

Article 5.

Registration of Dealers and Salesmen.

§ 78A-36. Registration requirement.

(a) It is unlawful for any person to transact business in this State as a dealer or salesman unless he is registered under this Chapter. No dealer shall be eligible for registration under this Chapter, or for renewal of registration hereunder, unless such dealer is at the time registered as a dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

(b) It is unlawful for any dealer to employ a salesman unless the salesman is registered. The registration of a salesman is not effective during any period when he is not associated with a particular dealer registered under this Chapter. When a salesman begins or terminates those activities which make him a salesman, the salesman as well as the dealer shall promptly notify the Administrator.

The Administrator may by rule or order require the return of a salesman's license upon the termination of those activities which make him a salesman or, if such return is impossible, require a bond or evidence satisfactory to the Administrator of such impossibility. No salesman may be registered with more than one dealer.

(c) Every registration expires on the thirty-first day of March of each year (or such other date not more than one year from its effective date as the Administrator may by rule or order provide) unless renewed. (1925, c. 190, s. 19; 1927, c. 149, s. 19; 1955, c. 436, s. 9; 1959, c. 1122; 1971, c. 831, s. 1; 1973, c. 1380; 1975, c. 144, s. 2; 1979, 2nd Sess., c. 1148, s. 2; 1981, c. 624, s. 4; 1983, c. 817, s. 8; 2001-182, s. 1.)

§ 78A-36.1. Limited registration of Canadian dealers and salesmen.

(a) A dealer that is a resident of Canada and that has no office or other physical presence in this State may effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by:

- (1) A person from Canada who is residing in this State temporarily and with whom the Canadian dealer had a bona fide dealer-client relationship before the person entered the United States; or
- (2) A person from Canada who is a resident of this State and whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor.

This subsection only applies to dealers that are registered in accordance with this section.

(b) A salesman who will be representing a Canadian dealer registered under this section may effect transactions in securities in this State as permitted for the dealer in subsection (a) of this section, only if the salesman is registered in accordance with this section.

(c) A Canadian dealer may register under this section provided that it meets all of the following conditions:

- (1) The dealer files an application in the form required by the jurisdiction in which it has its head office.
- (2) The dealer files a consent to service of process.
- (3) The dealer is registered as a dealer in good standing in the jurisdiction from which it is effecting transactions into this State and files evidence thereof.
- (4) The dealer is a member of a self-regulatory organization, the Bureau des services financiers or a stock exchange in Canada.

(d) A salesman who will be representing a Canadian dealer registered under this section in effecting transactions in securities in this State may register under this section provided that the salesman meets all of the following conditions:

- (1) The salesman files an application in the form required by the jurisdiction in which the dealer has its head office.
- (2) The salesman files a consent to service of process.
- (3) The salesman is registered in good standing in the jurisdiction from which the salesman is effecting transactions into this State and files evidence thereof.

(e) If no denial order is in effect and no proceeding is pending under G.S. 78A-39, registration becomes effective on the thirtieth day after an application is filed, unless the registration is made effective earlier.

(f) A Canadian dealer registered under this section shall meet all of the following conditions:

- (1) The dealer maintains its provincial or territorial registration and its membership in a self-regulatory organization, the Bureau des services financiers or a stock exchange in good standing.
- (2) The dealer provides the Administrator, upon request, with its books and records relating to its business in this State as a dealer.
- (3) The dealer informs the Administrator forthwith of any criminal action taken against it or of any finding or sanction imposed on the dealer as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation, or similar conduct.
- (4) The dealer discloses to its clients in this State that the dealer and its agents are not subject to the full regulatory requirements under this Article.

(g) A salesman of a Canadian dealer registered under this section shall meet all of the following conditions:

- (1) The salesman maintains the salesman's provincial or territorial registration in good standing.
- (2) The salesman informs the Administrator forthwith of any criminal action taken against the salesman or of any finding or sanction imposed on the salesman as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation, or similar conduct.

(h) Renewal applications for Canadian dealers and salesmen under this section shall be filed before December 31 of each year and may be made by filing the most recent renewal application, if any, filed in the jurisdiction in which the dealer has its head office, or if no such renewal application is required, the most recent application filed pursuant to subdivision (c)(1) of this section or subdivision (d)(1) of this section, as applicable.

(i) Every applicant for registration or renewal of registration under this section shall pay the fee for dealers and salesmen as required in this Chapter.

(j) Every Canadian dealer or salesman registered under this section may effect transactions in this State only:

- (1) As permitted in subsection (a) or (b) of this section, and
- (2) With or through:
 - a. The issuers of the securities involved in the transactions;
 - b. Other dealers; and

- c. Banks, savings institutions, trust companies, insurance companies, investment companies, as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees.

(k) Article 2 of this Chapter applies to Canadian dealers and salesmen registered under this section.

(l) Except as otherwise provided in this section, Canadian dealers or salesmen registered under this section and acting in accordance with the limitations set out in subsection (j) of this section are exempt from all of the requirements of this Chapter. A registration under this section may be denied, suspended, or revoked pursuant to G.S. 78A-39 only for a breach of Article 2 of this Chapter or this section. (2001-225, s. 1.)

§ 78A-37. Registration procedure.

(a) A dealer or salesman may obtain an initial or renewal registration by filing with the Administrator an application together with a consent to service of process pursuant to G.S. 78A-63(f). The application shall contain whatever information the Administrator by rule requires concerning such matters as (i) the applicant's form and place of organization; (ii) the applicant's proposed method of doing business; (iii) the qualifications and business history of the applicant; in the case of a dealer, 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 dealer, and a representation that the applicant dealer is duly registered as a dealer under the Securities Exchange Act of 1934; (iv) 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; and (v) the applicant's financial condition and history. If no denial order is in effect and no proceeding is pending under G.S. 78A-39, registration becomes effective at noon of the thirtieth 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 thirtieth day after the filing of any amendment. Registration of a dealer automatically constitutes registration of any salesman 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. 78A-39 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.

(b) Every applicant for initial or renewal registration shall pay a filing fee of three hundred dollars (\$300.00) in the case of a dealer and one hundred twenty-five dollars (\$125.00) in the case of a salesman. The Administrator may by rule reduce the registration fee proportionately when the registration will be in effect for less than a full year.

(c) A registered dealer 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 require registered dealers to post surety bonds in amounts up to one hundred thousand dollars (\$100,000) and salesmen to post surety bonds in amounts up to ten thousand dollars (\$10,000), 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 registrant whose 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. 78A-56 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 two years after the sale or other act upon which it is based. (1925, c. 190, s. 19; 1927, c. 149, s. 19; 1955, c. 436, s. 9; 1959, c. 1122; 1971, c. 831, s. 1; 1973, c. 1380; 1983, c. 713, s. 48; c. 817, ss. 9, 10; 1987, c. 566, s. 1; 1991 (Reg. Sess., 1992), c. 965, s. 2; 2002-126, s. 29A.34; 2003-413, s. 3; 2009-451, s. 24.1(a).)

§ 78A-38. Post-registration provisions.

(a) Every registered dealer shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the Administrator by rule prescribes, subject to the limitations of section 15 of the Securities Exchange Act of 1934 (15 U.S.C. § 78o).

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

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

(d) 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. (1925, c. 190, ss. 14, 15; 1927, c. 149, ss. 14, 15; 1973, c. 1380; 1997-419, s. 10.)

§ 78A-39. Denial, revocation, suspension, censure, cancellation, and withdrawal of registration.

(a) The Administrator may by order deny, suspend, or revoke any registration in whole or in part or restrict or limit as to any person, office, function, or activity or censure the registrant if he finds

- (1) That the order is in the public interest and
- (2) That the applicant or registrant or, in the case of a dealer, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the dealer:
 - 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; or
 - b. Has willfully violated or willfully failed to comply with any provision of this Chapter or a predecessor law or any rule or order under this Chapter or a predecessor law or any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisors Act of 1940, or the Commodity Exchange Act; or

- c. Has been convicted, within the past 10 years, of any misdemeanor involving a security or any aspect of the securities business, or any felony; or
- 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 business; or
- e. Is the subject of an order of the Administrator denying, suspending, or revoking registration as a dealer or salesman; or
- f. Is the subject of an order entered within the past five years by the securities administrator of any state or by the Securities and Exchange Commission denying or revoking registration as a dealer or salesman, or the substantial equivalent of those terms as defined in this Chapter, or is the subject of a final order suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States post office fraud order; but (i) the Administrator may not institute a revocation or suspension proceeding under subdivision (2)f of subsection (a) more than one year from the date of the order relied on, and (ii) the Administrator may not enter an order under subdivision (2)f of subsection (a) on the basis of an order under another state act unless that order was based on facts which would currently constitute a ground for an order under this section; or
- g. Has engaged in dishonest or unethical practices in the securities business; or
- 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 a dealer under this paragraph without a finding of insolvency as to the dealer; or
- 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).

(a1) The Administrator may by order deny, suspend, or revoke any registration in whole or in part or restrict or limit as to any person, office, function, or activity or censure the registrant if he finds

- (1) That the order is in the public interest and
- (2) That the applicant or registrant:
 - a. Has failed reasonably to supervise his salesmen if he is a dealer; or
 - b. 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. 78A-39(a)(2)i:

- (1) The Administrator may not enter an order against a dealer on the basis of the lack of qualification of any person other than (i) the dealer himself if he is an individual or (ii) a salesman of the dealer.
- (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 or, in the case of a dealer if he is registered and in good standing under the Securities Exchange Act of 1934.
- (3) The Administrator shall consider that a salesman who will work under the supervision of a registered dealer need not have the same qualifications as a dealer.
- (4) The Administrator may by rule provide for an examination which may be written or oral or both, to be taken by any class of or all applicants.

(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 a salesman, 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 a dealer or salesman, 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 a dealer or salesman 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. 78A-39(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) without (i) appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is a salesman), (ii) opportunity for hearing, and (iii) written findings of fact and conclusions of law. (1925, c. 190, s. 19; 1927, c. 149, s. 19; 1955, c. 436, s. 9; 1959, c. 1122; 1971, c. 831, s. 1; 1973, c. 1380; 1983, c. 817, ss. 11-15; 1997-456, s. 27; 1997-462, ss. 1, 2; 2001-126, s. 3.)

§ 78A-40. Alternative methods of registration.

(a) The Administrator may by rule or order provide an alternative method of registration by which any dealer or salesman acting in that capacity or as a principal may satisfy the requirements of this Article by furnishing the information otherwise required to be filed pursuant to this Article. The Administrator may provide for, among other things, alternative filing periods for dealers or salesmen, elimination of the issuance of a paper license and alternative methods for the payment and collection of initial or renewal filing fees, which shall be known as "alternative filing fees". The alternative filing fees shall be the same as provided in G.S. 78A-37(b).

(b) The Administrator may not adopt an alternative method of registration unless its purpose is to facilitate a central registration depository whereby dealers or salesmen can centrally or simultaneously register and pay fees for all states in which they plan to transact business that require registration. The Administrator may enter into an agreement with or otherwise facilitate an alternative method of registration with any national securities association registered with the Securities and Exchange Commission pursuant to Section 15A of the Securities Exchange Act of 1934, any national securities exchange registered under the Securities Exchange Act of 1934, or any national association of state securities Administrators or similar association to effectuate the provisions of this section.

(c) Nothing in this section shall be construed to prevent the exercise of the authority of the Administrator as provided in G.S. 78A-39. (1981, c. 624, s. 5; 1983, c. 817, s. 16; 1987, c. 849, s. 3.)

§§ 78A-41 through 78A-44. Reserved for future codification purposes.