Article 3.

Registration and Notice Filing Procedures of Investment Advisers and Investment Adviser Representatives.

§ 78C-16. Registration and notice filing requirement.

(a) It is unlawful for any person to transact business in this State as an investment adviser unless:

(1) The person is registered under this Chapter;

(2) The person's only clients in this State are investment companies as defined in the Investment Company Act of 1940, other investment advisers, investment advisers covered under federal law, dealers, banks, trust companies, savings institutions, savings and loan associations, insurance companies, employee benefit plans with assets of not less than one million dollars ($1,000,000), and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the Administrator;

(3) The person has no place of business in this State, and during the preceding 12-month period has had not more than five clients, other than those specified in subdivision (2) of this subsection, who are residents of the State; or

(4) The person, during the course of the preceding 12 months, has had fewer than 15 clients, and neither holds himself or herself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under the Investment Company Act of 1940, or a company that has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940.

(a1) It is unlawful for any person to transact business in this State as an investment adviser representative unless:

(1) The person is registered under this Chapter; or

(2) The person is an investment adviser representative employed by or associated with an investment adviser exempt from registration under subdivision (2), (3), or (4) of subsection (a) of this section; or

(3) The person is an investment adviser representative employed by or associated with an investment adviser covered under federal law that is exempt from the notice filing requirements of G.S. 78C-17(a1).

(b) It is unlawful for any person required to be registered as an investment adviser under this Chapter to employ an investment adviser representative unless the investment adviser representative is registered under this Chapter. The registration of an investment adviser representative is not effective during any period when the investment adviser representative is not employed by (i) an investment adviser registered under this Chapter; or (ii) an investment adviser covered under federal law who has made a notice filing pursuant to the provisions of G.S. 78C-17(a1). When an investment adviser representative begins or terminates employment or association with an investment adviser who is registered under this Chapter, the investment adviser shall notify promptly the Administrator. When an investment adviser representative begins or terminates employment or association with an investment adviser covered under federal law, the investment adviser representative shall, and the investment adviser may, notify promptly the Administrator.

(b1) No investment adviser representative may be registered with more than one investment adviser registered under this Chapter or investment adviser covered under federal law unless each of the investment advisers which employs or associates the investment adviser representative is under common ownership or control.

(b2) Notwithstanding subsection (b1) of this section, an investment adviser representative may be registered with more than one investment adviser registered under this Chapter or investment adviser covered under federal law for the purposes of soliciting, offering, or negotiating for the sale of, or for selling investment advisory services for or on behalf of, those investment advisers. If an investment adviser representative is registered with more than one investment adviser pursuant to this subsection, the representative shall be registered separately with each investment adviser for whom the representative solicits business and shall provide in writing to each person solicited any information disclosing the terms of any compensation arrangement that is related to the representative's solicitation or referral activities and that is required by the Administrator pursuant to rule or order. The Administrator may, by rule or order, specify supervisory procedures consistent with regulations adopted by the United States Securities and Exchange Commission applicable to investment advisers who compensate persons for referrals of business.

(c) Every registration or notice filing expires December 31 of each year unless renewed.

(d) It is unlawful for any investment adviser covered under federal law to conduct advisory business in this State unless the investment adviser covered under federal law complies with the provisions of G.S. 78C-17(a1). (1987 (Reg. Sess., 1988), c. 1098, s. 1; 1997-419, ss. 15, 16; 1998-217, s. 9; 2001-273, s. 2; 2003-413, ss. 17, 18; 2013-91, s. 3(h).)

§ 78C-17. Registration and notice filing procedures.

(a) An investment adviser, or investment adviser representative may obtain an initial or renewal registration by filing with the Administrator or the Administrator's designee an application together with a consent to service of process pursuant to G.S. 78C-46(b) and paying any reasonable costs charged by the designee for processing the filings. The application shall contain whatever information the Administrator by rule requires concerning such matters as:

(1) The applicant's form and place of organization;
(2) The applicant's proposed method of doing business;
(3) The qualifications and business history of the applicant; in the case of an investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the investment adviser;
(4) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;
(5) The applicant's financial condition and history; and
(6) Any information to be furnished or disseminated to any client or prospective client.

If no denial order is in effect and no proceeding is pending under G.S. 78C-19, registration becomes effective at noon of the 30th day after an application is filed. The Administrator may by rule or order specify an earlier effective date and may by order defer the effective date until noon of the 30th day after the filing of any amendment. Registration of an investment adviser automatically

constitutes registration of any investment adviser representative who is a partner, executive officer, or director, or a person occupying a similar status or performing similar functions. After the Administrator institutes a proceeding under G.S. 78C-19 to postpone or deny an application for registration, withdrawal of the application shall be allowed only at such time and under such conditions as the Administrator may by order determine.

(a1) The Administrator may require investment advisers covered under federal law to file with the Administrator any documentation filed with the Securities and Exchange Commission as a condition of doing business in this State. This subsection does not apply to (i) an investment adviser covered under federal law whose only clients are those described in G.S. 78C-16(a)(2), or (ii) an investment adviser covered under federal law who has no place of business in this State, and during the preceding 12-month period has had not more than five clients, other than those described in G.S. 78C-16(a)(2), who are residents of this State. A notice filing under this section may be renewed by (i) filing documents required by the Administrator and filed with the Securities and Exchange Commission, prior to the expiration of the notice filing, and (ii) paying the fee required under subsection (b1) of this section. A notice filed under this section may be terminated by the investment adviser by providing the Administrator notice of the termination, which shall be effective upon receipt by the Administrator.

(b) Every applicant for initial or renewal registration shall pay a filing fee of three hundred dollars ($300.00) in the case of an investment adviser, and seventy-five dollars ($75.00) in the case of an investment adviser representative. When an application is denied or withdrawn, the Administrator shall retain the fee.

(b1) Every person acting as an investment adviser covered under federal law in this State shall pay an initial filing fee of three hundred dollars ($300.00) and a renewal notice filing fee of three hundred dollars ($300.00).

(b2) Any person required to pay a fee under this section may transmit through any designee any fee required by this section or by the rules adopted pursuant to this section.

(c) A registered investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee.

(d) The Administrator may by rule establish minimum net capital requirements not to exceed one hundred thousand dollars ($100,000) for registered investment advisers, subject to the limitations of section 222 of the Investment Advisers Act of 1940 (15 U.S.C. § 80(b)-18a), which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over same and those investment advisers who do not.

(e) The Administrator may by rule require registered investment advisers who have custody of or discretionary authority over client funds or securities to post surety bonds in amounts up to one hundred thousand dollars ($100,000), subject to the limitations of section 222 of the Investment Advisers Act of 1940 (15 U.S.C. § 80(b)-18a), and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. No bond may be required of any investment adviser whose minimum net capital, which may be defined by rule, exceeds one hundred thousand dollars ($100,000). Every bond shall provide for suit thereon by any person who has a cause of action under G.S. 78C-38 and, if the Administrator by rule or order requires, by any person who has a cause of action not arising under this Chapter. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless

brought within the time limitations of G.S. 78C-38(d). (1987 (Reg. Sess., 1988), c. 1098, s. 1; 1997-419, s. 17; 2001-273, s. 3; 2002-126, s. 29A.35; 2002-189, ss. 2, 3; 2003-413, s. 19.)

§ 78C-18. Post-registration provisions.

(a) Every registered investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books and records as the Administrator by rule prescribes, subject to the limitations of section 222 of the Investment Advisers Act of 1940 (15 U.S.C. § 80(b)-18a).

All records so required shall be preserved for three years unless the Administrator by rule prescribes otherwise for particular types of records.

(b) With respect to investment advisers, the Administrator may require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the Administrator in his discretion, information furnished to clients or prospective clients of an investment adviser pursuant to the Investment Advisers Act of 1940 and the rules thereunder may be used in whole or partial satisfaction of this requirement.

(c) Every registered investment adviser shall file such financial reports as the Administrator by rule prescribes, subject to the limitations of section 222 of the Investment Advisers Act of 1940 (15 U.S.C. § 80(b)-18a).

(d) If the information contained in any document filed with the Administrator is or becomes inaccurate or incomplete in any material respect, the registrant or an investment adviser covered under federal law shall promptly file a correcting amendment, if the document is filed with respect to a registrant or when the amendment is required to be filed with the Securities and Exchange Commission with respect to an investment adviser covered under federal law, unless notification of the correction has been given under G.S. 78C-16(b).

(e) All the records referred to in subsection (a) of this section are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the Administrator, within or without this State, as the Administrator deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the Administrator, insofar as he deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934. (1987 (Reg. Sess., 1988), c. 1098, s. 1; 1997-419, s. 18.)

§ 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.)

§ 78C-20. Methods of registration.

(a) All applications for initial and renewal registrations or notice filings required under G.S. 78C-17 shall be filed with the Investment Adviser Registration Depository (IARD) operated by the National Association of Securities Dealers.

(b) Repealed by Session Laws 2001-273, s. 4, effective October 1, 2001.

(c) Nothing in this section shall be construed to prevent the exercise of the authority of the Administrator as provided in G.S. 78C-19. (1987 (Reg. Sess., 1988), c. 1098, s. 1; 2001-273, s. 4; 2002-159, s. 16.)

§§ 78C-21 through 78C-25: Reserved for future codification purposes.