

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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SENATE BILL 269

Short Title: Amend Investment Adviser Law-AB.

(Public)

Sponsors: Senator Hoyle.

Referred to: Commerce.

March 1, 2001

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE DEFINITION OF INVESTMENT ADVISER
2 REPRESENTATIVE; TO ALLOW MULTIPLE REGISTRATION OF
3 INVESTMENT ADVISER REPRESENTATIVES FOR CERTAIN PURPOSES;
4 AND TO REVISE THE REGISTRATION AND NOTICE FILING
5 PROCEDURES.
6

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 78C-2(3) reads as rewritten:

9 "(3) "Investment adviser representative" means, with respect to any
10 investment adviser registered under this Chapter, any partner, officer,
11 director (or a person occupying a similar status or performing similar
12 functions) or other individual employed by or associated with an
13 investment adviser, except clerical or ministerial personnel, who:

- 14 a. Makes any recommendations or otherwise renders advice
15 regarding securities directly to clients,
16 b. Manages accounts or portfolios of clients,
17 c. Determines which recommendations or advice regarding
18 securities should be given; provided, however if there are more
19 than five such persons employed by or associated with an
20 investment adviser, who do not otherwise come within the
21 meaning of G.S. 78C-2(3)a., b., d., or e., then only the direct
22 supervisors of such persons are deemed to be investment
23 adviser representatives under G.S. 78C-2(3)c.,
24 d. Solicits, offers or negotiates for the sale of or sells investment
25 advisory services, unless such person is a dealer or salesman
26 registered under Chapter 78A of the General Statutes and the
27 person would not be an investment adviser representative

1 except for the performance of the activities described in G.S.
2 78C-2(3)d., or

- 3 e. Directly supervises investment adviser representatives as
4 defined in G.S. 78C-2(3)a., b., c. (unless such investment
5 adviser representatives are already required to register due to
6 their role as supervisors by operation of G.S. 78C-2(3)c.), or d.
7 in the performance of the foregoing activities.

8 ~~With respect to any person that is registered or required to be~~
9 ~~registered under section 203 of the Investment Advisers Act of 1940~~
10 ~~(15 U.S.C. § 80b-3), "investment adviser representative" means any~~
11 ~~person who is defined as an "investment adviser representative"~~
12 ~~pursuant to rules or regulations adopted or promulgated by the~~
13 ~~Securities Exchange Commission pursuant to the Investment Advisers~~
14 ~~Act of 1940, and who has a place of business located in the State.~~

15 Notwithstanding this subdivision, the term "investment adviser
16 representative" as used in this Chapter and as applied to a person who
17 is employed by, or associated with, an investment adviser covered
18 under federal law only includes an individual who (i) has a "place of
19 business" in the State, as that term is defined in rules or regulations
20 adopted or promulgated under Section 203A of the Investment
21 Advisers Act of 1940 by the United States Securities and Exchange
22 Commission and (ii) either:

- 23 a. Is an "investment adviser representative" as that term is defined
24 in rules or regulations adopted or promulgated under Section
25 203A of the Investment Advisers Act of 1940 by the United
26 States Securities and Exchange Commission; or
27 b. Is not a "supervised person" as that term is defined in rules or
28 regulations adopted or promulgated under the Investment
29 Advisers Act of 1940 by the United States Securities and
30 Exchange Commission and who solicits, offers, or negotiates
31 for the sale of, or who sells, investment advisory services on
32 behalf of an adviser covered under federal law."

33 **SECTION 2.** G.S. 78C-16 reads as rewritten:

34 **"§ 78C-16. Registration and notice filing requirement.**

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

- 37 (1) The person is registered under this Chapter;
38 (2) The person's only clients in this State are investment companies as
39 defined in the Investment Company Act of 1940, other investment
40 advisers, investment advisers covered under federal law, dealers,
41 banks, trust companies, savings institutions, savings and loan
42 associations, insurance companies, employee benefit plans with assets
43 of not less than one million dollars (\$1,000,000), and governmental
44 agencies or instrumentalities, whether acting for themselves or as

1 trustees with investment control, or other institutional investors as are
2 designated by rule or order of the Administrator; or

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

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

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

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

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

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

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

33 (b2) Notwithstanding subsection (b1) of this section, an investment adviser
34 representative may be registered with more than one investment adviser registered
35 under this Chapter or investment adviser covered under federal law for the purposes of
36 soliciting, offering, or negotiating for the sale of, or for selling investment advisory
37 services for or on behalf of, those investment advisers. If an investment adviser
38 representative is registered with more than one investment adviser pursuant to this
39 subsection, the representative shall be registered separately with each investment
40 adviser for whom the representative solicits business and shall provide in writing to
41 each person solicited any information disclosing the terms of any compensation
42 arrangement that is related to the representative's solicitation or referral activities and
43 that is required by the Administrator pursuant to rule or order. The Administrator may,
44 by rule or order, specify supervisory procedures consistent with regulations adopted by

1 the United States Securities and Exchange Commission applicable to investment
2 advisers who compensate persons for referrals of business.

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

5 (d) It is unlawful for any investment adviser covered under federal law to
6 conduct advisory business in this State unless the investment adviser covered under
7 federal law complies with the provisions of G.S. 78C-17(a1)."

8 **SECTION 3.** S. 78C-17 reads as rewritten:

9 **"§ 78C-17. Registration and notice filing procedures.**

10 (a) An investment adviser, or investment adviser representative may obtain an
11 initial or renewal registration by filing with the Administrator or the Administrator's
12 designee an application together with a consent to service of process pursuant to ~~G.S.~~
13 ~~78C-46(b).~~ G.S. 78C-46(b) and paying any reasonable costs charged by the designee for
14 processing the filings. The application shall contain whatever information the
15 Administrator by rule requires concerning such matters as:

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

29 If no denial order is in effect and no proceeding is pending under G.S. 78C-19,
30 registration becomes effective at noon of the 30th day after an application is filed. The
31 Administrator may by rule or order specify an earlier effective date, and he may by
32 order defer the effective date until noon of the 30th day after the filing of any
33 amendment. Registration of an investment adviser automatically constitutes registration
34 of any investment adviser representative who is a partner, executive officer, or director,
35 or a person occupying a similar status or performing similar functions.

36 (a1) The Administrator may require investment advisers covered under federal
37 law to file with the Administrator any documentation filed with the Securities and
38 Exchange Commission as a condition of doing business in this State. This subsection
39 does not apply to (i) an investment adviser covered under federal law whose only clients
40 are those described in G.S. 78C-16(a)(2), or (ii) an investment adviser covered under
41 federal law who has no place of business in this State, and during the preceding
42 12-month period has had not more than five clients, other than those described in G.S.
43 78C-16(a)(2), who are residents of this State. A notice filing under this section may be
44 renewed by (i) filing documents required by the Administrator and filed with the

1 Securities and Exchange Commission, prior to the expiration of the notice filing, and
2 (ii) paying the fee required under subsection (b1) of this section. A notice filed under
3 this section may be terminated by the investment adviser by providing the Administrator
4 notice of the termination, which shall be effective upon receipt by the Administrator.

5 (b) Every applicant for initial or renewal registration shall pay a filing fee of two
6 hundred dollars (\$200.00) in the case of an investment adviser, and forty-five dollars
7 (\$45.00) in the case of an investment adviser representative. When an application is
8 denied or withdrawn, the Administrator shall retain the fee.

9 (b1) Every person acting as an investment adviser covered under federal law in
10 this State shall pay an initial filing fee of two hundred dollars (\$200.00) and a renewal
11 notice filing fee of two hundred dollars (\$200.00).

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

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

17 (d) The Administrator may by rule establish minimum net capital requirements
18 not to exceed one hundred thousand dollars (\$100,000) for registered investment
19 advisers, subject to the limitations of section 222 of the Investment Advisers Act of
20 1940 (15 U.S.C. § 80(b)-18a), which may include different requirements for those
21 investment advisers who maintain custody of clients' funds or securities or who have
22 discretionary authority over same and those investment advisers who do not.

23 (e) The Administrator may by rule require registered investment advisers who
24 have custody of or discretionary authority over client funds or securities to post surety
25 bonds in amounts up to one hundred thousand dollars (\$100,000), subject to the
26 limitations of section 222 of the Investment Advisers Act of 1940 (15 U.S.C. §
27 80(b)-18a), and may determine their conditions. Any appropriate deposit of cash or
28 securities shall be accepted in lieu of any bond so required. No bond may be required of
29 any investment adviser whose minimum net capital, which may be defined by rule,
30 exceeds one hundred thousand dollars (\$100,000). Every bond shall provide for suit
31 thereon by any person who has a cause of action under G.S. 78C-38 and, if the
32 Administrator by rule or order requires, by any person who has a cause of action not
33 arising under this Chapter. Every bond shall provide that no suit may be maintained to
34 enforce any liability on the bond unless brought within the time limitations of G.S.
35 78C-38(d)."

36 **SECTION 4.** 78C-20 reads as rewritten:

37 "**§ 78C-20. Alternative methods of registration.**

38 ~~(a) The Administrator may by rule or order provide an alternative method of~~
39 ~~registration by which any investment adviser or investment adviser representative may~~
40 ~~satisfy the requirements of this Article by furnishing the information otherwise required~~
41 ~~to be filed pursuant to this Article. The Administrator may provide for, among other~~
42 ~~things, alternative filing periods for investment advisers and investment adviser~~
43 ~~representatives, elimination of the issuance of a paper license and alternative methods~~
44 ~~for the payment and collection of initial or renewal filing fees, which shall be known as~~

1 ~~"alternative filing fees". The alternative filing fees shall be the same as provided in G.S.~~
2 ~~78C-17(b). All applications for initial and renewal registrations or notice filings~~
3 ~~required under G.S. 78C-17 shall be filed with the Investment Adviser Registration~~
4 ~~Depository (IARD) operated by the National Association of Securities Dealers.~~

5 ~~(b) The Administrator may not adopt an alternative method of registration unless~~
6 ~~its purpose is to facilitate a central registration depository whereby investment advisers~~
7 ~~and investment adviser representatives can centrally or simultaneously register and pay~~
8 ~~fees for all states in which they plan to transact business that require registration. The~~
9 ~~Administrator may enter into an agreement with or otherwise facilitate an alternative~~
10 ~~method of registration with any national securities association registered with the~~
11 ~~Securities and Exchange Commission pursuant to Section 15A of the Securities~~
12 ~~Exchange Act of 1934, any national securities exchange registered under the Securities~~
13 ~~Exchange Act of 1934, or any national association of state securities administrators or~~
14 ~~similar association to effectuate the provisions of this section.~~

15 ~~(c) Nothing in this section shall be construed to prevent the exercise of the~~
16 ~~authority of the Administrator as provided in G.S. 78C-19."~~

17 **SECTION 5.** This act becomes effective October 1, 2001, and applies to
18 applications for initial or renewal registrations and notice filings filed on or after that
19 date.