

§ 78C-19. Denial, revocation, suspension, bar, censure, cancellation, and withdrawal of registration.

(a) The Administrator may by order deny, suspend or revoke any registration, or bar or censure any registrant or any officer, director, partner or person occupying a similar status or performing similar functions for a registrant, from employment with a registered investment adviser, or restrict or limit a registrant as to any function or activity of the business for which registration is required in this State if he finds:

- (1) That the order is in the public interest and;
- (2) That the applicant or registrant or, in the case of an investment adviser, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the investment adviser;
 - a. Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;
 - b. Has willfully violated or willfully failed to comply with any provision of this Chapter or Chapter 78A or any rule or order under this Chapter or Chapter 78A;
 - c. Has been convicted, within the past 10 years, of any misdemeanor involving a security or the financial services business, or any aspect of the securities business, or the financial services business, or any felony;
 - d. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities or financial services business;
 - e. Is the subject of an order of the Administrator denying, suspending, barring, revoking, restricting or limiting registration as a dealer, salesman, investment adviser or investment adviser representative;
 - f. Is the subject of an adjudication or determination within the past five years by a securities, commodities or other financial services regulatory agency or an administrator of such laws of another state or a court of competent jurisdiction that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940 or the Commodity Exchange Act, or the securities or commodities law of any other state or any other financial services regulatory laws as the Administrator may designate by rule;
 - g. Has engaged in dishonest or unethical practices in the securities or financial services business;
 - h. Is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the Administrator may not enter an order against an investment adviser under this clause without a finding of insolvency as to the investment adviser;
 - i. Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except as otherwise provided in subsection (b) of this section;

- j. Has failed reasonably to supervise his salesmen or employees if he is a dealer or his investment adviser representatives or employees if he is an investment adviser to assure their compliance with this Chapter; or
- k. Has failed to pay the proper filing fee; but the Administrator may enter only a denial order under this clause, and he shall vacate any such order when the deficiency has been corrected.

The Administrator may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him when registration became effective unless the proceeding is instituted within the next 120 days.

(b) The following provisions govern the application of G.S. 78C-19(a)(2)i:

- (1) The Administrator may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than (i) the investment adviser himself if he is an individual or (ii) an investment adviser representative.
- (2) The Administrator may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both.
- (3) The Administrator shall consider that an investment adviser representative who will work under the supervision of a registered investment adviser need not have the same qualifications as an investment adviser.
- (4) The Administrator shall consider that an investment adviser or investment adviser representative is not necessarily qualified solely on the basis of experience as a dealer or salesman.
- (5) The Administrator may by rule provide for an examination, including an examination developed or approved by an organization of securities administrators, which examination may be written or oral or both, to be taken by any class of or all applicants. The Administrator may by rule or order waive the examination requirement as to a person or class of persons if the Administrator determines that the examination is not necessary for the protection of advisory clients.

(c) The Administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the Administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an investment adviser representative, that it has been entered and of the reasons therefor and that within 20 days after the receipt of a written request the matter will be scheduled for hearing in accordance with Chapter 150B of the General Statutes. If no request for a hearing, other responsive pleading, or submission is received by the Administrator within 30 business days of receipt of service of notice of the order upon the applicant or registrant and no hearing is ordered by the Administrator, the order shall become final and remain in effect unless it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(d) If the Administrator finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as an investment adviser or investment adviser representative, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the Administrator may by order cancel the registration or application.

(e) Withdrawal from registration as an investment adviser or investment adviser representative becomes effective 90 days after receipt of an application to withdraw or within such shorter period of time as the Administrator may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within 90 days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the Administrator by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Administrator may nevertheless institute a revocation or suspension proceeding under G.S. 78C-19(a)(2)b within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

(f) No order may be entered under any part of this section except the first sentence of subsection (c) of this section without (i) appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an investment adviser representative), (ii) opportunity for hearing, and (iii) written findings of fact and conclusions of law. (1987 (Reg. Sess., 1988), c. 1098, s. 1; 1997-462, s. 7; 2001-126, s. 5.)