

Article 4.

Registration and Notice Filing Procedures of Securities.

**§ 78A-24. Registration requirement.**

It is unlawful for any person to offer or sell any security in this State unless (i) it is registered under this Chapter, (ii) the security or transaction is exempted under G.S. 78A-16 or 78A-17 and such exemption has not been denied or revoked under G.S. 78A-18, or (iii) it is a security covered under federal law. (1925, c. 190, s. 6; 1927, c. 149, s. 6; 1955, c. 436, s. 4; 1973, c. 1380; 1997-419, ss. 6, 7.)

**§ 78A-25. Registration by notification.**

(a) The following securities may be registered by notification whether or not they are also eligible for registration by coordination under G.S. 78A-26:

- (1) Any security whose issuer and any predecessors have been in continuous operation for at least five years if
  - a. There has been no default during the current fiscal year or within the three preceding fiscal years in the payment of principal, interest, dividends, or distributions on any security of the issuer (or any predecessor) with a fixed maturity or a fixed interest or dividend or distribution provision, and
  - b. The issuer and any predecessors during the past three fiscal years have had average net earnings, determined in accordance with generally accepted accounting principles, (i) which are applicable to all securities without a fixed maturity or a fixed interest or dividend or distribution provision outstanding at the date the registration statement is filed and equal at least five percent (5%) of the amount of such outstanding securities (as measured by the maximum offering price or the market price on a day, selected by the registrant, within 30 days before the date of filing the registration statement, whichever is higher, or book value on a day, selected by the registrant, within 90 days of the date of filing the registration statement to the extent that there is neither a readily determinable market price nor a cash offering price), or (ii) which, if the issuer and any predecessors have not had any security of the type specified in clause (i) outstanding for three full fiscal years, equal at least five percent (5%) of the amount (as measured in clause (i)) of all securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this State) are issued;
- (2) Any security (other than a certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease) registered for nonissuer distribution if (i) any security of the same class has been registered under this Chapter or a predecessor law within five years of the date of filing the registration statement, or (ii) the security being registered was originally issued within five years of the date of filing the registration statement pursuant to an exemption under this Chapter or a predecessor law;

- (3) Any bonds or notes secured by a first mortgage upon agricultural lands used and valuable for agricultural purposes (not including oil, gas or mining property or leases) and the principal value of the bonds or notes does not exceed sixty percent (60%) of the then fair market value of the lands and improvements thereon;
- (4) Any bonds or notes secured by a first mortgage on city, town, or village real estate situated in any state or in Canada if the principal value of the bonds and notes does not exceed sixty percent (60%) of the fair market value of the land and improvements thereon and the real estate is used principally to produce through rental a net annual income or has a fair net rental value at least equal to the annual interest on the bonds and notes, plus not less than three percent (3%) of the principal of said mortgage indebtedness;
- (5) Any bond or note secured by a first lien on collateral pledged as security with a bank or trust company as trustee, which bank or trust company is incorporated under the laws of and subject to examination and supervision by the United States or by a state of the United States, and which collateral shall consist of (i) a principal amount of first mortgage bonds or notes meeting the requirements of G.S. 78A-25(a)(3) or 78A-25(a)(4) or (ii) a principal amount of obligations of the United States or (iii) cash equal to not less than one hundred percent (100%) of the principal secured, or (iv) a principal amount of obligations meeting the requirements of (i), (ii) or (iii) of this subdivision in any combination.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in G.S. 78A-28(c) and the consent to service of process required by G.S. 78A-63(f):

- (1) A statement demonstrating eligibility for registration by notification;
- (2) With respect to the issuer and any significant subsidiary: its name, address, and form of organization; the state (or foreign jurisdiction) and the date of its organization; and the general character and location of its business;
- (3) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; and a statement of his reasons for making the offering;
- (4) A description of the security being registered;
- (5) The information and documents specified in subdivisions (8), (10) and (12) of G.S. 78A-27(b); and
- (6) In the case of any registration under G.S. 78A-25(a)(2) which does not also satisfy the conditions of G.S. 78A-25(a)(1), a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement, and a summary of earnings for each of the two fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than two years.

(c) If no stop order is in effect and no proceeding is pending under G.S. 78A-29, a registration statement under this section automatically becomes effective at three o'clock Raleigh, North Carolina time in the afternoon of the tenth full business day after the filing of the registration

statement or the last amendment, or at such earlier time as the Administrator determines. (1927, c. 149, s. 8; 1955, c. 436, s. 6; 1973, c. 1380; 1975, c. 144, s. 1; 2001-201, s. 13; 2003-413, s. 2.)

**§ 78A-26. Registration by coordination.**

(a) Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in G.S. 78A-28(c) and the consent to service of process required by G.S. 78A-63(f):

- (1) One copy of the latest form of prospectus filed under the Securities Act of 1933;
- (2) A copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;
- (3) If the Administrator requests, any other information or copies of any other documents filed under the Securities Act of 1933; and
- (4) An undertaking to forward all future amendments to the federal prospectus, other than an amendment which merely delays the effective date of the registration statement, promptly and in any event not later than the first business day after they are forwarded to or filed with the Securities and Exchange Commission, whichever first occurs.

(c) A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied: (i) no stop order is in effect and no proceeding is pending under G.S. 78A-29; (ii) the registration statement has been on file with the Administrator for at least 10 days; and (iii) a statement of the maximum proposed offering price and the maximum underwriting discounts and commissions expressed as a percentage of the final offering price has been on file for two full business days or such shorter period as the Administrator permits by rule or otherwise and the offering is made within those limitations. The registrant shall promptly notify the Administrator by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the Administrator may enter a stop order without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection, if he promptly notifies the registrant by telephone or telegram (and promptly confirms by letter or telegram when he notifies by telephone) of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and post-effective amendment, the stop order is void as of the time of its entry. The Administrator may by rule or otherwise waive either or both of the conditions specified in clauses (ii) and (iii). If the federal registration statement becomes effective before all the conditions in this subsection are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the Administrator of the date when the federal registration

statement is expected to become effective, the Administrator shall promptly advise the registrant by telephone or telegraph, at the registrant's expense, whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under G.S. 78A-29; but this advice by the Administrator does not preclude the institution of such a proceeding at any time. (1925, c. 190, s. 6; 1927, c. 149, s. 6; 1955, c. 436, s. 4; 1973, c. 1380; 1981, c. 624, s. 6.)

**§ 78A-27. Registration by qualification.**

(a) Any security may be registered by qualification upon the following conditions.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in G.S. 78A-28(c) and the consent to service of process required by G.S. 78A-63(f):

- (1) With respect to the issuer and any significant subsidiary: its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;
- (2) With respect to every director and officer of the issuer or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past five years; the amount of securities of the issuer held by him as of a specified date within 30 days of the filing of the registration statement; the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected;
- (3) With respect to persons covered by subdivision (2): the remuneration paid during the past 12 months or fiscal year and estimated to be paid during the next fiscal year, directly or indirectly, by the issuer (together with all predecessors, parents, subsidiaries, and affiliates) to all those persons in the aggregate;
- (4) With respect to any person owning of record or beneficially if known, ten percent (10%) or more of the outstanding shares of any class of equity security of the issuer: the information specified in subdivision (2) other than his occupation;
- (5) With respect to every promoter if the issuer was organized within the past three years: the information specified in subdivision (2), any amount paid to him within that period or intended to be paid to him, and the consideration for any such payment;
- (6) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected; and a statement of his reasons for making the offering;
- (7) The capitalization and long-term debt (on both current and a pro forma basis) of the issuer and any significant subsidiary including a description of each security outstanding or being registered or otherwise offered, and a statement

of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past three years or is obligated to issue any of its securities;

- (8) The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately, cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering) or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;
- (9) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amount of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition (including the cost of borrowing money to finance the acquisition);
- (10) A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in subdivisions (2), (4), (5), (6), or (8) and by any person who holds or will hold ten percent (10%) or more in the aggregate of any such options;
- (11) The dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);
- (12) A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection

with the offering; if the security is a viatical settlement contract, the prospectus and advertising shall comply with G.S. 78A-13 and G.S. 78A-14 relating to the offering of viatical settlement contracts;

- (13) A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;
- (14) A signed or conformed copy of an opinion of counsel as to the legality of the security being registered (with an English translation if it is in a foreign language), which shall state whether the security when sold will be legally issued, fully paid, and nonassessable, and, if a debt security, a binding obligation of the issuer;
- (15) The written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if any such person is named as having prepared or certified a report or valuation (other than a public and official document or statement) which is used in connection with the registration statement;
- (16) A balance sheet of the issuer as of a date within four months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant; and
- (17) Such additional information as the Administrator requires by rule or order.

(c) A registration statement under this section becomes effective when the Administrator so orders.

(d) The Administrator may by rule (or order) require as a condition of registration under this section that a prospectus containing any designated part of the information specified in subsection (b) be sent or given to each person to whom an offer is made before or concurrently with (i) the first written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution, (ii) the confirmation of any sale made by or for the account of any such person, (iii) payment pursuant to any such sale, or (iv) delivery of the security pursuant to any such sale, whichever first occurs. (1927, c. 149, s. 9; 1955, c. 436, s. 7; 1973, c. 1380; 1975, c. 19, s. 21; 2001-436, s. 9.)

#### **§ 78A-28. Provisions applicable to registration generally.**

(a) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered dealer.

(b) Every person filing a registration statement shall pay a filing fee of two thousand dollars (\$2,000). When a registration statement is withdrawn before the effective date or a pre-effective stop order is entered under G.S. 78A-29, the Administrator shall retain the filing fee. A registration statement relating to redeemable securities to be offered for a period in excess of

one year, other than securities covered under federal law, must be renewed annually by payment of a renewal fee of one hundred dollars (\$100.00) and by filing any documents or reports that the Administrator may by rule or order require.

(c) Every registration statement shall specify (i) the amount of securities to be offered in this State; (ii) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed; and (iii) any adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the Securities and Exchange Commission.

(d) Any document filed under this Chapter or a predecessor law within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

(e) The Administrator may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(f) In the case of a nonissuer distribution, information may not be required under G.S. 78A-27 or 78A-28(i) unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

(g) The Administrator may by rule or order require as a condition of registration by qualification or coordination (i) that any security issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and (ii) that the proceeds from the sale of the registered security in this State be impounded until the issuer receives a specified amount from the sale of the securities either in this State or elsewhere. The Administrator may by rule or order determine the conditions of any escrow or impounding required hereunder, but he may not reject a depository solely because of location in another state.

(h) Except during the time a stop order is in effect under G.S. 78A-29, a registration statement relating to redeemable securities to be offered for a period in excess of one year, other than securities covered under federal law, expires on December 31 of each year or some other date not more than one year from its effective date as the Administrator may by rule or order provide. Every other registration statement is effective for one year from its effective date, or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution, except during the time a stop order is in effect under G.S. 78A-29. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction (i) so long as the registration statement is effective and (ii) between the thirtieth day after the entry of any stop order suspending or revoking the effectiveness of the registration statement under G.S. 78A-29 (if the registration statement did not relate in whole or in part to a nonissuer distribution) and one year from the effective date of the registration statement. A registration statement may not be withdrawn for one year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the Administrator.

(i) So long as a registration statement is effective, the Administrator may by rule or order require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose progress of the offering.

(j) A registration statement filed in accordance with subsection (b) of this section may be amended after its effective date to increase the securities specified as proposed to be offered. Such an amendment becomes effective when the Administrator so orders. Every person filing such an amendment shall pay a filing fee of fifty dollars (\$50.00) with respect to the additional securities proposed to be offered. (1973, c. 1380; 1979, 2nd Sess., c. 1148, s. 1; 1981, c. 452; c. 624, s. 3; c. 682, s. 14; 1983, c. 713, ss. 45-47; 1998-212, s. 29A.9(b).)

**§ 78A-29. Denial, suspension, and revocation of registration.**

(a) The Administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he finds

- (1) That the order is in the public interest and
- (2) That:
  - a. The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment under G.S. 78A-28(j) as of its effective date, or any report under G.S. 78A-28(i) is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact; or
  - b. Any provision of this Chapter or any rule, order, or condition lawfully imposed under this Chapter has been willfully violated, in connection with the offering, by (i) the person filing the registration statement, (ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or (iii) any underwriter; or
  - c. The security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; but (i) the Administrator may not institute a proceeding against an effective registration statement under paragraph c more than one year from the date of the order or injunction relied on, and (ii) he may not enter an order under paragraph c on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section; or
  - d. The issuer's enterprise or method of business includes or would include activities which are illegal where performed; or
  - e. The offering has worked or tended to work a fraud upon purchasers or would so operate; or
  - f. The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options; or



- g. When a security is sought to be registered by notification, it is not eligible for such registration; or
- h. When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by G.S. 78A-26(b)(4); or
- i. The applicant or registrant has failed to pay the proper fees; but the Administrator may enter only a denial order under this paragraph and he shall vacate any such order when the deficiency has been corrected.

The Administrator may not institute a stop-order proceeding against an effective registration statement on the basis of a fact or transaction known to him when the registration statement became effective unless the proceeding is instituted within the next 30 days.

(b) The following provisions govern the application of G.S. 78A-29(a)(2)f:

- (1) The Administrator may not enter a stop order against a registration statement based on one or more of the grounds set forth in paragraph f of G.S. 78A-29(a)(2) if the offering, or the dealer, or any dealers, making or participating in the offering, is subject to rules, promulgated by any national securities association registered with the Securities and Exchange Commission pursuant to section 15A of the Securities Exchange Act of 1934, providing safeguards against unreasonable profits or unreasonable rates or commissions or other charges, and such rules are complied with.
- (2) The Administrator may by rule or order require such evidence of compliance with such rules as he may deem advisable.

(c) The Administrator may by order summarily postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding under this section. Upon the entry of the order, the Administrator shall promptly notify each person specified in subsection (d) 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 hearing is requested and none is ordered by the Administrator, the order will remain in effect until it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of an opportunity for hearing to each person specified in subsection (d), may modify or vacate the order or extend it until final determination.

(d) No stop order may be entered under any part of this section except the first sentence of subsection (c) without (i) appropriate prior notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered, (ii) opportunity for hearing, and (iii) written findings of fact and conclusions of law.

(e) The Administrator may vacate or modify a stop order if he finds that the conditions which prompted entry have changed or that it is otherwise in the public interest to do so. (1973, c. 1380; 2001-126, s. 2.)

**§ 78A-30. Application to exchange securities.**

(a) When application is made for approval to issue securities or to deliver other consideration (whether or not the security or transaction is exempt from registration or qualification other than by the provisions of G.S. 78A-17(16) or not required to be qualified) in exchange for one or more bona fide securities, claims, or property interests, or partly in such exchange and partly in cash, the Administrator is expressly authorized to approve the terms and conditions of such issuance and exchange or such delivery and exchange and the fairness of such

terms and conditions, and is expressly authorized to hold a hearing upon the fairness of such terms and conditions, at which all persons to whom it is proposed to issue securities or to deliver such other consideration in such exchange have the right to appear. Notice of such hearing shall be mailed by United States Mail, Postage Prepaid, to all persons to whom it is proposed to issue securities or to deliver such other consideration in such exchange, not less than 10 days prior to such hearing, and such notice shall be effective upon mailing. The application for approval to issue securities or to deliver other consideration shall be in such form, contain such information and be accompanied by such documents as shall be required by rule or order of the Administrator.

(b) The Administrator shall be required to hold a hearing on an application for approval within 30 days after the filing of the application and supporting documents required by rule of the Administrator. Provided, however, if the securities or the transaction regarding which the fairness hearing is sought are otherwise exempt from the registration provisions of this Chapter: (1) the Administrator shall have until 45 days after the filing of the application and supporting documents to hold a hearing on the application for approval; and (2) the hearing on the application shall not be held until at least 10 business days after the filing of the application.

(c) Within 10 business days after holding the hearing under subsection (a), the Administrator shall issue his approval or a statement that his approval will not be forthcoming.

(d) The Administrator's authority under this section shall extend to the issuance or the delivery of securities or other consideration:

- (1) By any entity organized under the laws of this State; or
- (2) In any transaction which is subject to the registration or qualification requirements of this Chapter or which would be so subject except for the availability of an exemption under G.S. 78A-16 or G.S. 78A-17, or by reason that the security is a security covered under federal law.

(e) The provisions of this section shall be permissive only and no request for approval, failure to request approval, withdrawal of a request for approval, or denial of approval by the Administrator shall affect the availability of any exemption from the registration or qualification requirements other than the exemption available under G.S. 78A-17(16), and shall not be admissible as evidence in any legal or administrative proceeding.

(f) This section is intended to provide for a fairness hearing before the Administrator with respect to transactions which, if approved by the Administrator, would be exempt from the registration requirements of the federal securities laws under section 3(a)(10) of the Securities Act of 1933, or any section comparable thereto which may subsequently be enacted.

(g) The Administrator shall charge a fee for a fairness hearing that the Administrator holds under this section. The Administrator shall set the fee based upon the time and expenses incurred by the Administrator. The fee may not be less than five hundred dollars (\$500.00), and it may not exceed five thousand dollars (\$5,000). (1979, c. 647, ss. 2, 3; 1987, c. 849, s. 8; 1997-419, s. 8; 1998-212, s. 29A.9(c); 2001-201, s. 14.)

### **§ 78A-31. Notice filings for securities covered under federal law.**

(a) The Administrator, by rule or order, may require the filing of any of the following documents with regard to a security (i) issued by an investment company that is registered or has filed a registration statement under the Investment Company Act of 1940 and (ii) covered under section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(2)):

- (1) Prior to the initial offer of the security in this State, all documents that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, or, in lieu thereof, a form prescribed by the Administrator, together with a consent to service of process signed by the issuer and with the payment of a notice filing fee equal to the sum of one thousand seven hundred twenty-five dollars (\$1,725) and two hundred seventy-five dollars (\$275.00) for each series, fund, or portfolio offered in this State and listed in the federal registration statement.
- (2) After the initial offer of the security in this State, all documents that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, or, in lieu thereof, a form prescribed by the Administrator, which shall be filed concurrently with the Administrator.
- (3) A report of the value of securities covered under federal law that are offered or sold in this State.
- (4) A notice filing pursuant to this section shall expire on December 31 of each year or some other date not more than one year from its effective date as the Administrator may by rule or order provide. A notice filing of the offer of securities covered under federal law that are to be offered for a period in excess of one year shall be renewed annually by payment of a renewal fee equal to the sum of one thousand seven hundred twenty-five dollars (\$1,725) and two hundred seventy-five dollars (\$275.00) for each series, fund, or portfolio offered in this State and listed in the federal registration statement and by filing any documents and reports that the Administrator may by rule or order require consistent with this section. The renewal shall be effective upon the expiration of the prior notice period.
- (5) A notice filed in accordance with this section may be amended after its effective date to increase the securities specified as proposed to be offered. An amendment becomes effective upon receipt by the Administrator. Every person submitting an amended notice filing shall pay a filing fee of fifty dollars (\$50.00) with respect to the additional securities proposed to be offered.

(b) With regard to any security that is covered under section 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(4)(d)), the Administrator, by rule or order, may require the issuer to file a notice on SEC Form D (17 C.F.R. § 239.500) and a consent to service of process signed by the issuer no later than 15 days after the first sale of the security in this State. There is established a fee of three hundred fifty dollars (\$350.00) to recover costs for filing required by this section.

(c) The Administrator, by rule or order, may require the filing of any document filed with the Securities and Exchange Commission under the Securities Act of 1933, with respect to a security covered under section 18(b)(3) or (4) of the Securities Act of 1933 (15

U.S.C. § 77r(b)(3) or (4)). The Administrator may, by rule, establish a fee to recover costs for any filing required under this section, not to exceed one hundred fifty dollars (\$150.00).

(d) The Administrator may suspend the offer and sale of a covered security, except a covered security under section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(1)), if the Administrator finds that (i) the order is in the public interest, and (ii) there is a failure to comply with any condition established under this section.

(e) The Administrator, by rule or order, may waive any of the requirements set by this section. (1997-419, s. 9; 1998-212, s. 29A.9(d); 2002-126, ss. 29A.24, 29A.37; 2002-189, s. 4; 2003-284, s. 35B.2(a); 2008-107, s. 29.3(a); 2011-145, s. 31.27A(a).)

**§§ 78A-32 through 78A-35. Reserved for future codification purposes.**