

GENERAL ASSEMBLY OF NORTH CAROLINA  
1997 SESSION

S.L. 1997-419  
SENATE BILL 439

AN ACT TO CONFORM THE NORTH CAROLINA SECURITIES ACT AND THE  
INVESTMENT ADVISERS ACT TO THE NATIONAL SECURITIES MARKETS  
IMPROVEMENT ACT OF 1996.

The General Assembly of North Carolina enacts:

I. Securities

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

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

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

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

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

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

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

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

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

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

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

"ARTICLE 4.

"Registration and Notice Filing Procedures of Securities."

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

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

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

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

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

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

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

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

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

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

- (2) After the initial offer of the security in this State, all documents that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, or, in lieu thereof, a form prescribed by the Administrator, which shall be filed concurrently with the Administrator.
- (3) A report of the value of securities covered under federal law that are offered or sold in this State.
- (4) A notice filing pursuant to this section shall expire on December 31 of each year or some other date not more than one year from its effective date as the Administrator may by rule or order provide. A notice filing of the offer of securities covered under federal law that are to be offered for a period in excess of one year shall be renewed annually by payment of a renewal fee of one hundred dollars (\$100.00) and by filing any documents and reports that the Administrator may by rule or order require consistent with this section. The renewal shall be effective upon the expiration of the prior notice period.
- (5) A notice filed in accordance with this section may be amended after its effective date to increase the securities specified as proposed to be offered. An amendment becomes effective upon receipt by the Administrator. Every person submitting an amended notice filing shall pay a fee calculated in the manner specified in subdivision (1) of this subsection and a filing fee of fifty dollars (\$50.00) with respect to the additional securities proposed to be offered.

(b) With regard to any security that is covered under section 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(4)(d)), the Administrator, by rule or order, may require the issuer to file a notice on SEC Form D (17 C.F.R. § 239.500) and a consent to service of process signed by the issuer no later than 15 days after the first sale of the security in this State. The Administrator may, by rule, establish a fee to recover costs for filing required by this section, not to exceed one hundred fifty dollars (\$150.00).

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

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

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

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

**"§ 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.~~ prescribes, subject to the limitations of section 15 of the Securities Exchange Act of 1934 (15 U.S.C. § 78o). ~~All records so required shall be preserved for three years unless the Administrator by rule prescribes otherwise for particular types of records.~~

(b) Every registered dealer shall file such financial reports as the Administrator by rule ~~prescribes.~~ 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."

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

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

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

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

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

"(f) Every applicant for registration under this Chapter and every issuer who proposes to offer a security in this State through any person acting on an agency basis in the common-law sense shall file with the Administrator, in such form as he by rule prescribes, an irrevocable consent appointing the Administrator or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor, executor or administrator which arises under this Chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration or notice filing need not file another. Service may be made by leaving a copy of the

process in the office of the Administrator, but it is not effective unless (i) the plaintiff, who may be the Administrator in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his address on file with the Administrator, and (ii) the plaintiff's affidavit of compliance with the subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows."

## **II. Investment Advisers**

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

### **"§ 78C-2. Definitions.**

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

- (1) 'Investment adviser' means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. 'Investment adviser' also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as a part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. 'Investment adviser' does not include:
  - a. An investment adviser representative or a person excluded from the definition of investment adviser representative pursuant to G.S. 78C-2(3)c.;
  - b. A bank, savings institution, or trust company;
  - c. A lawyer, accountant, engineer, or teacher whose performance of any such services is solely incidental to the practice of his profession;
  - d. A dealer or its salesman whose performance of these services is solely incidental to the conduct of its business as a dealer and who receives no special compensation for them;
  - e. A publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;
  - f. A person solely by virtue of such person's services to or on behalf of any 'business development company' as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 provided the business development company is not an

'investment company' by reason of Section 3(c)(1) of the Investment Company Act of 1940, as both acts were in effect on June 1, 1988;

- g. A personal representative of a decedent's estate, guardian, conservator, receiver, attorney in fact, trustee in bankruptcy, trustee of a testamentary trust, or a trustee of an inter vivos trust, not otherwise engaged in providing investment advisory services, and the performance of these services is not a part of a plan or scheme to evade registration or the substantive requirements of this Chapter;
  - h. A licensed real estate agent or broker whose only compensation is a commission on real estate sold;
  - i. An individual or company primarily engaged in acting as a business broker whose only compensation is a commission on the sale of a business;
  - j. An individual who, as an employee, officer or director of, or general partner in, another person and in the course of performance of his duties as such, provides investment advice to such other person, or to entities that are affiliates of such other person, or to employee benefit plans of such other person or its affiliated entities, or, with respect to such employee benefit plans, to employees of such other person or its affiliated entities;
  - k. Any person who is exempt from registration under the Investment Advisers Act of 1940 by operation of Section 203(b)(3) of said act or by operation of any rule or regulation promulgated by the United States Securities and Exchange Commission under or related to said Section 203(b)(3) provided that any reference in this sub-subsection to any statute, rule or regulation shall be deemed to incorporate said statute, rule or regulation (and any statute, rule or regulation referenced therein) as in effect on June 1, 1988;
  - l. An employee of a person described in subdivision b., e., f., g., h., or j. of G.S. 78C-2(1) acting on behalf of such person within the scope of his employment;
  - m. An investment adviser who is covered under federal law as defined in subdivision (4) of this section.
  - ~~m.n.~~ Such other persons not within the intent of this subsection as the Administrator may by rule or order designate.
- (2) 'Investment Advisers Act of 1940' means the federal statute of that name as amended before or after the effective date of this Chapter.
- (3) 'Investment adviser representative' ~~means~~ means, with respect to any investment adviser registered under this Chapter, any partner, officer, director (or a person occupying a similar status or performing similar

functions) or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:

- a. Makes any recommendations or otherwise renders advice regarding securities directly to clients,
- b. Manages accounts or portfolios of clients,
- c. Determines which recommendations or advice regarding securities should be given; provided, however if there are more than five such persons employed by or associated with an investment adviser, who do not otherwise come within the meaning of G.S. 78C-2(3)a., b., d., or e., then only the direct supervisors of such persons are deemed to be investment adviser representatives under G.S. 78C-2(3)c.,
- d. Solicits, offers or negotiates for the sale of or sells investment advisory services, unless such person is a dealer or salesman registered under Chapter 78A of the General Statutes and the person would not be an investment adviser representative except for the performance of the activities described in G.S. 78C-2(3)d., or
- e. Directly supervises investment adviser representatives as defined in G.S. 78C-2(3)a., b., c. (unless such investment adviser representatives are already required to register due to their role as supervisors by operation of G.S. 78C-2(3)c.), or d. in the performance of the foregoing activities.

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

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

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

"ARTICLE 3.

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

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

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

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

- (1) ~~He~~ The person is ~~so~~ registered under this Chapter;

- (2) ~~His~~ 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; or
- (3) ~~He has no place of business in the State and during any period of 12 consecutive months does not direct business communications into this State in any manner to more than 10 clients, other than those specified in subdivision (2), whether or not he or any of the persons to whom the communications are directed is then present in the State; or~~ 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.
- (4) ~~He is an investment adviser representative employed by or associated with an investment adviser exempt from registration under subdivisions (2) or (3), above.~~

(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) or (3) 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 investment adviser required to be registered to employ or associate 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 he is not employed by or associated with an investment adviser registered under this Chapter. When an investment adviser representative begins or terminates employment or association with an investment adviser, the investment adviser shall promptly notify the Administrator. 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. No investment adviser representative may be registered with more than one investment adviser 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.

(c) Every registration or notice filing expires December 31st 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)."

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

**"§ 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 ~~his~~ the Administrator's designee an application together with a consent to service of process pursuant to G.S. 78C-46(b). 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 he 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.

(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 two hundred dollars (\$200.00) in the case of an investment adviser, and forty-five dollars (\$45.00) 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 two hundred dollars (\$200.00) and a renewal notice filing fee of two hundred dollars (\$200.00).

(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)."

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

**"§ 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.~~ 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.~~ 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 ~~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."

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

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

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

In the General Assembly read three times and ratified this the 19th day of August, 1997.

s/ Marc Basnight  
President Pro Tempore of the Senate

s/ Harold J. Brubaker  
Speaker of the House of Representatives

s/ James B. Hunt, Jr.  
Governor

Approved 2:16 p.m. this 21st day of August, 1997