INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION
REAL ESTATE COMMISSION

Timeshares

Adopted Amendments: N.J.A.C. 11:5- 9.2, 9.4, 9.5 and 9.14

Adopted New Rules: N.J.A.C. 11:5-9A

Proposed: July 7, 2008 at 40 N.J.R. 3944(a)

Adopted : June 11, 2009 by New Jersey Real Estate Commission, Robert L. Kinniebrew, Executive Director

Filed: June 11, 2009 as R. 2009 d. 222, with technical changes not requiring additional public notice and opportunity to comment (see N.J.A.C. 1:30-6.3)

Authority: N.J.S.A. 45:15-6 and 45:15-16.49

Effective Date: July 6, 2009

Expiration Date September 1, 2009

Summary of Public Comments and Agency Responses:

The following comments were received from the American Resort Development Association (ARDA). Suggestions of additional language are shown by underlining characters. Suggestions of deletions are shown in brackets.

COMMENT: ARDA attached a copy of the proposed regulations highlighting all deviations from the exact language of the New Jersey Real Estate Timeshare Act, N.J.S.A. 45:15-16.50 et seq. (Act) ARDA requests that proposed text that changes the meaning of the Act, that is not consistent with the legislative intent of the Act or that is not specifically authorized by the Act be deleted.

RESPONSE: The legislative intent of the Act is to create a comprehensive system regulating timeshares that includes registration of offerings, public offering requirements and consumer protections. The Act removed the regulation of timeshares from the Real Estate Sales Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq. and the Planned Real Estate Development Full Disclosure Act, N.J.S.A. 45:22A-21 et seq., (PREDFDA) which had separately regulated various aspects of timeshare offerings and had placed the regulatory authority over such offerings partly with the Department of Community Affairs and partly with the Real Estate Commission. The Act instead assigned all regulatory authority to the Real Estate Commission to avoid issues and inefficiencies that had resulted from the shared authority between the two departments. The restructuring is intended to provide a single regulatory framework for overseeing timeshare offerings directed or targeted to persons within the State. (See Senate Commerce Committee Statement to the Senate on S. No. 1321, May 15, 2006.)

The Commission believes that the language which has been proposed is consistent with the plain meaning of the text of the Act and the legislative intent and is within the authority delegated to the Commission by the Act to implement its provisions.

COMMENT: ARDA suggests that the second reference to "State" in the definition of "Abbreviated Registration" at N.J.A.C. 11:5-9A.2 should be lower case.

RESPONSE: The Commission agrees and thanks the commenter for pointing out the inadvertent typo.

COMMENT: ARDA requests that N.J.A.C. 11:5-9A.3 include the following sentence as the

second sentence in regard to multi-site inspections: "The acceptance of a registration and offering statement for a non-specific multi-site timeshare plan may be contingent upon an inspection to take place at the location where the multi-site timeshare plan is located."

RESPONSE: The Commission believes that the additional language is not necessary as the language "[t]he acceptance of a registration and offering statement approved in another state may be conditioned upon an acceptable on-site inspection" proposed at N.J.A.C. 11:5-9A.3(a)7 encompasses multi-state multi-site plans.

COMMENT: (a) ARDA suggests the following changes be made to N.J.A.C. 11:5-9A.4(b)2 which they believe will clarify that the obligation to return funds is contingent upon those funds being received by the developer and cleared by the bank or institution from which those funds were drawn. ARDA does not believe it is necessary to provide evidence of those refunds to the Commission, as they believe that it is somewhat impractical and does not provide any additional consumer protection. Instead, ARDA suggests that the Commission retain the right to ask for evidence of refunds but only in cases where there has been a complaint or there is a question as to whether funds were properly refunded. The following language is suggested: "Upon termination of a preliminary registration order for any reason other than the issuance of a final order of registration and public offering statement, all reservations executed under the preliminary registration shall be null and void, and all <u>cleared</u> funds obtained shall be refunded to the purchaser within 15 days of termination. <u>In the event there is a dispute as to whether funds were returned properly to a purchaser, the Commission shall have the right to request evidence of such refunds, which includes, but is not limited to, an affidavit by the Developer attesting to the</u>

adequacy of the refunds or bank records showing the return of all purchaser funds that were held pursuant to a Preliminary Registration. **[**Evidence of such refunds must be filed with the Commission within 30 days of the date of termination.**]**

(b) ARDA similarly suggests the following changes to "N.J.A.C. 11:5-9A.4(b)i.(3)": "The repayment to the potential purchaser of **[**his or her total deposit**]** all cleared funds received within 15 days following the receipt of a notice of cancellation of the reservation by either party; and"

RESPONSE: In response to its request for changes to be made to N.J.A.C. 11:5-9A.4(b)2, and assuming ARDA is suggesting similar changes to N.J.A.C. 11:5-9A.4(b)3i(3), the Commission does not agree with the commenter that requiring the developer to return funds to purchasers within 15 days of termination of a preliminary registration for a reason other than issuance of a final order of registration and public offering statement and filing evidence of those refunds within 30 days of that event is unnecessary and not an additional consumer protection. The Commission believes that when a developer collects funds from purchasers prior to the completion of the Commission's review of a registration application and issuance of a final order of registration and public offering statement, greater scrutiny of the payment of refunds to consumers is a necessary consumer protection and that compliance with the rule should be considered a necessary cost of doing business prior to the Commission's approval of the offering. Further, the Commission believes that the 15-day and 30-day timelines allow ample time for the clearing of the funds prior to the issuance of refunds as required by the rules. It is not the intent of the rule to require a Developer to refund monies that were not received as a result of the failure of a check to clear the Developer's account.

COMMENT: ARDA suggests adding the following changes to "N.J.A.C. 11:5-9A.4(b)i:" "The reservation instrument to be used in a form **[**previously**]** approved by the Commission and supplied with the preliminary registration application, which shall, at a minimum, provide the following:"

RESPONSE: Assuming ARDA is suggesting changes to N.J.A.C. 11:5-9A.4(b)3i, the phrase "previously approved" mirrors the language in the Act at N.J.S.A. 45:15-16.56.

COMMENT: ARDA suggests changing N.J.A.C. 11:5-9A.4(b)3iv to provide for the ability of a developer to have the escrow account located in a state other than New Jersey.

RESPONSE: The Commission believes that depositing money received from New Jersey residents in an escrow account in the State of New Jersey is a legitimate consumer protection and reasonably necessary for the protection of purchasers.

COMMENT: ARDA suggests adding language in N.J.A.C. 11:5-9A.4(b)3vi to the effect that advertisements that are provided to the Commission before use are being provided only for informational purposes and are not to be reviewed and approved by the Commission.

RESPONSE: The Commission disagrees with the suggestion. The filing of all advertisements to be utilized by the developer under the preliminary registration before use is a statutory requirement imposed by N.J.S.A. 45:15-16.57. As these advertisements will be utilized by the

developer, the Commission will review the advertisements as part of the approval process to ensure compliance with the Act.

COMMENT: As to N.J.A.C. 11:5-9A.4(b)3vii, ARDA believes that the term “evidence of compliance with all laws" is too broad and believe that it should be sufficient for a developer to provide evidence of compliance, such as an affidavit stating as such, with all applicable timeshare registration laws, or other such similar laws if the state does not have a timeshare registration law.

RESPONSE: The Commission disagrees that the scope is too broad. The Commission is not asking for evidence of compliance with “all laws,” as the comment seems to suggest. The Commission is asking for evidence of compliance with all laws “governing the offering of a timeshare plan in that jurisdiction.” The Commission agrees that compliance with the law governing timeshare registration in a foreign jurisdiction is pertinent to the approval processes. However, the Commission believes that knowledge of a violation of other laws in that jurisdiction which govern the offering of a timeshare plan would also be pertinent in the approval process.

COMMENT: ARDA suggests the addition of language to N.J.A.C. 11:5-9A.4(b)3viii, (c)1xxi, (c)1xxxvi and (d)1vii that they believe will clarify the obligation of the applicant with respect to former officers and directors. They suggest that the rules state: “A statement indicating whether the applicant, or a parent or a subsidiary of the applicant, or any of their current officers or principals have, during the past 10 years, or any of their former officers or principals have during

the last two years of their employment by the applicant, been convicted of any criminal or disorderly persons offense involving any aspect of the real estate sales or real estate securities business."

RESPONSE: The Commission disagrees with the suggestion. The commenter's suggested language requires the applicant to report any convictions during the former officers' or principals' last two years of employment. This greatly expands the window of scrutiny. If an officer left an applicant 18 years ago, one could be reporting a 20 year-old conviction. Further, the suggested language requires that to be reportable the conviction must have taken place during his or her employment. With the suggested language, a former officer could have been convicted immediately prior to the application for acts directly related to his 20 years of real estate sales, but if he or she ceased employment shortly before his or her conviction, it would not be reportable.

In contrast, the rule requires only the reporting of convictions of former officers or principals which occurred within the last two years, a standard which the Commission has used previously and has proven to be an effective consumer protection aid.

COMMENT: ARDA suggests deleting the language "all affiliated and" in N.J.A.C. 11:5-9A.4(c)1vi as they believe that those words were specifically not included in the comparable section of the Act and significantly change the meaning of that section as it exists in the Act.

RESPONSE: While N.J.S.A. 45:15-16.57d.(5) does not include the language "all affiliated,"

N.J.S.A. 45:15-16.57d(7) requires the developer to provide any other information regarding the developer, timeshare plan, brokers, marketing entities or managing entities as required by the Commission and established by regulation. Therefore, the language does not change the meaning of the section as it exists in the Act.

COMMENT: ARDA recommends the following changes to N.J.A.C. 11:5-9A.4(c)1x: the term "protected" be inserted in front of the word "guaranteed" and delete "New Jersey Residents" and add "within this State."

RESPONSE: Assuming the commenter is recommending the replacement of "guaranteed" with "protected" in N.J.A.C. 11:5-9A.4(c)1x, the Commission does not agree. N.J.S.A. 45:15-16.57e(3) provides that the Commission may accept a surety bond, bond in lieu of escrow, irrevocable letter of credit or other financial assurance acceptable to the Commission in lieu of funds being deposited with an escrow agent. The Commission believes that the phrase "be guaranteed by some means acceptable to the Commission" clarifies and better defines the type of financial assurance which might be considered acceptable.

The Commission does not agree with the deletion of New Jersey resident and its replacement with "within this State." The Commission believes that any monies paid by New Jersey residents who have been solicited in this State by the applicant under the terms of the Act should be held in escrow regardless of where payment of the funds was tendered to the applicant.

COMMENT: ARDA suggests making the following changes to N.J.A.C. 11:5-9A.4(c)1xx: "The filing of the audited consolidated financial statements of a parent company of an applicant may

be permitted **[**if the parent company is the registrant, applicant, co-registrant or guarantor**]**." ARDA also suggests the addition of the following language: "If the applicant is a newly formed entity or has not had any significant operating experience an unaudited balance sheet and statements of receipts and disbursement of funds may be used."

RESPONSE: The Commission believes that the language which the commenter wishes to delete clarifies the Commission's position on when it will accept a parent company's financial statement in lieu of the applicant's. The Commission believes that the additional language is not needed, as the following language already appears: "In the discretion of the Commission, it may accept or require alternative information evidencing the applicant's ability. . ."

COMMENT: ARDA proposes the following changes to N.J.A.C. 11:5-9A.4(c)1xxii and N.J.A.C. 11:5-9A.4(d)1iv that they believe are in line with the intent of the proposed regulation but would provide additional clarity to the registrant regarding what permits need to be provided to the Commission: "A statement as to the status of all applications for permits and/or compliance with any permits **[**and/or compliance with any permit required**]** or issued by any Federal, state, or local agencies **[**or similar organizations which have the authority to regulate or issue permits, approvals or licenses**]** which pertain to the registration **[**may be material to the development, sale**]** or **[**other**]** disposition of the timeshare interests to be registered and the existing or proposed facilities, common areas or improvements thereof."

RESPONSE: The Commission does not believe the language as suggested clarifies the information requested. Rather, the suggested language limits the information to the instant

timeshare offering which is not the intent of the proposed regulation. Compliance issues that do not directly involve the registration or disposition of the interests to be registered may nevertheless be material to the consumer protection goals of the new Act.

COMMENT: ARDA believes that N.J.A.C. 11:5-9A.4(c)1xxiii poses significant problems for the majority of its members as many of the requirements represent unduly burdensome requirements on an applicant.

RESPONSE: The requirements listed consist of a shortened list of requirements from the previous act. The Commission does not believe that lessening the requirements which have already been in effect is unduly burdensome. In addition, all of the requirements imposed bear a rational relationship to the consumer protection goals of the new Act and are not arbitrary, capricious or unreasonable.

COMMENT: ARDA states that in N.J.A.C. 11:5-9A.4(d)1i, the word “pot” should be “not.”

RESPONSE: The Commission agrees that the word “pot” in the attachments that ARDA included would have been incorrect if included in the proposal. However, the word does not appear in the published proposal at 40 N.J.R. 3944(a).

COMMENT: ARDA believes that the language of N.J.A.C. 11:5-9A.5(a) should mirror that of the Act, specifically the language of Section 11B of the Act. ARDA states that the language in this entire section does not clarify 11B, but instead widens its scope and changes the meaning of

that section. Therefore, ARDA recommends that N.J.A.C. 11:5-9A.5(a) be changed to mirror the language in the Act and that N.J.A.C. 11:5-9A.5(b), (c) and (d) be removed entirely.

RESPONSE: The Commission believes that N.J.A.C. 11:5-9A.5(a) is consistent with and serves to implement the Act and that N.J.A.C. 11:5-9A.5(b) through (d) clarify the requirements of N.J.A.C. 11:5-9A.5(a) and its corresponding statutory requirements.

COMMENT: With respect to the timing of the filing requirement, ARDA suggests deleting the word "immediately" in N.J.A.C. 11:5-9A.5(a) and instead placing a timeframe within which the amendment must be filed, such as within 10 days of learning of the material change.

RESPONSE: The Commission does not believe that the addition of a timeframe is necessary. However, as the governing provision in the Act, N.J.S.A. 45:15-16.60b(1), differentiates between material changes that are within the control of the developer and those that are beyond the developer's control, the Department has determined to amend this provision upon adoption to incorporate the statutory text into the rule.

COMMENT: ARDA requests clarification as to the meaning of a "substantial change" in N.J.A.C. 11:5-9A.5(b)1iii. as ARDA believes the term is ambiguous as it is currently drafted.

RESPONSE: The Commission believes that the plain meaning of "substantial change" is clear and therefore N.J.A.C. 11:5-9A.5(b)1iii is not ambiguous as drafted.

COMMENT: ARDA recommends that the percentage increase in the budget referenced in N.J.A.C. 11:5-9A.5(b)1vi. and (d)4 be raised from 15 percent to 20 percent as the 20 percent figure is the general threshold for whether or not a developer or managing entity must get a vote of the membership before they can make an increase of that size.

RESPONSE: The Commission believes that the suggestion may have merit. However, a change in the percentages would constitute a substantive change requiring an additional proposal and comment period and therefore cannot be implemented at this time. The Department will study the suggestion further and if it is found that the suggestion implements the intent of the Act while adequately protecting New Jersey consumers, the Commission will propose an amendment at a future date.

COMMENT: ARDA suggests deleting N.J.A.C. 11:5-9A.5(b)1viii., as transfer of control of the association to the owners is a "well defined event in either the governing documents or in state law, and should not be considered a material event for purposes of amending documents and potentially affecting closings."

RESPONSE: While the prospective transfer may be a "well defined event," the Commission believes that the actual transferring of the control of the association to the owners does constitute a material change affecting the duties or obligations of the registrant, developer or purchaser and therefore should not be excluded from the list of material changes.

COMMENT: ARDA believes that the type of change referenced in N.J.A.C. 11:5-9A.5(b)1xi. should only be material if it affects the current timeshare owners. In addition, ARDA believes that it should be made clear that this type of financing does not include financing offered to potential timeshare purchasers.

RESPONSE: The Commission does not agree that this material change should be limited to only those events that affect current timeshare owners. The application and/ or public offering statement offered to future timeshare owners should reflect any refinancing of or the placing of additional mortgages or blanket encumbrances on the timeshare property or interests.

COMMENT: ARDA suggests the following changes to N.J.A.C. 11:5-9A.5(d) so as not to limit the items which may not be material or adverse changes: “The following is a list of circumstances which do not constitute a material or adverse change. This list is not intended to be exhaustive:”

RESPONSE: The Commission does not agree that the additional language is either necessary or appropriate. The rule includes a non-exclusive list of occurrences that the Commission does not consider to be material or adverse changes.

COMMENT: ARDA suggests that in N.J.A.C. 11:5-9A.5(e)1, the term “red-lined” be replaced with a standard such as "computer compared or other compared draft of the revised provision against the provision previously submitted in the approved registration.”

RESPONSE: The Commission agrees that the additional language will clarify the meaning of "red-lined" and is amending the proposal upon adoption to add the phrase "or other submission utilizing a similar method of clearly showing the differences between the current and previously submitted drafts."

COMMENT: ARDA states that the seven-year document retention time in N.J.A.C. 11:5-9A.6(a)1 is inconsistent with the majority of their members' document retention policies, and therefore suggest that the timeframe be amended to be a term of three years. ARDA also suggests deleting the phrase "before the purchaser signs the contract or purchase agreement" in subsection (a) and inserting "opportunity to read prior to the expiration of the rescission period."

RESPONSE: The Commission believes that a seven-year retention period is consistent with the goals of protecting the consumer who signs such a contract, as it better assures that copies of the contract are available should a legal action be commenced prior to the expiration of the contractual statute of limitations. The Commission believes the removal of the language as suggested by the commenter is unacceptable. Delaying a purchaser's opportunity to read the contract or purchase agreement until prior to the expiration does not allow the purchaser to effectively use the entire rescission period to formulate their decisions as intended.

COMMENT: ARDA suggests changing the term "designated" to "authorized" in N.J.A.C. 11:5-9A.6(b)1.

RESPONSE: The Commission agrees and upon adoption is changing the word to “authorized” in N.J.A.C. 11:5-9A.6(b)1.

COMMENT: ARDA suggests deleting the phrase “not be deemed current unless it” and then remove the “s” from “contains” in N.J.A.C. 11:5-9A.6(b)3.

RESPONSE: The commenter misconstrues the Commission’s intent in promulgating the rule. The rule implicates the consequences of providing a public offering statement that does not contain all of the amendments that have been approved by the Commission; removing the phrase as suggested removes those consequences.

COMMENT: ARDA believes that the term “immediately” should be deleted from N.J.A.C. 11:5-9A.6(b)4, as there are timing requirements specifically set forth in Section 11 of the Act that should be adhered to.

RESPONSE: The Commission agrees that the timing requirements are set forth in the Act. As was discussed in a Response to a prior Comment, N.J.S.A. 45:15-16.60b(1) differentiates between material changes within the control of the developer and those that are not. In order to ensure consistency between the rules and the Act, the Department is amending the rule upon adoption to incorporate the statutory text into the rule.

COMMENT: ARDA does not feel that it is necessary to require a developer to create and file an entire public offering statement in another language as required in N.J.A.C. 11:5-9A.6(b)8 and

9A.8(g), “if they simply have an advertisement that is created in a separate language.” They believe the more sensible consumer protection standard should focus on what language the actual sale is negotiated in, not necessarily the language in which it was advertised. Therefore, they suggest language such as the following: “If the contract for a time-share interest is negotiated primarily in a language other than English, orally or in writing, the developer, upon the request of the purchaser, shall provide to the prospective purchaser prior to the commencement of the rescission period an unexecuted translation of the contract in the language in which the contract was negotiated.”

RESPONSE: The Commission believes that if the developer actively solicits non-English speaking purchasers by advertising in their native tongue, consistent with the overall intent of the Act, such purchasers are entitled to receive the public offering statement in that language.

COMMENT: In reference to N.J.A.C. 11:5-9A.6(b)11ix ARDA asks “based on the fact that the new Act was developed, in part, in order to separate timeshare from out of the scope of PREDFDA, is it still necessary to include this subsection? If so, why?”

RESPONSE: The legislative intent in separating timeshare from the scope of PREDFDA was to assign all regulatory authority to the Real Estate Commission in order to avoid the issues and inefficiencies that resulted from the shared regulatory authority between the two departments previously involved in their regulation. The Commission believes that retention of the subsection is not inconsistent with that legislative intent and that the subsection provides necessary regulatory safeguards for consumers.

COMMENT: ARDA suggests adding a new subparagraph N.J.A.C. 11:5-9A.7(b)7vi, that would provide for the following: "All accommodations, facilities and amenities of the timeshare plan will be delivered to the purchaser free and clear of all liens and encumbrances except for any purchase money financing that is granted to the purchaser."

RESPONSE: The Commission believes that the suggestion may have merit. However, the addition of this requirement would constitute a substantive change requiring an additional proposal and comment period and therefore cannot be implemented at this time. If upon further study the Department finds the additional requirement is compatible with the intentions of the Act and increases protection for New Jersey consumers, the Commission will propose the suggested requirement.

COMMENT: ARDA believes that the language in the N.J.A.C. 11:5-9A.7(c) is not consistent with the language and procedures set forth in the Act and the changes in the proposed regulations materially alter the meaning in the Act. Therefore, they recommend that the proposed regulation be modified to reflect the exact language in the Act.

RESPONSE: The Commission does not agree. N.J.S.A. 45:15-16.53c authorizes the Commission to implement the statutory exception "…subject to the rules and regulations adopted by the Commission." As proposed, the regulation provides a mechanism to implement a limited exemption from full registration for qualifying offerings while maintaining the core consumer protection and full disclosure requirements of the Act. The regulation prevents developers from using sham filings to market unregistered properties and evade full disclosure and rescission

requirements. It also prevents this exemption from being utilized by developers whose registrations were revoked for violations of this or prior Acts.

COMMENT: ARDA suggests adding the words “per project” after “$300” in N.J.A.C. 11:5-9A.7(c)4.

RESPONSE: The Commission agrees that the language needs clarification and upon adoption is adding the language “per notice filed in accordance with (c)1 above” to this paragraph. This additional text is consistent with the Commissioner’s intent in proposing this fee, as was set forth in the description of this provision in the Summary of the notice of proposal. That description stated that the developer was required to “file a notice with the Commission identifying the timeshare plan that it intends to offer” immediately prior to referring to the requirement that a developer filing such a notice “submit a fee of $300.00.”

COMMENT: ARDA recommends replacing the language in N.J.A.C. 11:5-9A.7(c)5 with the following: “If the offer is made to an owner who purchased a timeshare interest in a project whose registration is no longer active or has been terminated, such an offer can only be made if the registration was terminated in good standing as provided in N.J.S.A. 45:15-16.60c, 45:15-16.40c or 45:22A-31, as applicable.”

RESPONSE: The Commission believes that the language in the rule as proposed serves the same purpose as the suggestion and that the proposed language is clearer and more succinct.

COMMENT: With reference to N.J.A.C. 11.5-9A.8(a), ARDA suggests deleting language starting with "and shall disclose any known or estimated additional assessments or costs to the purchaser." A "potential compromise" which they suggest is to "simply have a general disclosure that 'other charges and fees may apply in addition to the listed purchase price'."

RESPONSE: The Commission believes that advertisements that refer to the price of a timeshare should include all known costs to the purchaser so as to correctly reflect the consumers' actual and anticipated outlay of funds.

COMMENT: ARDA states that N.J.A.C. 11:5-9A.8(a)1 ("no advertisement shall refer to a price increase unless the amount and date of the increase are indicated,") is already covered in section 21.1 of the Act so this paragraph can be deleted.

RESPONSE: The Commission does not agree and believes that in order to provide an adequate level of consumer protection, this requirement should also be included in the rules.

COMMENT: ARDA believes that N.J.A.C. 11.5-9A.8(e) is unclear and, if it is essential, then it should be clarified or deleted altogether. Specifically, they state that they do not know what the phrase "owners of timeshare plans" means.

RESPONSE: The Commission believes that the phrase "owners of timeshare plans" as used in N.J.A.C. 11:5-9A.8(e) is clear and unambiguous and means a developed seeking to market or sell units in an unregistered timeshare plan in New Jersey.

COMMENT: ARDA suggests the following alternative language for N.J.A.C. 11.5-9A.8(f) which they believe clarifies the intent and wording of the subsection: "Any advertisement, including those which contain offers of reimbursement of travel expenses and/or offers of premiums or other inducements shall not be exempt from **[**also comply with**]** the provisions of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. solely based on the fact that such offers may also be regulated pursuant to this Act."

RESPONSE: The Commission believes that the original language better reflects the Commission's intent that the advertising must comply with N.J.S.A. 56:8-1 et seq. in order to best protect the consumer.

COMMENT: ARDA suggests adding a provision to N.J.A.C. 11:5-9A.9(b) with respect to inspections, "to be consistent with the our recommended changes as set forth in N.J.A.C. 11:5-9A above." In addition, they suggest adding the term "reasonable" in front of "The" in the first sentence.

RESPONSE: As N.J.A.C. 11:5-9A encompasses the entire subchapter, the comment is unclear as to specifically what is being suggested. Further, the Commission believes that the addition of the word "reasonable" is unnecessary as at N.J.S.A. 45:15-16.64b, the Act specifies that the Commission may provide by regulation for fees to cover reasonable expenses.

Summary of Agency-Initiated Change:

The Department has been made aware of a typographical error in the text of N.J.A.C. 11:5-9A.7(c) in which the second usage of the noun "State" was not capitalized. Accordingly the Department is correcting that error with an agency-initiated change which does not require additional notice and opportunity to comment. See N.J.A.C. 1:30-6.3(c).

Federal Standards Statement

A Federal standards analysis is not required because the Act and these adopted rules and amendments are not subject to any Federal requirements or standards.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *__thus__*; deletions from the proposal indicated in brackets with asterisks *[thus]*):

11:5-9A.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Abbreviated registration" means an expedited filing procedure for those out-of-State filings that are located in a [State]*__state*__ or jurisdiction where the disclosure requirements are substantially equivalent or greater than those required under the Act.

. . .

11:5-9A.5 Amendments to registrations and to public offering statements

(a) The registrant shall *[immediately]* file with the Commission amendments to its registration application and/or public offering statement reflecting any material or adverse change(s) in previously supplied information or documents ***in accordance with N.J.S.A. 45:15-16.60b(1)*,** in order to ensure that the information provided to purchasers is current.

(b)-(d) (No change from proposal.)

(e) Unless otherwise permitted by the Act, no revised public offering statement shall be given to prospective purchasers without the approval of the Commission.

1. Applications for approval of an amended or corrected public offering statement shall be made by filing a red-lined copy ***or other submission utilizing a similar method of clearly showing the differences between the current and previously submitted drafts*** of the proposed revised public offering statement with the Commission and an application update.

(f) - (g) (No change from proposal.)

11:5-9A.6 Public offering statements

(a) (No change from proposal.)

(b) The public offering statement shall disclose fully and accurately the characteristics of the timeshare plan offered and shall make known to prospective purchasers all unusual and material circumstances and features affecting the timeshare plan. The public offering statement shall be in clear and concise language and combine simplicity and accuracy in order to fully advise purchasers of their rights, privileges, obligations and restrictions.

1. The public offering statement shall be in a form *[designated]* ***authorized*** by the Commission. No change in form shall be made without the consent of the Commission.

2. and 3. (No change from proposal.)

4. Applicants and registrants shall *[immediately]* report to the Commission any material change, as defined in N.J.A.C. 11:5-9A.5, in the information contained in any proposed or approved public offering statement ***in accordance with N.J.S.A. 45:15-16.60b(1)*** and shall simultaneously submit a request for approval of the appropriate amendments.

5. – 12. (No change from proposal.)

11:5-9A.7 Exemptions

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

(c) Any offering under this subsection may only be made to those persons who are current bona fide owners of an interest in a timeshare plan currently registered under the Act or previously registered under the Act, or under N.J.S.A. 45:15-16.27 et seq. or the Planned Real Estate Development Full Disclosure Act, N.J.S.A. 45:22A-21 et seq., by the same developer making the offer. A developer of a timeshare plan that either is or was so registered may offer and dispose of an interest in another timeshare plan created by that developer that is located outside of this State and not registered under the Act to a person in this **[**state**]** ***State*** who is a current owner of an interest in the currently or previously registered timeshare plan provided that:

1. – 3. (No change from proposal.)

4. The developer submits a fee of $300.00 ***per notice filed in accordance with (c)1 above.*** ; and

5. (No change from proposal.)

inoregs/bgtimeshare.adopt