

§ 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.)