

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

4

SENATE BILL 439\*  
Commerce Committee Substitute Adopted 4/10/97  
Third Edition Engrossed 5/22/97  
House Committee Substitute Favorable 7/23/97

Short Title: Securities/Investment Advisers/AB.

(Public)

---

Sponsors:

---

Referred to:

---

March 20, 1997

1 A BILL TO BE ENTITLED  
2 AN ACT TO CONFORM THE NORTH CAROLINA SECURITIES ACT AND THE  
3 INVESTMENT ADVISERS ACT TO THE NATIONAL SECURITIES MARKETS  
4 IMPROVEMENT ACT OF 1996.

5 The General Assembly of North Carolina enacts:

6 **I. Securities**

7 Section 1. G.S. 78A-2(2)d.1. reads as rewritten:

8 "1. The security is exempted under subdivisions (1), (2), (3),  
9 (4), (5), (7), (9), (10), (11), (13), or (14) of G.S. 78A-16,  
10 or the security is a security covered under federal law, or  
11 the transaction is exempted under G.S. 78A-17, and such  
12 exemption has not been denied or revoked under G.S. 78A-18,  
13 or the transaction is in a security covered under federal  
14 law, and such exemption has not been denied or revoked  
15 under G.S. 78A-18, or".

16 Section 2. G.S. 78A-2(2) is amended by adding a new sub-subdivision to read:

1           "g. An individual who represents an issuer in effecting transactions  
2           in a security described in sub-subdivision (2)d. of this section or  
3           a security covered under federal law, provided no commission or  
4           other special remuneration is paid or given directly or indirectly  
5           for soliciting any prospective purchaser in this State."

6 Section 3. G.S. 78A-2(9) reads as rewritten:

7 "(9) 'Salesman' means any individual other than a dealer who represents a  
8 dealer in effecting or attempting to effect purchases or sales of  
9 securities. 'Salesman' does not include an individual who represents a  
10 dealer in effecting transactions in this State limited to those transactions  
11 described in section 15(h)(2) of the Securities Exchange Act of 1934 (15  
12 U.S.C. § 78o(h)(2)). A partner, executive officer, or director of a dealer,  
13 or a person occupying a similar status or performing similar functions,  
14 is a salesman only if ~~he~~ that person otherwise comes within this  
15 definition."

16 Section 4. G.S. 78A-2 is amended by adding a new subdivision to read:

17 "(11a) 'Security covered under federal law' means any security that is a covered  
18 security under section 18(b) of the Securities Act of 1933 (15 U.S.C. §  
19 77r(b)) or rules or regulations adopted under that section."

20 Section 5. G.S. 78A-17(16) reads as rewritten:

21 "(16) Any offer to purchase or to sell or any sale or issuance of a ~~security~~  
22 security, other than a security covered under federal law, pursuant to a  
23 plan approved by the Administrator after a hearing conducted pursuant  
24 to the provisions of ~~G.S. 78A-30 of this Chapter.~~ G.S. 78A-30."

25 Section 6. The title to Article 4 of Chapter 78A reads as rewritten:

#### 26 **"ARTICLE 4.**

### 27 **"REGISTRATION AND NOTICE FILING PROCEDURES OF SECURITIES."**

28 Section 7. G.S. 78A-24 reads as rewritten:

#### 29 **"§ 78A-24. Registration requirement.**

30 It is unlawful for any person to offer or sell any security in this State unless (i) it is  
31 registered under this ~~Chapter or Chapter,~~ (ii) the security or transaction is exempted under  
32 G.S. 78A-16 or 78A-17 and such exemption has not been denied or revoked under ~~G.S.~~  
33 ~~78A-18.~~ G.S. 78A-18, or (iii) it is a security covered under federal law."

34 Section 8. G.S. 78A-30(d) reads as rewritten:

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

37 (1) By any corporation organized under the laws of this State; or

38 (2) In any transaction which is subject to the registration or qualification  
39 requirements of this Chapter or which would be so subject except for  
40 the availability of an exemption under G.S. 78A-16 or ~~78A-17 or by~~  
41 ~~reason of G.S. 78A-2(8)(f).~~ G.S. 78A-17, by reason of G.S. 78A-2(8)f., or  
42 by reason that the security is a security covered under federal law."

1 Section 9. Article 4 of Chapter 78A of the General Statutes is amended by  
2 adding a new section to read:

3 **"§ 78A-31. Notice filings for securities covered under federal law.**

4 (a) The Administrator, by rule or order, may require the filing of any of the  
5 following documents with regard to a security covered under section 18(b)(2) of the  
6 Securities Act of 1933 (15 U.S.C. § 77r(b)(2)):

7 (1) Prior to the initial offer of the security in this State, all documents that  
8 are part of a federal registration statement filed with the Securities and  
9 Exchange Commission under the Securities Act of 1933, or, in lieu  
10 thereof, a form prescribed by the Administrator, together with a consent  
11 to service of process signed by the issuer and with the payment of a  
12 notice filing fee of one-tenth of one percent (1/10 of 1%) of the  
13 maximum aggregate offering price at which the securities covered under  
14 federal law are to be offered in this State, but the notice filing fee shall  
15 not be less than twenty-five dollars (\$25.00) or more than one thousand  
16 six hundred dollars (\$1,600).

17 (2) After the initial offer of the security in this State, all documents that are  
18 part of an amendment to a federal registration statement filed with the  
19 Securities and Exchange Commission under the Securities Act of 1933,  
20 or, in lieu thereof, a form prescribed by the Administrator, which shall  
21 be filed concurrently with the Administrator.

22 (3) A report of the value of securities covered under federal law that are  
23 offered or sold in this State.

24 (4) A notice filing pursuant to this section shall expire on December 31 of  
25 each year or some other date not more than one year from its effective  
26 date as the Administrator may by rule or order provide. A notice filing  
27 of the offer of securities covered under federal law that are to be offered  
28 for a period in excess of one year shall be renewed annually by payment  
29 of a renewal fee of one hundred dollars (\$100.00) and by filing any  
30 documents and reports that the Administrator may by rule or order  
31 require consistent with this section. The renewal shall be effective upon  
32 the expiration of the prior notice period.

33 (5) A notice filed in accordance with this section may be amended after its  
34 effective date to increase the securities specified as proposed to be  
35 offered. An amendment becomes effective upon receipt by the  
36 Administrator. Every person submitting an amended notice filing shall  
37 pay a fee calculated in the manner specified in subdivision (1) of this  
38 subsection and a filing fee of fifty dollars (\$50.00) with respect to the  
39 additional securities proposed to be offered.

40 (b) With regard to any security that is covered under section 18(b)(4)(D) of the  
41 Securities Act of 1933 (15 U.S.C. § 77r(b)(4)(d)), the Administrator, by rule or order,  
42 may require the issuer to file a notice on SEC Form D (17 C.F.R. § 239.500) and a  
43 consent to service of process signed by the issuer no later than 15 days after the first sale

1 of the security in this State. The Administrator may, by rule, establish a fee to recover  
2 costs for filing required by this section, not to exceed one hundred fifty dollars (\$150.00).

3 (c) The Administrator, by rule or order, may require the filing of any document  
4 filed with the Securities and Exchange Commission under the Securities Act of 1933,  
5 with respect to a security covered under section 18(b)(3) or (4) of the Securities Act of  
6 1933 (15 U.S.C. § 77r(b)(3) or (4)). The Administrator may, by rule, establish a fee to  
7 recover costs for any filing required under this section, not to exceed one hundred fifty  
8 dollars (\$150.00).

9 (d) The Administrator may suspend the offer and sale of a covered security, except  
10 a covered security under section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. §  
11 77r(b)(1)), if the Administrator finds that (i) the order is in the public interest, and (ii)  
12 there is a failure to comply with any condition established under this section.

13 (e) The Administrator, by rule or order, may waive any of the requirements set by  
14 this section."

15 Section 10. G.S. 78A-38 reads as rewritten:

16 "**§ 78A-38. Post-registration provisions.**

17 (a) Every registered dealer shall make and keep such accounts, correspondence,  
18 memoranda, papers, books, and other records as the Administrator by rule ~~prescribes.~~  
19 prescribes, subject to the limitations of section 15 of the Securities Exchange Act of 1934  
20 (15 U.S.C. § 78o). All records so required shall be preserved for three years unless the  
21 Administrator by rule prescribes otherwise for particular types of records.

22 (b) Every registered dealer shall file such financial reports as the Administrator by  
23 rule ~~prescribes.~~ prescribes, subject to the limitations of section 15 of the Securities  
24 Exchange Act of 1934 (15 U.S.C. § 78o).

25 (c) If the information contained in any document filed with the Administrator is or  
26 becomes inaccurate or incomplete in any material respect, the registrant shall promptly  
27 file a correcting amendment unless notification of the correction has been given under  
28 G.S. 78A-36(b).

29 (d) All the records referred to in subsection (a) of this section are subject at any  
30 time or from time to time to such reasonable periodic, special, or other examinations by  
31 representatives of the Administrator, within or without this State, as the Administrator  
32 deems necessary or appropriate in the public interest or for the protection of investors.  
33 For the purpose of avoiding unnecessary duplication of examinations, the Administrator,  
34 insofar as he deems it practicable in administering this subsection, may cooperate with  
35 the securities administrators of other states, the Securities and Exchange Commission,  
36 and any national securities exchange or national securities association registered under  
37 the Securities Exchange Act of 1934."

38 Section 11. G.S. 78A-49(d) reads as rewritten:

39 "(d) The Administrator may by rule or order require the filing of any prospectus,  
40 pamphlet, circular, form letter, advertisement, or other sales literature or advertising  
41 communication addressed or intended for distribution to prospective investors, unless the  
42 security or transaction is exempted by G.S. 78A-16 or 78A-17 (except 78A-17(9), (17))  
43 and such exemption has not been denied or revoked under ~~G.S. 78A-18.~~ G.S. 78A-18 or

1 the security is a security covered under federal law or the transaction is with respect to a  
2 security covered under federal law."

3 Section 12. G.S. 78A-63(a) reads as rewritten:

4 "(a) Sections 78A-8, 78A-10, 78A-24, 78A-31, 78A-36(a), and 78A-56 apply to  
5 persons who sell or offer to sell when (i) an offer to sell is made in this State, or (ii) an  
6 offer to buy is made and accepted in this State."

7 Section 13. G.S. 78A-63(f) reads as rewritten:

8 "(f) Every applicant for registration under this Chapter and every issuer who  
9 proposes to offer a security in this State through any person acting on an agency basis in  
10 the common-law sense shall file with the Administrator, in such form as he by rule  
11 prescribes, an irrevocable consent appointing the Administrator or his successor in office  
12 to be his attorney to receive service of any lawful process in any noncriminal suit, action  
13 or proceeding against him or his successor, executor or administrator which arises under  
14 this Chapter or any rule or order hereunder after the consent has been filed, with the same  
15 force and validity as if served personally on the person filing the consent. A person who  
16 has filed such a consent in connection with a previous registration or notice filing need  
17 not file another. Service may be made by leaving a copy of the process in the office of the  
18 Administrator, but it is not effective unless (i) the plaintiff, who may be the Administrator  
19 in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and  
20 a copy of the process by registered mail to the defendant or respondent at his address on  
21 file with the Administrator, and (ii) the plaintiff's affidavit of compliance with the  
22 subsection is filed in the case on or before the return day of the process, if any, or within  
23 such further time as the court allows."  
24

## 25 **II. Investment Advisers**

26 Section 14. G.S. 78C-2 reads as rewritten:

### 27 **"§ 78C-2. Definitions.**

28 When used in this Chapter, the definitions of G.S. 78A-2 shall apply along with the  
29 following, unless the context otherwise requires:

- 30 (1) 'Investment adviser' means any person who, for compensation, engages  
31 in the business of advising others, either directly or through publications  
32 or writings, as to the value of securities or as to the advisability of  
33 investing in, purchasing, or selling securities, or who, for compensation  
34 and as part of a regular business, issues or promulgates analyses or  
35 reports concerning securities. 'Investment adviser' also includes  
36 financial planners and other persons who, as an integral component of  
37 other financially related services, provide the foregoing investment  
38 advisory services to others for compensation and as a part of a business  
39 or who hold themselves out as providing the foregoing investment  
40 advisory services to others for compensation. 'Investment adviser' does  
41 not include:

- 1 a. An investment adviser representative or a person excluded from  
2 the definition of investment adviser representative pursuant to  
3 G.S. 78C-2(3)c.;
- 4 b. A bank, savings institution, or trust company;
- 5 c. A lawyer, accountant, engineer, or teacher whose performance of  
6 any such services is solely incidental to the practice of his  
7 profession;
- 8 d. A dealer or its salesman whose performance of these services is  
9 solely incidental to the conduct of its business as a dealer and  
10 who receives no special compensation for them;
- 11 e. A publisher of any newspaper, news column, newsletter, news  
12 magazine, or business or financial publication or service, whether  
13 communicated in hard copy form, or by electronic means, or  
14 otherwise, that does not consist of the rendering of advice on the  
15 basis of the specific investment situation of each client;
- 16 f. A person solely by virtue of such person's services to or on  
17 behalf of any 'business development company' as defined in  
18 Section 202(a)(22) of the Investment Advisers Act of 1940  
19 provided the business development company is not an  
20 'investment company' by reason of Section 3(c)(1) of the  
21 Investment Company Act of 1940, as both acts were in effect on  
22 June 1, 1988;
- 23 g. A personal representative of a decedent's estate, guardian,  
24 conservator, receiver, attorney in fact, trustee in bankruptcy,  
25 trustee of a testamentary trust, or a trustee of an inter vivos trust,  
26 not otherwise engaged in providing investment advisory services,  
27 and the performance of these services is not a part of a plan or  
28 scheme to evade registration or the substantive requirements of  
29 this Chapter;
- 30 h. A licensed real estate agent or broker whose only compensation  
31 is a commission on real estate sold;
- 32 i. An individual or company primarily engaged in acting as a  
33 business broker whose only compensation is a commission on the  
34 sale of a business;
- 35 j. An individual who, as an employee, officer or director of, or  
36 general partner in, another person and in the course of  
37 performance of his duties as such, provides investment advice to  
38 such other person, or to entities that are affiliates of such other  
39 person, or to employee benefit plans of such other person or its  
40 affiliated entities, or, with respect to such employee benefit  
41 plans, to employees of such other person or its affiliated entities;
- 42 k. Any person who is exempt from registration under the  
43 Investment Advisers Act of 1940 by operation of Section

1 203(b)(3) of said act or by operation of any rule or regulation  
2 promulgated by the United States Securities and Exchange  
3 Commission under or related to said Section 203(b)(3) provided  
4 that any reference in this sub-subsection to any statute, rule or  
5 regulation shall be deemed to incorporate said statute, rule or  
6 regulation (and any statute, rule or regulation referenced therein)  
7 as in effect on June 1, 1988;

8 l. An employee of a person described in subdivision b., e., f., g., h.,  
9 or j. of G.S. 78C-2(1) acting on behalf of such person within the  
10 scope of his employment;

11 m. An investment adviser who is covered under federal law as  
12 defined in subdivision (4) of this section.

13 ~~m-n.~~ Such other persons not within the intent of this subsection as  
14 the Administrator may by rule or order designate.

15 (2) 'Investment Advisers Act of 1940' means the federal statute of that name  
16 as amended before or after the effective date of this Chapter.

17 (3) 'Investment adviser representative' ~~means~~ means, with respect to any  
18 investment adviser registered under this Chapter, any partner, officer,  
19 director (or a person occupying a similar status or performing similar  
20 functions) or other individual employed by or associated with an  
21 investment adviser, except clerical or ministerial personnel, who:

22 a. Makes any recommendations or otherwise renders advice  
23 regarding securities directly to clients,

24 b. Manages accounts or portfolios of clients,

25 c. Determines which recommendations or advice regarding  
26 securities should be given; provided, however if there are  
27 more than five such persons employed by or associated with  
28 an investment adviser, who do not otherwise come within the  
29 meaning of G.S. 78C-2(3)a., b., d., or e., then only the direct  
30 supervisors of such persons are deemed to be investment  
31 adviser representatives under G.S. 78C-2(3)c.,

32 d. Solicits, offers or negotiates for the sale of or sells investment  
33 advisory services, unless such person is a dealer or salesman  
34 registered under Chapter 78A of the General Statutes and the  
35 person would not be an investment adviser representative  
36 except for the performance of the activities described in G.S.  
37 78C-2(3)d., or

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

1 With respect to any person that is registered or required to be registered  
2 under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. §  
3 80b-3), 'investment adviser representative' means any person who is  
4 defined as an 'investment adviser representative' pursuant to rules or  
5 regulations adopted or promulgated by the Securities Exchange  
6 Commission pursuant to the Investment Advisers Act of 1940, and who  
7 has a place of business located in the State.

8 (4) 'Investment adviser covered under federal law' means any adviser who  
9 is registered with the Securities and Exchange Commission under  
10 section 203 of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-  
11 3)."

12 Section 15. The title to Article 3 of Chapter 78C reads as rewritten:

13 **"ARTICLE 3.**

14 **"REGISTRATION AND NOTICE FILING PROCEDURES OF INVESTMENT**  
15 **ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES."**

16 Section 16. G.S. 78C-16 reads as rewritten:

17 **"§ 78C-16. Registration and notice filing requirement.**

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

- 20 (1) ~~He~~ The person is ~~so~~ registered under this Chapter;
- 21 (2) ~~His~~ The person's only clients in this State are investment companies as  
22 defined in the Investment Company Act of 1940, other investment  
23 advisers, investment advisers covered under federal law, dealers, banks,  
24 trust companies, savings institutions, savings and loan associations,  
25 insurance companies, employee benefit plans with assets of not less than  
26 one million dollars (\$1,000,000), and governmental agencies or  
27 instrumentalities, whether acting for themselves or as trustees with  
28 investment control, or other institutional investors as are designated by  
29 rule or order of the Administrator; or
- 30 (3) ~~He has no place of business in the State and during any period of 12~~  
31 ~~consecutive months does not direct business communications into this~~  
32 ~~State in any manner to more than 10 clients, other than those specified~~  
33 ~~in subdivision (2), whether or not he or any of the persons to whom the~~  
34 ~~communications are directed is then present in the State; or~~ The person  
35 has no place of business in this State, and during the preceding 12-  
36 month period has had not more than five clients, other than those  
37 specified in subdivision (2) of this subsection, who are residents of the  
38 State.
- 39 (4) ~~He is an investment adviser representative employed by or associated~~  
40 ~~with an investment adviser exempt from registration under subdivisions~~  
41 ~~(2) or (3), above.~~

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



- 1           (1) The person is registered under this Chapter; or  
2           (2) The person is an investment adviser representative employed by or  
3           associated with an investment adviser exempt from registration under  
4           subdivision (2) or (3) of subsection (a) of this section; or  
5           (3) The person is an investment adviser representative employed by or  
6           associated with an investment adviser covered under federal law that is  
7           exempt from the notice filing requirements of G.S. 78C-17(a1).

8           (b) ~~It is unlawful for any investment adviser required to be registered to~~  
9 ~~employ or associate an investment adviser representative unless the investment adviser~~  
10 ~~representative is registered under this Chapter. The registration of an investment adviser~~  
11 ~~representative is not effective during any period when he is not employed by or~~  
12 ~~associated with an investment adviser registered under this Chapter. When an investment~~  
13 ~~adviser representative begins or terminates employment or association with an investment~~  
14 ~~adviser, the investment adviser shall promptly notify the Administrator. It is unlawful for~~  
15 ~~any person required to be registered as an investment adviser under this Chapter to~~  
16 ~~employ an investment adviser representative unless the investment adviser representative~~  
17 ~~is registered under this Chapter. The registration of an investment adviser representative~~  
18 ~~is not effective during any period when the investment adviser representative is not~~  
19 ~~employed by (i) an investment adviser registered under this Chapter; or (ii) an investment~~  
20 ~~adviser covered under federal law who has made a notice filing pursuant to the provisions~~  
21 ~~of G.S. 78C-17(a1). When an investment adviser representative begins or terminates~~  
22 ~~employment or association with an investment adviser who is registered under this~~  
23 ~~Chapter, the investment adviser shall notify promptly the Administrator. When an~~  
24 ~~investment adviser representative begins or terminates employment or association with an~~  
25 ~~investment adviser covered under federal law, the investment adviser representative shall,~~  
26 ~~and the investment adviser may, notify promptly the Administrator. No investment~~  
27 ~~adviser representative may be registered with more than one investment adviser or~~  
28 ~~investment adviser covered under federal law unless each of the investment advisers~~  
29 ~~which employs or associates the investment adviser representative is under common~~  
30 ~~ownership or control.~~

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

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

36           Section 17. G.S. 78C-17 reads as rewritten:

37 **"§ 78C-17. Registration and notice filing procedures.**

38           (a) An investment adviser, or investment adviser representative may obtain an  
39 initial or renewal registration by filing with the Administrator or ~~his~~ the Administrator's  
40 designee an application together with a consent to service of process pursuant to G.S.  
41 78C-46(b). The application shall contain whatever information the Administrator by rule  
42 requires concerning such matters as:

- 43           (1) The applicant's form and place of organization;

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

13          If no denial order is in effect and no proceeding is pending under G.S. 78C-19,

14          registration becomes effective at noon of the 30th day after an application is filed. The

15          Administrator may by rule or order specify an earlier effective date, and he may by order

16          defer the effective date until noon of the 30th day after the filing of any amendment.

17          Registration of an investment adviser automatically constitutes registration of any

18          investment adviser representative who is a partner, executive officer, or director, or a

19          person occupying a similar status or performing similar functions.

20          (a1) The Administrator may require investment advisers covered under federal law

21          to file with the Administrator any documentation filed with the Securities and Exchange

22          Commission as a condition of doing business in this State. This subsection does not

23          apply to (i) an investment adviser covered under federal law whose only clients are those

24          described in G.S. 78C-16(a)(2), or (ii) an investment adviser covered under federal law

25          who has no place of business in this State, and during the preceding 12-month period has

26          had not more than five clients, other than those described in G.S. 78C-16(a)(2), who are

27          residents of this State. A notice filing under this section may be renewed by (i) filing

28          documents required by the Administrator and filed with the Securities and Exchange

29          Commission, prior to the expiration of the notice filing, and (ii) paying the fee required

30          under subsection (b1) of this section. A notice filed under this section may be terminated

31          by the investment adviser by providing the Administrator notice of the termination,

32          which shall be effective upon receipt by the Administrator.

33          (b)    Every applicant for initial or renewal registration shall pay a filing fee of two

34          hundred dollars (\$200.00) in the case of an investment adviser, and forty-five dollars

35          (\$45.00) in the case of an investment adviser representative. When an application is

36          denied or withdrawn, the Administrator shall retain the fee.

37          (b1) Every person acting as an investment adviser covered under federal law in this

38          State shall pay an initial filing fee of two hundred dollars (\$200.00) and a renewal notice

39          filing fee of two hundred dollars (\$200.00).

40          (c)    A registered investment adviser may file an application for registration of a

41          successor, whether or not the successor is then in existence, for the unexpired portion of

42          the year. There shall be no filing fee.

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

7 (e) The Administrator may by rule require registered investment advisers who  
8 have custody of or discretionary authority over client funds or securities to post surety  
9 bonds in amounts up to one hundred thousand dollars (\$100,000), subject to the  
10 limitations of section 222 of the Investment Advisers Act of 1940 (15 U.S.C. § 80(b)-  
11 18a), and may determine their conditions. Any appropriate deposit of cash or securities  
12 shall be accepted in lieu of any bond so required. No bond may be required of any  
13 investment adviser whose minimum net capital, which may be defined by rule, exceeds  
14 one hundred thousand dollars (\$100,000). Every bond shall provide for suit thereon by  
15 any person who has a cause of action under G.S. 78C-38 and, if the Administrator by rule  
16 or order requires, by any person who has a cause of action not arising under this Chapter.  
17 Every bond shall provide that no suit may be maintained to enforce any liability on the  
18 bond unless brought within the time limitations of G.S. 78C-38(d)."

19 Section 18. G.S. 78C-18 reads as rewritten:

20 "**§ 78C-18. Post-registration provisions.**

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

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

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

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

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

1 (e) All the records referred to in subsection (a) of this section are subject at any  
2 time or from time to time to such reasonable periodic, special, or other examinations by  
3 representatives of the Administrator, within or without this State, as the Administrator  
4 deems necessary or appropriate in the public interest or for the protection of investors.  
5 For the purpose of avoiding unnecessary duplication of examinations, the Administrator,  
6 insofar as he deems it practicable in administering this subsection, may cooperate with  
7 the securities administrators of other states, the Securities and Exchange Commission,  
8 and any national securities exchange or national securities association registered under  
9 the Securities Exchange Act of 1934."

10 Section 19. G.S. 78C-46(b) reads as rewritten:

11 "(b) Every applicant for registration under this Chapter shall file with the  
12 Administrator, in such form as he by rule prescribes, an irrevocable consent appointing  
13 the Administrator or his successor in office to be his attorney to receive service of any  
14 lawful process in any noncriminal suit, action or proceeding against him or his successor,  
15 executor or administrator which arises under this Chapter or any rule or order hereunder  
16 after the consent has been filed, with the same force and validity as if served personally  
17 on the person filing the consent. A person who has filed such a consent in connection  
18 with a previous registration or notice filing need not file another. Service may be made  
19 by leaving a copy of the process in the office of the Administrator, but it is not effective  
20 unless (i) the plaintiff, who may be the Administrator in a suit, action, or proceeding  
21 instituted by him, forthwith sends notice of the service and a copy of the process by  
22 registered or certified mail to the defendant or respondent at his last address on file with  
23 the Administrator, and (ii) the plaintiff's affidavit of compliance with the subsection is  
24 filed in the case on or before the return day of the process, if any, or within such further  
25 time as the court allows."

26 Section 20. This act becomes effective October 1, 1997. Sections 1 through  
27 13 of this act apply to securities offered or sold and to persons who offer or sell securities  
28 on or after the applicable effective date of each of these sections. Sections 14 through 19  
29 of this act apply to advisory business conducted on or after the applicable effective date  
30 of each of these sections.