

Article 3.

Exemptions.

**§ 78A-16. Exempt securities.**

The following securities are exempted from G.S. 78A-24 and 78A-49(d):

- (1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing;
- (2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;
- (3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company organized and supervised under the laws of any state;
- (4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this State;
- (5) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state and authorized to do business in this State; but this exemption does not apply to an annuity contract, investment contract, or similar security under which the promised payments are not fixed in dollars but are substantially dependent upon the investment results of a segregated fund or account invested in securities unless the issuing or delivering company has satisfied the Commissioner of Insurance that it is in compliance with G.S. 58-7-95;
- (6) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this State;
- (7) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company of one of the foregoing which is (i) subject to the jurisdiction of the Interstate Commerce Commission; (ii) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act; (iii) regulated in respect of its rates and charges by a governmental authority of the United States or any state; or (iv) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;
- (8) Repealed by Session Laws 2001, c. 149, s. 1.
- (9) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association provided, however, that the Administrator may by

- rule or order impose conditions upon this exemption either generally or in relation to specific securities or transactions;
- (10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal;
  - (11) Any interest in an employees' stock or equity purchase, option, savings, pension, profit-sharing or other similar benefit plan;
  - (12) Any bond or note secured by lien on vessels shown by policies of marine insurance taken out in responsible companies to be of value, after deducting any and all other indebtedness secured by prior lien, of not less than one hundred twenty-five percent (125%) of the par amount of such bonds or notes;
  - (13) Any capital stock issued by a professional corporation organized pursuant to the provisions of the Professional Corporation Act, Chapter 55B;
  - (14) Any security issued by (i) any mutual association or agricultural marketing association organized or domesticated and existing under Subchapter IV or Subchapter V, respectively, of Chapter 54 of the General Statutes of North Carolina; or (ii) any electric or telephone membership corporation organized or domesticated and existing under Chapter 117 of the General Statutes of North Carolina.
  - (15) Any security listed or approved for listing upon notice of issuance on an exchange registered with the United States Securities and Exchange Commission or quoted or approved for quotation upon notice of issuance on an automated quotation system operated by a national securities association registered with the United States Securities and Exchange Commission, provided such security or class of securities, exchange or system is approved by rule of the Administrator; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing. (1925, c. 190, s. 3; 1927, c. 149, s. 3; 1931, c. 243, s. 5; 1955, c. 436, s. 2; 1967, c. 1233, s. 1; 1973, c. 1380; 1981, c. 624, s. 1; 1983, c. 817, ss. 4, 5; 1989 (Reg. Sess., 1990) c. 803, s. 1; 2001-149, s. 1; 2001-201, s. 7.)

#### **§ 78A-17. Exempt transactions.**

Except as otherwise provided in this Chapter, the following transactions are exempted from G.S. 78A-24 and G.S. 78A-49(d):

- (1) Any isolated nonissuer transaction, whether effected through a dealer or not.
- (2) Any nonissuer distribution other than by a controlling person of an outstanding security if
  - a. A recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within 18 months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or

- b. A registered dealer files with the Administrator such information relating to the issuer as the Administrator may by rule or order require, or
  - c. The security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the security.
- (3) Any nonissuer transaction effected by or through a registered dealer pursuant to an unsolicited order or offer to buy; but the Administrator may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the dealer for a specified period.
  - (4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.
  - (5) Any transaction in a bond or other evidence of indebtedness secured by a lien or security interest in real or personal property, or by an agreement for the sale of real estate or chattels, if the entire security interest or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit.
  - (6) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.
  - (7) Any transaction executed by a person holding a bona fide security interest without any purpose of evading this Chapter.
  - (8) Any offer or sale to an entity which has a net worth in excess of one million dollars (\$1,000,000) as determined by generally accepted accounting principles, bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a dealer, whether the purchaser is acting for itself or in some fiduciary capacity.
  - (9) Any transaction pursuant to an offer directed by the offeror to not more than 25 persons, other than those persons designated in subdivision (8), in this State during any period of 12 consecutive months, whether or not the offeror or any of the offerees is then present in this State, if the seller reasonably believes that all the buyers in this State are purchasing for investment. The Administrator may by rule or order withdraw, amend, or further condition this exemption for any security or security transaction. There is established a fee of one hundred fifty dollars (\$150.00) to recover costs for any filing required.
  - (10) Any offer or sale of a preorganizational certificate or subscription if: (i) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber; (ii) no public advertising or solicitation is used in connection with the offer or sale; (iii) the number of subscribers does not exceed 10 and the number of offerees does not exceed 25; and (iv) no payment is made by any subscriber.

- (11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if (i) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this State, or (ii) the issuer first files a notice specifying the terms of the offer and the Administrator does not by order disallow the exemption within the next 10 full business days.
- (12) Any offer (but not a sale) of a security for which registration statements have been filed under both this Chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act.
- (13) Any offer or sale by a domestic entity of its own securities if (i) the entity was organized for the purpose of promoting community, agricultural or industrial development of the area in which the principal office is located, (ii) the offer or sale has been approved by resolution of the county commissioners of the county in which its principal office is located, and, if located in a municipality or within two miles of the boundaries thereof, by resolution of the governing body of such municipality, (iii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this State, and (iv) the entity is both organized and operated principally to promote some community, industrial, or agricultural development that confers a public benefit rather than organized and operated principally to generate a pecuniary profit.
- (14) Any offer, sale or issuance of securities pursuant to an employees' stock or equity purchase, option, savings, pension, profit-sharing, or other similar benefit plan that is exempt under the provisions of G.S. 78A-16(11).
- (15) Any offer or sale of limited partnership interests in a partnership organized under the North Carolina Uniform Limited Partnership Act for the sole purpose of constructing, owning and operating a low and moderate income rental housing project located in North Carolina if the total amount of the offering and the total number of limited partners, both within and without this State for each such partnership, does not exceed five hundred thousand dollars (\$500,000) and 100 respectively. This exemption shall be allowed without limitation as to (i) the number, either in total or within any time period, of separate partnerships which may be formed by the same general partner or partners, sponsors or individuals in which partnership interests are offered; (ii) the period over which such offerings can be made; (iii) the amount of each limited partner's investment; or (iv) the period over which such investment is payable to the partnership. For purposes of this subdivision (15), the term "low and moderate rental housing project" means:
  - a. Any housing project with respect to which a mortgage is insured or guaranteed under section 221(d)(3) or 221(d)(4) or 236 of the National Housing Act, or any housing project financed or assisted by direct loan, mortgage insurance or guaranty, or tax abatement under similar provisions of federal, State or local laws, whether now existing or hereafter enacted; or

- b. Any housing project, some or all of the units of which are available for occupancy by families or individuals eligible to receive subsidies under section 8 of the United States Housing Act of 1937, as amended, or under the provisions of other federal, State or local law authorizing similar levels of subsidy for lower income families, whether now existing or hereafter enacted; or
  - c. Any housing project with respect to which a loan is made, insured or guaranteed under Title V, section 515, of the Housing Act of 1949, or under similar provisions of other federal, State or local laws, whether now existing or hereafter enacted.
- (16) Any offer to purchase or to sell or any sale or issuance of a 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 or any transaction incident to any other judicially or governmentally approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly cash.
- (17) Any transaction that is exempt pursuant to rules established by the Administrator creating limited offering transactional exemptions that are consistent with the objectives of compatibility with federal limited offering exemptions and uniformity among the states. There is established a fee of one hundred fifty dollars (\$150.00) to recover costs for any filing required by such rules.
- (18) Any transaction incident to a class vote by security holders, pursuant to the articles of incorporation or similar organizational document or the applicable statute governing the internal affairs of the entity, on a merger, conversion, consolidation, share exchange, reclassification of securities, or sale of an entity's assets in consideration of the issuance of securities of another entity.
- (19) Any offer or sale of any viatical settlement contract or any fractionalized or pooled interest therein by the issuer in a transaction that meets all of the following criteria:
- a. The underlying viatical settlement transaction with the viator was not in violation of any applicable state or federal law; and
  - b. The offer and sale of such contract or interest therein is conducted in accordance with such conditions as the Administrator requires by rule or order, including conditions governing advertising, suitability standards, financial statements, the investor's right of rescission, and the disclosure of information to offerees and purchasers.
- The Administrator may establish a fee to recover costs for any filing required by such rules, not to exceed five hundred dollars (\$500.00).
- (20) Any offer or sale of a security by an issuer if the offer or sale is conducted in accordance with G.S. 78A-17.1. (1925, c. 190, s. 4; 1927, c. 149, s. 4; 1935, cc. 90, 154; 1955, c. 436, s. 3; 1959, c. 1185; 1967, c. 1233, ss. 2, 3; 1971, c. 572, s. 1; 1973, c. 1380; 1977, c. 162; c. 610, s. 1; 1979, c. 647, s. 1; 1981, c. 624, s. 2; 1981 (Reg. Sess., 1982), c. 1263, ss. 1, 2; 1983, c. 509, ss. 1, 2; c. 817, ss. 6, 7; 1997-419, s. 5; 2001-197, s. 1;

2001-201, ss. 8, 9, 10, 11, 12; 2001-436, s. 8; 2002-126, ss. 29A.22, 29A.23; 2004-203, s. 6; 2016-103, s. 1.)

**§ 78A-17.1. Invest NC exemption.**

(a) Exemption. – Except as otherwise provided in this Chapter, an offer or sale of a security by an issuer is exempt from G.S. 78A-24 and G.S. 78A-49(d) if the offer or sale is conducted in accordance with each of the following requirements:

- (1) The issuer of the security is a business entity formed under the laws of the State and/or registered with the Secretary of State.
- (2) The transaction meets the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. § 77c(a)(11), and/or SEC rule 147, 17 C.F.R. § 230.147.
- (3) The sum of all cash and other consideration to be received for all sales of the security in reliance upon this exemption does not exceed the cap provided in this subdivision:
  - a. One million dollars (\$1,000,000), less the aggregate amount received for all sales of securities by the issuer made in reliance upon this exemption within the 12 months before the first offer or sale made in reliance upon this exemption, if the issuer has not undergone and made available to each prospective investor and the Administrator the documentation resulting from a financial audit or review with respect to its most recently completed fiscal year and meeting generally accepted accounting principles.
  - b. Two million dollars (\$2,000,000), less the aggregate amount received for all sales of securities by the issuer made in reliance upon this exemption within the 12 months before the first offer or sale made in reliance upon this exemption, if the issuer has undergone and made available to each prospective investor and the Administrator the documentation resulting from a financial audit or review with respect to its most recently completed fiscal year and meeting generally accepted accounting principles.
- (4) The issuer has not accepted more than five thousand dollars (\$5,000) from any single purchaser in an offering made in reliance upon this exemption in any 12-month period unless the purchaser is an accredited investor as defined by rule 501 of SEC regulation D, 17 C.F.R. § 230.501.
- (5) Not less than 10 days prior to the commencement of an offering of securities in reliance on this exemption or the use of any publicly available Web site in connection with any such offering, the issuer shall file a notice with the Administrator, in writing or in electronic form as specified by the Administrator, containing the following:
  - a. A notice of claim of exemption from registration, specifying that the issuer will be conducting an offering in reliance upon this exemption, accompanied by the filing fee as specified in this section.
  - b. A copy of the disclosure statement to be provided to prospective investors in connection with the offering, containing the following:

1. A description of the company, its type of entity, the address and telephone number of its principal office, its history, its business plan, and the intended use of the offering proceeds, including any amounts to be paid, as compensation or otherwise, to any owner, executive officer, director, managing member, or other person occupying a similar status or performing similar functions on behalf of the issuer.
  2. The identity of all persons owning more than ten percent (10%) of the ownership interests of any class of securities of the company.
  3. The identity of the executive officers, directors, managing members, and other persons occupying a similar status or performing similar functions in the name of and on behalf of the issuer, including their titles and their prior experience.
  4. The terms and conditions of the securities being offered and of any outstanding securities of the company, the minimum and maximum amount of securities being offered, if any, and either the percentage ownership of the company represented by the offered securities or the valuation of the company implied by the price of the offered securities.
  5. The identity of any person who has been or will be retained by the issuer to assist the issuer in conducting the offering and sale of the securities, including any Web sites, but excluding persons acting solely as accountants or attorneys and employees whose primary job responsibilities involve the operating business of the issuer rather than assisting the issuer in raising capital, and for each person identified in response to this sub-sub-subdivision, a description of the consideration being paid to such person for such assistance.
  6. A description of any litigation or legal proceedings involving the company or its management.
  7. The names and addresses, including URL, of any Web sites that will be used in connection with the offering.
- c. An escrow agreement with a bank or other depository institution located within this State or approved by the Administrator in which the investor funds will be deposited, providing that all offering proceeds will be released to the issuer only when the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount specified in the disclosure document provided to the Administrator pursuant to sub-subdivision (a)(5)b. of this section and that all investors may cancel their commitments to invest if that target offering amount is not raised by the time stated in the disclosure document.
- (6) The issuer is not, either before or as a result of the offering, an investment company, as defined in section 3 of the Investment Company Act of 1940, 15 U.S.C. § 8a-3, or an entity that would be an investment company but for the exclusions currently provided in section 3(c) of the Act, or subject to the

reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m and 78o(d).

- (7) The issuer shall inform all prospective purchasers under this section that the securities have not been registered under federal or State securities law and that the securities are subject to limitations on resale. The issuer shall display the following legend conspicuously on the cover page of the disclosure document: "IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME."
- (8) The issuer shall require each purchaser to certify in writing "I understand and acknowledge that:
  - a. I am investing in a high-risk, speculative business venture. I may lose all of my investment, and I can afford the loss of my investment.
  - b. This offering has not been reviewed or approved by any state or federal securities commission or other regulatory authority and that no such person or authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering.
  - c. The securities I am acquiring in this offering are illiquid, that there is no ready market for the sale of such securities, that it may be difficult or impossible for me to sell or otherwise dispose of this investment, and that, accordingly, I may be required to hold this investment indefinitely.
  - d. I may be subject to tax on my share of the taxable income and losses of the company, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the company.
- (9) If the offer or sale of securities is made through an Internet Web site, the following requirements apply:
  - a. Prior to the offer of an investment opportunity to residents of this State through a Web site, the issuer shall provide to the Web site and to the Administrator evidence that the issuer is organized under North Carolina law or that it is authorized to do business within the State.

- b. The issuer shall obtain from each purchaser of a security under this section evidence that the purchaser is a resident of North Carolina and, if applicable, an accredited investor.
  - c. The Web site operator shall register with the Administrator by filing a statement that it is a business entity that is organized under North Carolina law or that it is authorized to do business within the State and that it is being utilized to offer and sell securities pursuant to this exemption. As part of the registration, the Web site shall notify the Administrator of its and the issuer's identity, location, and contact information.
  - d. The issuer and the Web site must keep and maintain records of the offers and sales of securities effected through the Web site and must provide ready access to the records to the Administrator, upon request. The Administrator may access, inspect, and review any Web site and its records.
- (10) All payments for purchase of securities must be directed to and held by the bank or depository institution subject to the provisions of sub-subdivision (a)(5)c. of this section. The bank or depository institution shall notify the Administrator of the receipt of payments for securities and the identity and residence of the investors. The information shall be confidential and considered trade secrets within the scope of G.S. 132-1.2 while in the possession of the Administrator.
- (11) No offers or sales of a security shall be made through an Internet Web site unless the Web site is registered with the Administrator pursuant to sub-subdivision (a)(9)c. of this section. The Web site shall not be subject to the registration provisions of G.S. 78A-36 provided that all of the following apply:
- a. It does not offer investment advice or recommendations.
  - b. It does not solicit purchases, sales, or offers to buy the securities offered or displayed on the Web site.
  - c. It does not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the Web site.
  - d. It is not compensated based on the amount of securities sold, and it does not hold, manage, possess, or otherwise handle investor funds or securities.
  - e. It does not engage in such other activities as the Administrator, by rule, determines appropriate.
- (12) An executive officer, director, managing member, or person occupying a similar status or performing similar functions in the name of and on behalf of the issuer shall be exempt from the registration provisions of G.S. 78A-36, provided that the person does not receive, directly or indirectly, any commission or remuneration for offering and selling securities of the issuer pursuant to this exemption.
- (13) The issuer must provide a copy of the disclosure document provided to the Administrator pursuant to sub-subdivision (a)(5)b. of this section to each prospective investor at the time the offer of securities is made to the prospective investor. In addition to the information described in sub-subdivision (a)(5)b. of

this section, the disclosure document provided to the Administrator and to prospective investors should include additional information material to the offering, including, where appropriate, a discussion of significant factors that make the offering speculative or risky. This discussion must be concise and organized logically and should not present risks that could apply to any issuer or any offering.

(b) Indexing. – The dollar limitations provided in subdivision (a)(3) of this section shall be cumulatively adjusted every fifth year by the Administrator to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting each dollar limitation to the nearest fifty thousand dollars (\$50,000).

(c) Report. – An issuer of a security, the offer and sale of which is exempt under this section, shall provide a quarterly report to the issuer's investors until no securities issued under this section are outstanding. The report required by this subsection shall be free of charge. An issuer may satisfy the reporting requirement of this subsection by making the information available on an Internet Web site if the information is made available within 45 days of the end of each fiscal quarter and remains available until the succeeding quarterly report is issued. An issuer shall file each such quarterly report with the Administrator and must provide a written copy of the report to any investor upon request. The report must contain each of the following:

- (1) Compensation received by each director and executive officer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received.
- (2) An analysis by management of the issuer of the business operations and financial condition of the issuer.

(d) Offers and Sales to Controlling Persons. – The exemption provided in this section shall not be used in conjunction with any other exemption under this Chapter, except offers and sales to controlling persons shall not count toward the limitations in subdivision (3) or (4) of subsection (a) of this section. A controlling person is an officer, director, partner, trustee, or individual occupying similar status or performing similar functions with respect to the issuer or to a person owning ten percent (10%) or more of the outstanding shares of any class or classes of securities of the issuer.

(e) Disqualification. – The exemption allowed by this section shall not apply if an issuer or person affiliated with the issuer or offering is subject to any disqualification contained in 18 NCAC 06A .1207(a)(1) through (a)(6) or contained in rule 262 as promulgated under the Securities Act of 1933 (17 C.F.R. § 230.262). The provisions of this subsection shall not apply if (i) upon a showing of good cause and without prejudice to any other action by the Administrator, the Administrator determines that it is not necessary under the circumstances that an exemption be denied and (ii) the issuer establishes that it made factual inquiry into whether any disqualification existed under this subsection but did not know, and in the exercise of reasonable care could not have known, that a disqualification existed under this subsection. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants.

(f) Rules. – To effectuate the general purpose of this section, the Administrator may adopt rules and issue orders that are necessary or appropriate in the public interest or for the protection of investors. The Administrator may also adopt rules and issue orders coordinating the interpretation and administration of this section with the related federal law and regulations.

(g) Fee. – The Administrator shall charge a nonrefundable filing fee of one hundred fifty dollars (\$150.00) for filing an exemption notice required by subsection (a) of this section. The fees

paid to the Administrator pursuant to this subsection shall be used to pay the costs incurred in administering and enforcing this Chapter. The revenue derived from the fee shall be credited to a nonreverting agency revenue account. (2016-103, s. 2.)

**§ 78A-18. Denial and revocation of exemptions.**

(a) The Administrator may by order deny or revoke any exemption specified in subdivision (9), (11), or (15) of G.S. 78A-16 or in 78A-17 with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the Administrator may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this section. Upon the entry of a summary order, the Administrator shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within 20 days of the receipt of a written request the matter will be scheduled for hearing in accordance with Chapter 150B of the General Statutes. If no hearing is requested and none is ordered by the Administrator, the order will remain in effect until it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of an opportunity for hearing to all interested persons, may not modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated G.S. 78A-24 or 78A-49(d) by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the order.

(b) In a civil or administrative proceeding brought under this Chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it. In a criminal proceeding brought under this Chapter, the State has no initial burden of producing evidence to show that the defendant's actions do not fall within the exemption or exception; however, once the defendant introduces evidence to show that his conduct is within the exemption or exception, the burden of persuading the trier of fact that the exemption or exception does not apply falls upon the State. (1925, c. 190, ss. 5, 11; 1927, c. 149, ss. 5, 11; 1973, c. 1380; 1975, c. 19, s. 20; 1987, c. 849, s. 2; 1989 (Reg. Sess., 1990), c. 803, s. 2; 2001-126, s. 1; 2001-149, s. 2.)

**§§ 78A-19 through 78A-23. Reserved for future codification purposes.**