. A deposit to an exchange wagering account shall only be accepted where the exchange wagering account holder first provides a correct account number and a correct confidential personal identification number for the account. A receipt for each deposit shall be issued to the exchange wagering account holder, but the receipt need not reflect the current account balance. A deposit to an exchange wagering account, by credit card or debit card, shall only be accepted by the exchange wagering licensee in a maximum amount consistent with its internal control procedures, as approved by the Commission, for each exchange wagering account holder. The funds deposited into an exchange wagering account shall not bear interest to the exchange wagering account holder. The internal control procedures of the account wagering licensee shall set forth procedures addressing such interest funds, which shall in all cases be disbursed as exchange revenues, for distribution as provided in N.J.A.C. 13:74C-3.5.

(c) Credit for winnings from wagers placed with funds in an exchange wagering account shall be promptly posted to the exchange wagering account by the exchange wagering licensee, consistent with its internal control procedures. Following the exchange wagering licensee's proper debit of an exchange wagering account, for an exchange wager or wagers properly accepted by the exchange wagering licensee pursuant to N.J.A.C. 13:74C-4.3, the net winnings due shall be credited to the exchange wagering account of the exchange wagering account holder who won the wager, less any applicable takeout, or transaction or other fees due the exchange wagering licensee, as provided for pursuant to N.J.A.C. 13:74C-5.9(b) and 5.11.

(d) Credit for refunded exchange wagers shall be promptly posted to the wagering account by the exchange wagering licensee, consistent with its internal control procedures.

(e) An exchange wager account holder may not place an exchange wager drawn upon sums deposited into his or her exchange wagering account, regardless of the manner of deposit of those funds, unless the deposit has first been administratively processed by the exchange wagering licensee, the funds subject of the deposit have been credited to the exchange wagering account of the exchange wagering account holder, the funds subject of the deposit have satisfied any banker's or other required clearance, and the funds subject of the deposit are actually available within the exchange wagering account. Holding periods shall be determined by the exchange wagering licensee, who shall make such information available to the exchange wagering account holder upon request.

13:74C-4.5 Debits to an exchange wagering account and placing of exchange wagers; required suspensions of exchange wagering accounts by exchange wagering licensee

(a) Upon receipt by the exchange wagering licensee of an exchange wager placed in accordance with the Act, this chapter, and the internal control procedures of the exchange wagering licensee, the exchange wagering licensee shall promptly debit the exchange wagering account holder's exchange wagering account in the amount of the wager. As condition precedents to debiting any account, the exchange wagering licensee shall first be satisfied and determine that there are sufficient funds in the exchange wagering account to cover the amount of the exchange wager, as well as any additional applicable transaction or other fees due the exchange wagering licensee as provided for or authorized by this chapter, and that the wager is of a type that can be identically matched within a given market to an identically opposing exchange wager or exchange wagers.

(b) An exchange wagering account holder may request a withdrawal of the available funds in his or her exchange wagering account or any portion thereof. If there are sufficient funds in the exchange wagering account to cover the withdrawal amount requested, after taking into consideration any existing exchange wagers made by the exchange wagering account holder, the exchange wagering licensee shall authorize a disbursement of the amount requested to the exchange wagering account holder consistent with its internal control procedures and where the exchange wagering account holder provides to the exchange wagering licensee: proper identification; a correct confidential account number; a correct personal identification number; and a properly completed and executed withdrawal slip on a form approved by the Commission. Where

a withdrawal is requested by an exchange wagering account holder by telephone, or by other electronic means as approved by the Commission, an executed withdrawal form will not be required where the exchange wagering account holder has previously and in writing authorized the exchange wagering licensee to accept withdrawal requests by such approved electronic means.

(c) No later than three business days following the receipt of a properly completed and executed withdrawal form, which shall be processed by the exchange wagering licensee at a location consistent with the requirements of N.J.A.C. 13:74C-3.3, the exchange wagering licensee shall cause the withdrawal amount to be issued and sent, in an amount no more than that requested, and payable to the holder of the exchange wagering account. The withdrawal amount may be issued, in the discretion of the exchange wagering licensee, by cash, by check, or by electronic transfer. If the withdrawal amount is issued by means of check, such disbursement shall be sent to the address specified in the exchange wagering account application of the exchange wagering account holder, and made payable to the exchange wagering account holder in the amount requested and available in his or her exchange wagering account. The address provided by the exchange wagering account holder in the application to establish the exchange wagering account shall be deemed to be the proper address for this purpose, unless the exchange wagering account holder has properly amended his or her exchange wagering account application to reflect a new address consistent with the procedures established by the exchange wagering licensee for such purpose. All other methods of withdrawal payments shall be properly recorded by the exchange wagering licensee, consistent with its internal control procedures.

(d) Notwithstanding its receipt of a properly completed exchange wagering account withdrawal request, the exchange wagering licensee shall suspend an exchange wagering account, or decline to fulfill a withdrawal request, where it reasonably suspects either fraud, that the exchange wagering account holder was ineligible to make one or more of the exchange wagers made from the exchange wagering account, or where the Commission Executive Director has notified the exchange wagering licensee that the Commission is conducting an investigation into the exchange wagering account or exchange wagering system, and directs in writing that the exchange wagering licensee suspend the exchange wagering account, or not to fulfill any withdrawal requests associated with the particular exchange wagering account.

13:74C-4.6 Dormant exchange wagering accounts

(a) The exchange wagering licensee, consistent with this chapter and its internal control procedures, may in its discretion cause a dormant exchange wagering account to be closed.

(b) The exchange wagering licensee, at least 30 days before the date on which any dormant account is to be closed, shall forward by regular and certified mail to the address of the exchange wagering account holder, as set forth in the exchange wagering account holder's exchange wagering account application (or properly amended exchange wagering account application), notice of the date on which the exchange wagering account shall be closed. The notice shall specify that, upon any closure of the exchange wagering account, the funds within the exchange wagering account shall be disbursed as set forth in (c) below. The notice shall further provide what actions the exchange wagering account holder must take, consistent with the internal control procedures of the exchange wagering licensee, in order for the exchange wagering account holder to secure the funds in the exchange wagering account prior to its closure, or alternatively and subject to the discretion of the exchange wagering licensee, to cause the exchange wagering account not to be closed and remain an active exchange wagering account.

(c) Where an exchange wagering account is closed consistent with this section, the funds that were within the closed exchange wagering account shall be disbursed as exchange revenues, for distribution as provided in N.J.A.C. 13:74C-3.5.

13:74C-4.7 Exchange wagering system records maintenance; exchange wagering account disputes

(a) The exchange wagering licensee shall maintain complete records of every deposit, withdrawal, wager, and winning payoff for each exchange wager, which records shall be made available to the Commission upon

request. Such records shall be stored and maintained at a location required by N.J.A.C. 13:74C-3.3.

(b) For exchange wagers and other transactions made by direct telephone call, the exchange wagering licensee shall make a voice recording of the entire transaction and shall not accept any such exchange wager or transaction if the voice recording system is inoperable. The voice recording of the exchange wagering account holders' finalization of the wager shall be deemed to be the actual wager or record of transaction, regardless of what wager was entered by and into the exchange wagering system. The voice recording records shall be made available to the Commission upon request.

(c) For exchange wagers or transactions made by computer or other electronic means approved by the Commission, the exchange wagering licensee shall maintain a printable record of the entire transaction and shall not accept any such exchange wager or transaction if the printable record system is inoperable. The record of the finalization of the wager shall be deemed to be the actual wager or record of transaction, regardless of what wager was entered by and into the exchange wagering system. The records shall be made available to the Commission upon request.

(d) For exchange wagers or transactions made by an exchange wagering account holder in-person, the exchange wagering licensee shall maintain a printable record of the entire transaction and shall not accept any such exchange wager or transaction if the printable record system is inoperable. The record of the finalization of the wager shall be deemed to be the actual wager or record of transaction, regardless of what exchange wager was entered by and into the exchange wagering system. The records shall be made available to the Commission upon request.

(e) The exchange wagering licensee shall provide each exchange wagering account holder, upon reasonable request and consistent with its internal control procedures, with a statement of account showing each exchange wagering deposit, each exchange wagering account withdrawal, each credit to the exchange wagering account, and each debit to the exchange wagering account made during the time period reported by the account statement. The exchange wagering account holder may dispute any transaction in accordance with the exchange wagering licensee's dispute resolution procedure, which procedure shall be set forth in the exchange wagering licensee's internal control procedures. In any dispute initiated in accordance with such procedure, or as otherwise permitted by the exchange wagering licensee in its discretion, the exchange wagering account holder shall have the right to review the voice recording or printable record of his or her exchange wagering account transaction or exchange wager as described in (b), (c), and (d) above. The decision of the exchange wagering licensee as to any dispute shall not be the subject of any appeal to the Commission, and shall constitute a final decision on the part of the exchange wagering licensee. The records referred to in this subsection shall be made available to the Commission upon request.

(f) The exchange wagering licensee shall maintain all records required by this section for a period of time consistent with the ability of an exchange wagering account holder to dispute a transaction consistent with its internal control procedures and, except as otherwise noted within this subsection, for a period of not less than six months from the date of the related exchange wagering transaction. All telephone voice recordings of exchange wagering transactions shall be maintained for a period of not less than 30 days from the date of the related exchange wagering transaction. All exchange wagering account applications or amendments thereto shall be retained by the exchange wagering licensee for a minimum period of one year following the rejection of the application by the exchange wagering licensee, or where an exchange wagering account has been established, for a minimum period of one year following the closure of the related exchange wagering account.

#### 13:74C-4.8 Responsibility for overpayment and underpayment errors

(a) If an error occurs in the payment of amounts of exchange wagers, regardless of cause, the exchange wagering licensee shall be responsible for such overpayment or underpayment.

(b) Nothing contained in this section shall be interpreted to preclude the exchange wagering licensee from entering into a written contract or written agreement, with another person or entity, including any exchange management agent or exchange services agent, requiring reimbursement

to the exchange wagering license for its overpayment or underpayment of exchange wagers.

#### 13:74C-4.9 Exchange wagering account holder complaints to Commission

(a) An application to establish an exchange wagering account shall contain or be accompanied by a statement, as approved by the Commission, advising the prospective applicant that an exchange wagering account holder may file any complaint, as may concern the exchange wagering system, with the Commission in writing or by computer. The statement shall include the present address of the Commission for such purpose, and the email address of the Commission for such purpose.

(b) The exchange wagering licensee, its employees and agents shall not have direct access to the complaints submitted by exchange wagering account holders as a result of the filing of such a complaint with the Commission. The Commission Executive Director shall provide a copy of each complaint to the exchange wagering licensee unless, in his or her discretion, he or she determines that to do so would be inconsistent with a Commission investigation or criminal investigation.

#### 13:74C-4.10 Exchange wagering by certain persons prohibited

(a) In addition to the prohibitions set forth in N.J.A.C. 13:74C-4.1(b), a person who has been excluded by the Commission from appearing at any premises subject to the jurisdiction of the Commission pursuant to this chapter or N.J.A.C. 13:70, 71, 72, or 74, including, but not limited to, the premises of off-track wagering facilities, racetracks, licensed farms, non-licensed farms where racehorses are situated, and casino simulcast facilities, shall not be permitted to open or to maintain an exchange wagering account.

(b) Nothing contained in this chapter shall be interpreted to preclude the Commission from initiating a hearing with regard to an exchange wagering account holder whose continued participation in the exchange wagering system would be inimical to the integrity of exchange wagering or racing, or who is in violation of the Act, this chapter, or N.J.A.C. 13:70, 71, 72, or 74, for the purpose of excluding the exchange wagering account holder from participating in racing, maintaining an exchange wagering account, and appearing at any premises subject to the jurisdiction of the Commission.

(c) No Commission licensee may at any time, directly or indirectly, place an exchange wager in connection with any race or races where that licensee has performed any service whatsoever, or will participate in the race, where that service performed or participation would be pursuant to the license or licenses issued to such person by the Commission. For example, a Commission-licensed trainer who trains a horse that participates in race x may not place an exchange wager in connection with race x, or an exchange wager where the outcome of the exchange wager is dependent on the outcome of multiple races that involve race x, such as an exchange wager, which relates to the outcome of races x and y; a Commission-licensed veterinarian who treats a horse in connection with race x may not place an exchange wager in connection with race x; and a jockey or driver who participates in race x may not place an exchange wager in connection with race x. However, a Commission licensee who has no involvement whatsoever in any race or race subject of an exchange wager, or who will have no involvement in any race or race subject of an exchange wager, may place an exchange wager in connection with such race or races, provided he or she does so through his or her properly established exchange wagering account.

(d) The employees of the exchange wagering licensee, or any exchange management agent or exchange services agent, shall not be permitted to have or maintain an exchange wagering account.

### SUBCHAPTER 5. CONDUCT OF EXCHANGE WAGERING

#### 13:74C-5.1 Permissible market types

(a) The following market types shall be permissible within the exchange established by the exchange wagering licensee, subject to compliance with the procedure set forth at N.J.A.C. 13:74C-5.2:

1. Off-time market, which is a market within the exchange through which an exchange wagering account holder may back or lay a selected

outcome on horse races conducted within and outside this State, and where the market is closed for exchange wagering at off-time;

2. Antepost market, which is a market within the exchange through which an exchange wagering account holder may back or lay a selected outcome on horse races conducted within and outside this State. In an antepost market, the exchange wager is placed in advance of the closing of entries on an outcome, and the exchange wager includes both that the selected horse will run the race and that the selected horse will finish the race in the selected position of win, place, or show. An antepost market closes for exchange wagering at the close of entries;

3. Finish market, which is a market within the exchange through which an exchange wagering account holder may back or lay a selected outcome on horse races conducted within and outside this State, and which market remains open after the off-time and closes for exchange wagering at the official finish of the race; and

4. Such other new markets as may be proposed by the exchange wagering licensee to the Commission through the filing of a written petition, pursuant to N.J.A.C. 13:74C-5.2, and which are approved by the Commission. The Commission shall approve a new market where the exchange wagering licensee demonstrates to the Commission's satisfaction, by clear and convincing evidence, that the new market is in compliance with the Act and this chapter, that the offering of exchange wagering through the new market will be accurately processed, that all aspects of wagering integrity and wagering recordkeeping will be maintained, that the offering of the new market will not negatively impact the fiscal soundness and technological reliability of the exchange wagering system, that the new market will not create undue confusion to the wagering public, and that the new market will not be inimical to the best interests of racing.

#### 13:74C-5.2 Procedure for Commission approval of markets

(a) Before any market, including those specifically identified in N.J.A.C. 13:74C-5.1, may be offered for exchange wagering for the first time within the exchange, the exchange wagering licensee, and/or the exchange management agent where such is employed by the exchange wagering licensee, shall file a written petition with the Commission. In the filing of any such petition, any exchange services agent may participate as a joint petitioner.

(b) The petition shall identify the type of market for which Commission approval is sought, as identified in N.J.A.C. 13:74C-5.1, and shall include: a narrative description of the possible exchange wagers that can be placed within the market, including a statement of rules for such exchange wagers; a statement as to whether the same market has been offered to the public in any other jurisdiction, by any person or entity, and whether such offering encountered any known technological or practical problems; a statement as to whether any exchange services agent employed by the exchange wagering licensee has itself offered the market in another jurisdiction and, if so, whether any problems were encountered with the market; the minimum and maximum dollar amount of the exchange wagers that will be accepted for the market; a certified statement that the hardware and software components of the exchange wagering system have been successfully tested to handle the market; the particular race or races in connection with which the market is proposed; and a certified statement by the petitioner that the market is in compliance with all laws that may be implicated thereby.

(c) In considering any petition filed pursuant to this section, the Commission may impose such conditions on approval as it deems reasonable and necessary to insuring the integrity of the exchange wagering system and horse racing industry in this State, including that the exchange wagering system be subject to independent testing for technological and wagering data reliability, in connection with any proposed market, before the market is approved, at cost to the exchange wagering licensee.

(d) Where the Commission approves a market, the Commission Executive Director or designee shall have discretion to subsequently approve written applications of the exchange wagering licensee or exchange management agent to offer that same market in connection with other races or groups of races, provided that the market subject of such application comprises the same exchange wager (including the rules for the exchange wager to be offered within the given market) as previously

approved by the Commission. In its written application to the Commission Executive Director, the exchange wagering licensee or any exchange management agent shall: identify the market type; that the Commission has previously approved the market; state that the market is comprised of the same exchange wager (including the rules for the exchange wager to be offered within the given market) as previously approved by the Commission; identify the races for which exchange wagering will be offered in the market, and include a statement as to whether any technological or other problems arose in connection with the offering of such market in the matter previously approved by the Commission or Commission Executive Director. In acting on such application, the Commission Executive Director may approve the application, refer the application to the Commission for consideration, or deny the application for good cause. In approving any such application, the Commission Executive Director may impose conditions as he or she deems reasonable and necessary to insure the integrity of the exchange wagering system and horse racing industry in this State.

(e) Nothing contained in this section shall be interpreted to preclude the Commission or Commission Executive Director from ordering that an approved market, or previously approved market, be discontinued where the continuance thereof would be inconsistent with the integrity of the exchange wagering system, including its wagering and technological reliability aspects, or the maintenance of the integrity of the horse racing industry in this State.

#### 13:74C-5.3 Procedure in the event of a minor technological breakdown of the exchange wagering system, not requiring the suspension or voiding of the market

(a) In the event of a minor technological breakdown associated with the exchange wagering system, which renders the exchange wagering system non-functional, and where the exchange wagering licensee determines that the nature and degree of the minor technological breakdown does not require a suspension or voiding of the market as authorized by N.J.A.C. 13:74C-5.4, the exchange wagering licensee shall:

1. Cause all matched wagers, as of the time of the failure, to remain matched, and to be paid in accordance with the established price for such wagers and the internal control procedures of the exchange wagering licensee applicable to matched wagers; and

2. Cause all unmatched wagers to be cancelled.

(b) In the event the exchange wagering licensee acts pursuant to this section, it shall promptly file with the Commission Supervisor of Mutuels a written report detailing the action taken and the reasons in support of such action.

#### 13:74C-5.4 Market suspensions and market voiding; procedure

(a) The exchange wagering licensee may suspend a market on its own accord and at any time, including after the race is declared official but before winning exchange wagers are credited, for good cause. For the purposes of this section, good cause shall exist where: the exchange wagering licensee has reasonable cause to suspect that fraud or any other action or inaction by any natural person connected with the race raises questions about the integrity and fairness of the market; the exchange wagering licensee has reasonable cause to conclude that a material technological breakdown associated with the exchange wagering system exists or has arisen, which technological breakdown is of such magnitude that the implementation of the exchange wagering system's breakdown procedure as set forth in N.J.A.C. 13:74C-5.3, would be inadequate. The exchange wagering licensee may also suspend a market for other reasons where, upon emergent application, it demonstrates to the satisfaction of the Commission Supervisor of Mutuels that a failure to suspend a market will likely negatively impact the integrity of the exchange wagering system and the horse racing industry in this State.

(b) In the event the exchange wagering licensee suspends a market pursuant to (a) above, it shall immediately notify the Commission Supervisor of Mutuels of such action in writing, by electronic mail. In addition, the exchange wagering licensee shall promptly file a written report with the Commission Supervisor of Mutuels which, at a minimum, identifies the market suspended, the date and time of the suspension, the reason for the market suspension, the reasons why the implementation of the procedure set forth in N.J.A.C. 13:74C-5.3 would have been insufficient; the results of the related due diligence investigation

conducted by the exchange wagering licensee, and a proposal for settling the market. Upon satisfactory review of the Commission Supervisor of Mutuels, and his or her written authorization, the exchange wagering licensee shall settle the market.

(c) An entire market may only be voided, upon application to the Commission Executive Director or designee, where the exchange wagering licensee demonstrates to the satisfaction of the Commission Executive Director that a material and irreparable technological breakdown of the exchange wagering system occurred, and that, due to the nature thereof and circumstances present, it would prove insufficient for the exchange wagering licensee to implement the procedure set forth in either N.J.A.C. 13:74C-5.3, or in (a) or (b) above. In approving any such application, the Commission Executive Director may impose conditions as he or she deems reasonable and necessary to insuring the integrity of the exchange wagering system and the horse racing industry in this State.

13:74C-5.5 Corrective wagers permissible under certain circumstances

(a) The exchange wagering licensee may, under circumstances set forth in its internal control procedures as approved by the Commission pursuant to N.J.A.C. 13:74C-2.2, cause a corrective wager to be placed in a given market provided the placement of such wager is necessary to address the impact on that market of the cancellation or voiding of a given wager or given part of a matched wager, and provided that the cancellation or voiding of such given wager is due to the exchange wagering licensee's mistaken acceptance thereof.

(b) Corrective wagers may only be placed in a manner where no exchange revenues accrue to the exchange wagering licensee, any exchange management agent, or any exchange services agent.

(c) In the event the exchange wagering licensee causes a corrective wager to be placed pursuant to (a) above, it shall promptly cause to be filed with the Commission Supervisor of Mutuels a written report detailing the action taken, and the reasons in support of such action.

13:74C-5.6 Cancellation of unmatched wagers

(a) The exchange wagering licensee may cancel an unmatched wager at any time, without cause, before it is matched to form one or more identically opposing wagers.

(b) An exchange wagering account holder who offers an unmatched wager may cancel that unmatched wager at any time, without cause, before it is matched by the exchange wagering licensee to form one or more identically opposing wagers. However, the suspected abuse of this cancellation privilege by an account holder, including, but not limited to, where any such cancellation is made pursuant to or in furtherance of fraudulent activity related to horse racing or the exchange wagering system, or where the frequency of such cancellations is determined by the exchange wagering provider to negatively impact the exchange or any given market, shall serve as a basis for the closure or suspension of the exchange wagering account pursuant to N.J.A.C. 13:74C-4.2.

(c) In the event the exchange wagering licensee cancels an unmatched wager, as authorized by this section, the exchange wagering licensee shall promptly cause to be filed with the Commission Executive Director a written report detailing the action taken, and the reasons in support of such action.

13:74C-5.7 Finalization of exchange wagers; cancellation of matched wagers under limited circumstances

(a) Except as provided in (b) below, once an unmatched wager is confirmed by the exchange wagering licensee as having been matched to an identically opposing wager in a given market on the exchange, and a matched wager is thereby formed, such matched wager shall be final and shall not be canceled.

(b) The exchange wagering licensee shall only cancel a matched wager, or part of a matched wager, if such cancellation is ordered by the Commission or, where in its sole discretion, the exchange wagering licensee determines that:

1. There is a technological failure of the exchange wagering system and the entire market, within which the exchange wager was made, must as a result be voided in accordance with the procedure at N.J.A.C. 13:74C-5.4(c);

2. There is good cause to suspect that a person placing a wager through the exchange wagering system has acted in violation of the terms and conditions entered into with the exchange wagering licensee at the time such person's exchange wagering account was established, or at the time the terms thereof were amended;

3. It is in the interest of maintaining the integrity and fairness in a particular market, including as provided in N.J.A.C. 13:74C-5.8(a); or

4. Human error, by the exchange wagering licensee, occurred in the recording of the exchange wager.

(c) In the event the exchange wagering licensee cancels a matched wager as authorized by this section, the exchange wagering licensee shall promptly cause to be filed with the Commission Supervisor of Mutuels a written report detailing the action taken and the reasons in support of such action.

13:74C-5.8 Non-starters and declared or scratched entries

(a) Except in the case of an antepost market, matched wagers on non-starters, and declared or scratched entries, shall be voided by the exchange wagering licensee.

(b) In the event of a non-starter, declared, or scratched entry, the price of all other matched wagers existing at the time the declared or scratched entry occurred, or the non-starter declared, may be reduced proportionally by the exchange wagering licensee or exchange wagering services agent, in accordance with its internal control procedures, to reflect the increased probability that those outcomes will become winning outcomes. All exchange wagering account applicants shall be advised of this possibility, as part of the application disclosures required by N.J.A.C. 13:74C-4.1(f).

13:74C-5.9 Exchange wagering pools; no takeout requirement

(a) Notwithstanding any other law or rule to the contrary, the exchange wagering licensee shall not be required to include any pools of exchange wagers in the wagering pools at the track conducting the races. However, in the event that the exchange wagering licensee determines to do so, the exchange wagering licensee shall obtain approval in advance from the Commission.

(b) Notwithstanding any other law or rule to the contrary, the exchange wagering licensee shall not be required to retain, withhold, or takeout any amounts from any exchange wagers. However, in the event that the exchange wagering licensee determines to do so, the exchange wagering licensee shall obtain approval in advance from the Commission, as required by N.J.A.C. 13:74C-5.11.

13:74C-5.10 Interstate exchange pools permissible

Where approved by the Commission, and where the exchange wagering licensee demonstrates by clear and convincing evidence that a proposed interstate exchange pool is consistent with law in all respects, an interstate exchange pool may be offered. An interstate exchange pool may be established in this State, in another state, or a foreign nation. Regardless of where established, the unmatched exchange wagers of New Jersey exchange wagering account holders shall be matched with unmatched exchange wagers, within the interstate exchange pool, to form identically opposing matched wagers.

13:74C-5.11 Imposition of exchange wagering surcharges permitted

Subject to approval of the Commission, both as to type and amount, the exchange wagering licensee may impose and collect exchange revenues, in the form of a surcharge or surcharges associated with exchange wagering accounts and exchange wagers. Permissible surcharges shall include, but not be limited to, surcharges in connection with the submission of exchange wagers to the exchange wagering licensee for processing, and the assessment of a surcharge on any exchange wagering account holder's winnings. Any imposed surcharges shall constitute exchange revenues and be distributed in accordance with N.J.A.C. 13:74C-3.5.

13:74C-5.12 Changes to exchange wagering hardware or software infrastructure components; successful testing requirement

No change may be made to the exchange wagering hardware or software infrastructure components unless the exchange wagering licensee first submits to the Commission Supervisor of Mutuels a certified written statement setting forth with specificity the changes proposed to be made to such infrastructure and a certification that the



proposed change was the subject of successful testing. The Commission Supervisor of Mutuels, in consultation with the Commission Executive Director, may require that additional testing be conducted by the exchange wagering licensee, before the change is implemented, where to do so would be consistent with the integrity of the exchange wagering system.

#### 13:74C-5.13 Race information availability

The exchange wagering licensee's internal control procedures shall set forth what race information, if any, it shall make available to exchange wagering account holders. In the event the exchange wagering licensee elects not to provide race information to exchange wagering account holders, or if the Commission determines that the race information the exchange wagering licensee elects to make available to exchange wagering account holders is insufficient, the Commission may in its discretion impose a license condition on the exchange wagering licensee requiring that race information, including the nature and extent of such race information, be provided by the exchange wagering licensee to exchange wagering account holders. In determining whether to impose such a condition, the Commission shall consider whether such provision of such race information to exchange wagering account holders will foster and enhance the exchange wagering system, alleviate the potential for confusion amongst the exchange wagering account holders, whether the race information is otherwise reasonably and readily available to the exchange wager account holders from a source other than the exchange wagering licensee, and the position of the exchange wagering licensee.

### SUBCHAPTER 6. LICENSING; PENALTIES FOR VIOLATIONS; HEARING PROCESS

#### 13:74C-6.1 Persons required to have licenses

(a) The exchange wagering licensee shall be licensed in accordance with the Act and this chapter. Any appeal of a final decision on such a license application, or renewal license application, shall be to the Superior Court of New Jersey, Appellate Division.

(b) A successor in interest, to whom an initial exchange wagering license or renewed exchange wagering license is to be transferred or assigned, shall be licensed in the same capacity, and at the same license application filing fee cost, as the holder of the license subject of the transfer or assignment, in accordance with N.J.A.C. 13:74C-2.2 and 3.1.

(c) All employees of the exchange wagering licensee who perform duties in connection with the exchange wagering system, including those with supervisory or oversight responsibilities regardless of location, shall take out an exchange wagering identification license at an annual fee of \$25.00.

(d) A person or entity who is the subject of a written agreement, pursuant to N.J.A.C. 13:74C-3.2, shall be licensed as an exchange management agent or exchange services agent, as determined by the Commission, at an annual fee of \$50.00.

(e) All employees of an exchange management agent or exchange services agent, including those with supervisory or oversight responsibilities regardless of location, shall take out an exchange wagering identification license at an annual fee of \$25.00.

(f) Unless the Commission or Commission Executive Director determines the issuance of a license to be unnecessary, following the filing of a petition of a prospective applicant for an exemption from the exchange wagering vendor license requirements of this subsection and in consideration of the nature of the service provided and volume of business to be conducted, the following vendors shall be required to take out a license from the Commission: any vendor who maintains an on-site presence at the premises of either the exchange wagering licensee, any exchange management agent, or any exchange services agent; any vendor who supplies racing-related or exchange-wagering-system-related wagering equipment, supplies, information, or data to the exchange wagering licensee, any exchange management agent, or any exchange services agent, in connection with the exchange wagering system. The annual fee for such exchange wagering vendor license shall be \$50.00.

(g) The Commission shall have the discretion to require, based upon the nature of service provided or volume of business, that any other vendor to the exchange wagering licensee, or in connection with the exchange wagering system, take out an exchange wagering vendor

license for the requisite \$50.00 annual fee. The exchange wagering licensee, any exchange management agent, and any exchange services agent, by March 15 of each year, shall each file with the Commission a report identifying the name of each non-licensed vendor with whom it did business in an aggregate amount of \$10,000 or more for the preceding calendar year, the nature of the vendor's business, the principal address and telephone number of the vendor, and whether or not the business relationship is continuing in nature.

(h) An individual or vendor, who is licensed by the Commission pursuant to N.J.A.C. 13:70, 71, 72, or 74 and who is 18 years of age or older, shall not be required to take out a license pursuant to this chapter where the job responsibilities for which the license was issued by the Commission are substantially similar to those that are to be performed pursuant to this chapter as determined by the Commission Executive Director. However, such a vendor or individual must first have his or her license properly endorsed by the Commission at no charge, and is also subject to all other requirements of this chapter consistent with the license endorsement.

(i) An individual or vendor, who is licensed by the Commission pursuant to this chapter, shall not be required to take out a license pursuant to N.J.A.C. 13:70, 71, 72, or 74, where the job responsibilities for which the license pursuant to this chapter was issued are substantially similar to those that are to be performed pursuant to N.J.A.C. 13:70, 71, 72, or 74 as determined by the Commission Executive Director. However, such a vendor or individual must first have his or her license properly endorsed by the Commission at no charge, and is also subject to all other requirements of N.J.A.C. 13:70, 71, 72, or 74 consistent with the license endorsement.

#### 13:74C-6.2 Duration of license

All licenses issued pursuant to this chapter shall be effective from January 1st to December 31st of the same year, except as provided in N.J.A.C. 13:74C-2.1 and 2.2(b).

#### 13:74C-6.3 License fee payment

All license fee costs shall be paid when the license application is filed with the Commission, and shall be non-refundable for any reason, including the denial of the license applied for.

#### 13:74C-6.4 Collection and dissemination of Social Security numbers

(a) The Commission may request Social Security numbers to be furnished for use in determining a license applicant's eligibility for licensure. No application shall be denied for failure to comply with such request, provided that a person may be required to submit such other information as the Commission may require in order to determine an applicant's eligibility for licensure.

(b) Any form used by the Commission to request submission of a Social Security number shall include the following:

1. A statement that the provision of a Social Security number is voluntary;

2. A citation to this section, which authorizes the Commission to request the Social Security number; and

3. A statement that the Commission will use Social Security numbers as a secondary internal identifier for the following purposes: credit checks, background checks, and other such investigations.

#### 13:74C-6.5 Fingerprint and photograph requirement

All persons licensed by the Commission in connection with the exchange wagering system are required to be fingerprinted and photographed. The applicant must pay for the cost of fingerprints and for the related criminal history check consistent with the fee structure of the reviewing State and Federal agency.

#### 13:74C-6.6 Age requirements

No application for a license shall be considered or granted to a person who is not 18 years of age or older.

#### 13:74C-6.7 Badges

(a) All Commission licensed personnel employed at the premises of the exchange wagering licensee, at the premises of any exchange management agent, and at the premises of any exchange services agent, shall be required to wear upon their outside apparel in prominent position

an identification tag which may be devised or authorized by the exchange wagering licensee, as approved by the Commission, and to carry on their person and produce to the Commission, upon request, the authorized badges containing picture identification supplied by the Commission. In the event the exchange wagering licensee elects not to devise or authorize such an identification tag, all such Commission-licensed personnel shall instead be required to wear upon their outside apparel in a prominent position the authorized badges containing picture identification supplied by the Commission. In the event any such employees are required to wear Commission identification tags or the equivalent, as a result of licensure by the Commission in another capacity, the required exchange wagering identification tag shall be endorsed to reflect the other category of Commission licensure, in a uniform manner acceptable to the Commission. Notwithstanding anything in this section to the contrary, the penalty for an individual's failure to comply with this section shall be \$15.00 for a first violation; \$25.00 for a second violation; \$50.00 for a third violation; and a \$100.00 fine and seven day license suspension for each violation thereafter.

(b) The requirement of this section may be waived by the Commission as concerns employees who conduct any functions in connection with the exchange wagering system, where those functions are performed out-of-State, as approved by the Commission pursuant to N.J.A.C. 13:74C-3.3.

#### 13:74C-6.8 Refusal to issue or renew license

(a) The burden shall rest on each applicant to show that he or she is qualified in every respect to receive the license applied for. Ability, as well as good character and integrity, must be clearly shown by the applicant in order to receive the license applied for.

(b) The Commission may investigate the applicant or any person named in the application, with respect to such person's background, good character, qualifications, financial responsibility, criminal record, subversive record, and other reports concerning such persons, in order to determine whether the applicant is qualified to receive the license applied for.

(c) The Commission may refuse to issue or renew a license, or may suspend a license issued pursuant to this chapter, if it shall find that the applicant is not of good character, is not qualified to hold the license applied for, or that the applicant, or any person who is a partner, agent, or employee or associate of the applicant, has been convicted of a crime in any jurisdiction, or is associating or consorting with any person or persons who has been convicted of a crime or crimes in any jurisdiction, or is consorting with, or has consorted with bookmakers, touts, or persons of similar pursuits, or is financially irresponsible, or has been guilty of or attempted any fraud or misrepresentation in connection with racing, breeding, or otherwise, or has violated or attempted to violate any law with respect to racing in any jurisdiction or any rule, regulation, or order of the Commission, or shall have violated any rule of racing, which shall have been approved or adopted by the Commission, or has been guilty of or engaged in similar, related or like practices.

(d) In considering an application for a license, the Commission or Commission Executive Director may require that the applicant appear before the Commission, the Commission Executive Director, or a designee for an interview in connection with the license application. An applicant has the unqualified duty to cooperate with the Commission in connection with its investigation into any application for a license and a license shall be denied where the applicant fails to do so.

(e) Any person making any false, untrue, or misleading statements on a license application, or in connection with any written or oral examination in connection with an application for a license, shall be denied a license and is subject to the additional penalties set forth in N.J.A.C. 13:74C-6.10.

(f) Where a license is denied, the Commission Executive Director shall cause a ruling to be issued reflecting the license denial. An applicant who has been denied a license may appeal the license denial to the Commission in accordance with N.J.A.C. 13:74C-6.12.

#### 13:74C-6.9 License conditions

The Commission shall have the discretion to impose conditions upon any license necessary to effectuate the purposes of the Act and this chapter.

#### 13:74C-6.10 Suspension or revocation of a license; penalties for violations

(a) Any license issued pursuant to this chapter, considering the particular facts present and the nature of the violation, may, following the conduct of a hearing, be suspended for a finite period of time, suspended indefinitely, or permanently revoked; and a monetary fine issued, or a letter of reprimand issued, at any time for: misconduct or malfeasance; conduct detrimental to racing; failure to comply with any license condition; violation of any rule or order of the Commission; failure to comply with the requirements of the Act and this chapter; fraudulent activity; bribery; financial irresponsibility, meaning the accumulation of unpaid obligations, or the issuance of drafts or checks that are dishonored or on which payment is refused, or conduct otherwise displaying financial irresponsibility reflecting on the exchange wagering system; failure to cooperate with the Commission in any investigation as required by N.J.A.C. 13:74C-6.11; or any attempt to commit, or participation in any conspiracy to commit, any of the above-listed acts.

(b) Any fine imposed as a result of a violation of this chapter shall not exceed \$5,000 per violation. Where the violation is ongoing in nature, a fine not to exceed \$5,000 per day may be imposed. A penalty of revocation may only be ordered by the Commission.

(c) Where a license suspension or license revocation is ordered, the licensee subject to the action shall be ordered not to appear at any premises subject to the jurisdiction of the Commission.

(d) In imposing any penalty, the imposition of remedial conditions may be ordered.

(e) A licensee, subject to compliance with the requirements and procedures set forth in N.J.A.C. 13:71-26.9, may have his or her license suspended immediately when the licensee is indicted in this State for a crime of the first, second, third, or fourth degree, or is indicted for a similar crime under Federal law or the law of another state or country.

(f) Where a penalty is imposed as a result of a violation of this chapter, the Commission Executive Director shall cause a ruling to be issued reflecting the violation and penalty ordered.

#### 13:74C-6.11 Duty to cooperate; knowledge of violations

(a) A licensee who shall come into possession of knowledge concerning any violation of N.J.A.C. 13:70, 71, 72, 73, or 74, or the rules of racing or any violation of law in connection with the Act and this chapter, the running of a race, or the wagering or exchange wagering conducted in connection with the running of a race, shall immediately report the information to the Commission for investigation and such action as the case may warrant.

(b) A licensee has the duty to fully cooperate in any investigation being conducted by the Commission, including as concerns the Act and this chapter.

(c) A licensee shall give every possible cooperation, aid, and assistance to any department, bureau, division, officer, agent, or inspector, or any other person connected with the United States government or with this State, or who may be acting in cooperation therewith, who may be investigating or prosecuting any matter involving a violation of law, or any other rules or regulations of the Commission, including the Act and this chapter.

#### 13:74C-6.12 Hearing requirement and procedure

(a) Pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, the Commission may directly conduct a hearing to determine if a violation of its rules has occurred. Upon a finding of violation(s), the Commission may directly impose any of the penalties set forth in N.J.A.C. 13:74C-6.10. Alternatively, the Commission or the Commission Executive Director may refer the matter to the Office of Administrative Law for a recommended decision.

(b) Except as provided in N.J.A.C. 13:74C-6.1(a), any person who has been denied a license may appeal such determination by filing a written request with the Commission Executive Director within 10 days of the license denial decision. In such event, the Commission Executive Director shall cause the matter to be referred to the Office of Administrative Law for a recommended decision.

(c) Any appeal of a final decision of the Commission, as concerns a license denial or imposed penalty, shall be to the Superior Court of New Jersey, Appellate Division.

(d) The license applicant or licensee shall be responsible for any costs incurred in connection with any hearing or appeal proceeding pursuant to this section.

#### 13:74C-6.13 Stay requests and determinations

Where a penalty has been issued or adopted in a Commission final decision, the licensee may submit a written request to the Commission Executive Director for a stay pending appeal to the Appellate Division of the Superior Court of New Jersey, which written request shall set forth all facts and arguments in support of the stay request. The Commission Executive Director may deny a stay request if he or she determines that the grant of a stay would be adverse to the best interests of exchange wagering, adverse to the best interests of racing, or inimical to the integrity of racing. The decision of the Commission Executive Director on the stay request shall constitute a final decision, which may be appealed to the Superior Court of New Jersey, Appellate Division.

#### 13:74C-6.14 Reciprocity

Full force and effect shall be given to the denial, revocation, or suspension of any license by any other racing commission, or other regulatory body, with the responsibility to oversee the conduct of racing, off-track-wagering, account wagering, or exchange wagering.

## OTHER AGENCIES

### (a)

#### CASINO CONTROL COMMISSION

##### General Provisions

##### Applications

##### Casino Licensees

##### Proposed Repeals: N.J.A.C. 19:40 and 19:41

##### Proposed New Rules: N.J.A.C. 19:40A, 19:41A, and 19:43A

Authorized By: Casino Control Commission, Matthew B. Levinson, Chairman.

Authority: N.J.S.A. 5:12-50, 52, 54, 56, 60, 63, 69, 72, 73, 74, 74.1, 80, 81, 82, 83, 84, 85, 85.1, 86, 87, 89, 91.1, 94, 95, 95.12 through 95.16, 105, 106, 107, 108, and 130.1 through 130.11.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2014-097.

Submit written comments by August 15, 2014, to:

Stephanie A. Olivo, Senior Counsel  
Casino Control Commission  
Arcade Building  
Tennessee Avenue and the Boardwalk  
Atlantic City, New Jersey 08401  
[generalcounselmailbox@ccc.state.nj.us](mailto:generalcounselmailbox@ccc.state.nj.us)

The agency proposal follows:

#### Summary

The Casino Control Act (the Act), N.J.S.A. 5:12-1 et seq., was amended in 2011 to, among other things, reallocate duties and responsibilities as between the Casino Control Commission (Commission) and the Department of Law and Public Safety, Division of Gaming Enforcement (Division). (P.L. 2011, c. 19, effective February 1, 2011). Effective December 19, 2011, the Division repealed various Commission rules in Title 19, including, in Chapter 40 (General Provisions): N.J.A.C. 19:40-1.2, 3.4 through 3.7, 4.1 through 4.9, 5.1 through 5.4, and 7.1 through 7.4; in Chapter 41 (Applications): N.J.A.C. 19:41-1.2, 1.3A, 1.5, 4.4, 5.1 through 5.2A, 5.5 through 5.9, 5.11, 5.12 through 5.18, 7.1 through 7.1B, 7.2 through 7.16, 8, 9.1 through 9.10, 9.15 through 9.17, 9.19 through 9.21, and 12.1 through 12.9; and in

Chapter 43 (Casino Licensing): Subchapters 1 through 4, 6 through 12 and 14 through 16. The remaining rules in Chapter 43 expire on June 7, 2014.

By this notice of proposal, the Commission is promulgating new rules, previously codified at N.J.A.C. 19:40, 41, and 43, in proposed new Chapters 40A (General Provisions), 41A (Applications) and 43A (Casino Licensing).

The proposed new rules in Chapter 40A contain organizational and other general regulatory provisions. N.J.A.C. 19:40A-1 addresses the construction and application of Commission rules, including the Commission's rulemaking authority (N.J.A.C. 19:40A-1.1) and is not revised from the existing rules. N.J.A.C. 19:40A-1.2 is proposed to contain definitions of the words and terms used in the chapter. Rules regarding construction and application (N.J.A.C. 19:40A-1.3) and practice where matters are not governed by the chapter (N.J.A.C. 19:40A-1.6) are not changed from the existing versions. Existing N.J.A.C. 19:40-1.4 and 1.5, Severability and preemption, subsection (b) are not proposed in the new chapter as they are unnecessary.

N.J.A.C. 19:40A-2.1 is revised to reflect changes in the Commission's organization. Revisions reflect the reduction of the Commission membership from five to three; eliminate the Divisions of Administration, Financial Evaluation, Licensing, and Compliance; incorporate statutorily prescribed functions under the Division of Regulatory Affairs; and prescribe the employees that constitute the management advisory team of the Commission. N.J.A.C. 19:40A-2.2 is revised to indicate that the Chairman may call a special meeting at the request of a majority of members (reflecting the reduction in members from five to three). N.J.A.C. 19:40A-2.3 and 2.4 govern the conduct of public meetings and N.J.A.C. 19:40A-2.5 addresses the delegation of authority to the Commission staff; these three sections remain unchanged. N.J.A.C. 19:40A-2.6 outlines the post-employment restrictions applicable to Commission staff and petitions for waiver thereof and is revised to reflect changes in the composition of the Commission's management and to indicate that nongaming service industries are now registered rather than licensed.

Revisions to existing rules in Subchapter 3 reflect new agency procedures requiring filings to be directed to the Division. N.J.A.C. 19:40A-3.1 sets forth the Commission's office location and business hours. N.J.A.C. 19:40A-3.2 addresses the release of official records and copying fees are set in accordance with applicable State law. N.J.A.C. 19:40A-3.3 provides for the service for communications and notices served upon or by the Commission. N.J.A.C. 19:40A-3.4 directs inquiries to the Commission's public information office. N.J.A.C. 19:40A-3.5, 3.6, and 3.7 govern petitions and other filings, including petitions for rulemaking and declaratory ruling petitions.

Proposed N.J.A.C. 19:40A-4 addresses the confidentiality of information within the Commission's control, including definitions (N.J.A.C. 19:40A-4.1); determination of confidential status (N.J.A.C. 19:40A-4.2); access to confidential information (N.J.A.C. 19:40A-4.3); retention schedules (N.J.A.C. 19:40A-4.4 and 4.5); the handling of confidential information by authorized Commission personnel (N.J.A.C. 19:40A-4.6); standards for the copying or release of confidential information (N.J.A.C. 19:40A-4.7 and 4.8) and sanctions for disclosure (N.J.A.C. 19:40A-4.9). Proposed N.J.A.C. 19:40A-5.1 addresses the general provisions of professional practice before the Commission. N.J.A.C. 19:40A-5.2 and 5.3 govern appearances by an attorney; Internal grievance procedures required pursuant to the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq., are set forth at N.J.A.C. 19:40A-6, including definitions (N.J.A.C. 19:40A-6.1); purpose (N.J.A.C. 19:40A-6.2); notice (N.J.A.C. 19:40A-6.3); the Commission's ADA coordinator (N.J.A.C. 19:40A-6.4); grievance procedures (N.J.A.C. 19:40A-6.5); content for a grievance (N.J.A.C. 19:40A-6.6); and procedures for investigating any grievance (N.J.A.C. 19:40A-6.7) and the form for a grievance (N.J.A.C. 19:40A-6 Appendix).

Proposed new N.J.A.C. 19:41A sets forth standards and procedures for casino key employee licensure. Subchapter 1 contains the duties and responsibilities of a casino key license applicant. N.J.A.C. 19:41A-1.1 states the affirmative responsibility of applicants to establish qualification by clear and convincing evidence. N.J.A.C. 19:41A-1.2 addresses an applicant's duty to cooperate and disclose requested information.