

By Mr. Norton, a petition (accompanied by bill, Senate, No. 107) of Michael J. Connolly, Secretary of the Commonwealth, and Thomas C. Norton for legislation relative to financial planning services. Commerce and Labor.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Nine.

AN ACT RELATIVE TO FINANCIAL PLANNING SERVICES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 401 of Chapter 110A of the General
2 Laws is hereby amended by adding therein subsections (m)
3 and (n): —

4 (m) "Investment adviser" means any person who, for
5 compensation, engages in the business of advising others, either
6 directly or through publications or writings, as to the value of
7 securities or as to the advisability of investing in, purchasing, or
8 selling securities, or who, for compensation and as a part of a
9 regular business, issues or promulgates analyses or reports
10 concerning securities. "Investment adviser" also includes financial
11 planners and other persons who, as an integral component of
12 other financially related services, provide the foregoing
13 investment advisory services to others for compensation and as
14 part of a business or who hold themselves out as providing the
15 foregoing investment advisory services to others for compensa-
16 tion. "Investment adviser" does not include (1) a bank, savings
17 institution, or trust company; (2) a lawyer, accountant, engineer,
18 or teacher whose performance of these services is solely incidental
19 to the practice of his profession; (3) a broker-dealer or agent
20 registered without the imposition of a condition under
21 section 204 (b) (5); (4) a publisher of any bona fide newspaper,
22 news column, newsletter, news magazine, or business or financial
23 publication or service whether communicated in hard copy form,
24 or by electronic means, or otherwise, that does not consist of the

25 rendering of advice on the basis of the specific investment situation
26 of each client; (5) a person whose only clients in this state are other
27 investment advisers, broker-dealers, banks, savings institutions,
28 trust companies, insurance companies, investment companies as
29 defined in the Investment Company Act of 1940, employee benefit
30 plans with assets of not less than five million dollars (\$5,000,000),
31 governmental agencies or instrumentalities, or other financial
32 institutions or institutional buyers, whether acting for themselves
33 or as trustees with investment control; or (6) such other persons
34 not within the intent of this paragraph as the secretary may by
35 rule or order designate.

36 (n) "Investment adviser representative" means any partner,
37 officer, director of (or a person occupying a similar status or
38 performing similar functions) or other individual employed by or
39 associated with an investment adviser, except clerical or
40 ministerial personnel, who (1) makes any recommendations or
41 otherwise renders advice regarding securities, (2) manages
42 accounts or portfolios of clients, (3) determines which
43 recommendation or advice regarding securities should be given,
44 (4) solicits, offers or negotiates for the sale of or sells investment
45 advisory services, or (5) supervises employees who perform any
46 of the foregoing.

1 SECTION 2. Section 201 of Chapter 110A of the General
2 Laws is hereby amended by striking section (c) and inserting new
3 sections (c) and (d): —

4 (c) It is unlawful for any person to transact business in this state
5 as an investment adviser or as an investment adviser representative
6 unless he is so registered under this act.

7 (d) Every registration expires on the last day of the calendar
8 year.

1 SECTION 3. Section 202 of Chapter 110A of the General
2 Laws is hereby amended by striking sections (a)-(d) and insert-
3 ing in place thereof the following: —

4 (a) A broker-dealer, agent, investment adviser, or investment
5 adviser representative may obtain an initial or renewal registration
6 by filing with the secretary an application together with a consent
7 to service of process pursuant to section 414(g). The application

8 shall contain whatever information the Secretary by rule requires
9 concerning such matters as (1) the applicant's form and place of
10 organization; (2) the applicant's proposed method of doing
11 business; (3) the qualification and business history of the
12 applicant; and in the case of a broker-dealer or investment adviser,
13 the qualifications and business history of any partner, officer, or
14 director, any person occupying a similar status or performing
15 similar functions, or any person directly or indirectly controlling
16 the broker-dealer or investment adviser; (4) any injunction or
17 administrative order or conviction of a misdemeanor involving
18 a security or any aspect of the securities business and any
19 conviction of a felony; (5) the applicant's financial condition and
20 history and, (6) any information to be furnished or disseminated
21 to any client or prospective client, if the applicant is an investment
22 advisor. The Secretary may by rule or order require an application
23 for initial registration to publish an announcement of the
24 application in one or more specified newspapers published in this
25 state. If no denial order is in effect and no proceeding is pending
26 under section 204, registration becomes effective at noon of the
27 thirtieth day after an application is filed. The Secretary may by
28 rule or order specify an earlier effective date, and he may by order
29 defer the effective date until noon of the thirtieth day after the
30 filing of any amendment. Registration of a broker-dealer or
31 investment adviser automatically constitutes registration of any
32 agent or investment adviser representative (whichever is
33 applicable) who is a partner, officer, or director, or a person
34 occupying a similar status or performing similar functions. No
35 person shall be designated as an officer, partner or director or a
36 person occupying a similar position or performing similar
37 functions, for the purpose of automatic registration if such
38 designation is solely for the purpose of avoiding registration as
39 an agent or investment adviser representative.

40 (b) Every applicant for initial or renewal registration shall pay
41 a registration fee of three hundred dollars in the case of a broker-
42 dealer, forty dollars in the case of an agent, including an agent
43 automatically registered pursuant to section 202 (a), fifty dollars
44 in the case of an investment adviser and forty dollars in the case
45 of an investment adviser representative, including an investment
46 adviser representative registered pursuant to section 202 (a).

47 When an agent or investment adviser representative transfers an
48 affiliation, he/she shall pay a fee of forty dollars.

49 (c) A registered broker-dealer or investment adviser may file
50 an application for registration of a successor, whether or not the
51 successor is then in existence, for the unexpired portion of the
52 year. There shall be no filing fee.

53 (d) The secretary may by rule require a minimum capital for
54 registered broker-dealers and establish minimum financial
55 requirements for investment advisers.

1 SECTION 4. Section 203 of Chapter 110A of the General
2 Laws is hereby amended by striking out sections (a) and (b) and
3 inserting in place thereof the following: —

4 (a) Every registered broker-dealer and investment adviser shall
5 make and keep such accounts, correspondence, memoranda,
6 papers, books, and other records as the Secretary by rule
7 prescribes. All records so required shall be preserved for three
8 years unless the Secretary by rule prescribes otherwise for
9 particular types of records.

10 (b) Every registered broker-dealer and investment adviser shall
11 file such financial reports as the Secretary by rule prescribes.

1 SECTION 5. Section 204 (a) of Chapter 110A of the General
2 Laws is hereby amended by striking out the first paragraph and
3 inserting in place thereof the following: —

4 (a) The secretary may by order deny, suspend, or revoke any
5 registration if he finds (1) that the order is in the public interest
6 and (2) that the applicant or registrant or, in the case of a broker-
7 dealer or investment adviser, any partner, officer, or director, any
8 person occupying a similar status or performing similar functions,
9 or any person directly or indirectly controlling the broker-dealer
10 or investment adviser.

1 SECTION 6. Section 204(a) of Chapter 110A of the General
2 Laws is hereby amended by striking out subsection (E) and
3 inserting the following:

4 (E) is the subject of an order of the secretary denying,
5 suspending, or revoking registration as a broker/dealer, agent,
6 investment advisor, or investment advisor representative;

1 SECTION 7. Section 204 (a) of Chapter 110A of the General
2 Laws is hereby amended by striking subsection (J) and inserting
3 therein the following: —

4 (J) has failed reasonably to supervise agents, investment
5 adviser representatives or other employees to assure compliance
6 with this chapter; or: -.

1 SECTION 8. Section 204 (b) of Chapter 110A of the General
2 Laws is hereby amended by striking subsections (2), (3) and (4)
3 and inserting therein the following: —

4 (2) The secretary may not enter an order against any investment
5 adviser on the basis of the lack of qualification of any person other
6 than (A) the investment adviser himself if he is an individual or
7 (B) an investment adviser representative.

8 (3) The secretary may not enter an order solely on the basis of
9 lack of experience if the applicant or registrant is qualified by
10 training or knowledge or both.

11 (4) The secretary shall consider that an agent who will work
12 under the supervision of a registered broker-dealer need not have
13 the same qualifications as a broker-dealer and that an investment
14 adviser representative who will work under the supervision of a
15 registered investment adviser need not have the same qualifica-
16 tions as an investment adviser.

17 (5) The secretary may consider that a broker/dealer or agent
18 is not necessarily qualified to act in the capacity as an investment
19 adviser solely on the basis of experience as a broker-dealer or
20 agent. When he finds that an applicant for initial or renewal
21 registration as a broker-dealer or agent is not qualified to act in
22 the capacity of an investment adviser, he may by order condition
23 the applicant's registration as a broker-dealer upon his not
24 transacting the business of an investment adviser in this state.

25 (6) The secretary may by rule provide for an examination which
26 may be written or oral or both, to be taken by any class of or
27 all applicants.

1 SECTION 9. Section 204 of Chapter 110A of the General
2 Laws is hereby amended by striking subsections (c), (d), (e) and
3 (f) and inserting therein the following: —

4 (c) The secretary may by order summarily postpone or suspend
5 registration, pending final determination of any proceeding under

6 this section. Upon the entry of the order, the secretary shall
7 promptly notify the applicant or registrant, as well as the employer
8 or prospective employer if the applicant or registrant is an agent
9 or investment adviser representative, that it has been entered and
10 of the reasons therefor and that within fifteen days after the receipt
11 of a written request the matter will be set down for hearing. If
12 no hearing is requested and none is ordered by the secretary the
13 order will remain in effect until it is modified or vacated by the
14 secretary. If a hearing is requested or ordered, the secretary, after
15 notice of and opportunity for hearing, may modify or vacate the
16 order or extend it until final determination.

17 (d) If the secretary finds that any registrant or applicant for
18 registration is no longer in existence or has ceased to do business
19 as a broker-dealer, agent, investment adviser or investment
20 adviser representative or is subject to an adjudication of mental
21 incompetence or to the control of a committee, conservator, or
22 guardian, or cannot be located after reasonable search, the
23 secretary may by order cancel the registration or application.

24 (e) Withdrawal from registration as a broker-dealer, agent,
25 investment adviser or investment adviser representative becomes
26 effective thirty days after receipt of an application to withdraw
27 or within such shorter period of time an application as the
28 secretary may determine, unless a revocation or suspension
29 proceeding is pending when the application is filed or a proceeding
30 to revoke or suspend or to impose conditions upon the withdrawal
31 is instituted within thirty days after the application is filed. If a
32 proceeding is pending or instituted, withdrawal becomes effective
33 at such time and upon such conditions as the secretary by order
34 determines. If no proceeding is pending or instituted and
35 withdrawal automatically becomes effective, the secretary may
36 nevertheless institute a revocation or suspension proceeding under
37 section 204 (a) (2) (B) within one year after withdrawal became
38 effective and enter a revocation or suspension order as of the last
39 date on which registration was effective.

40 (f) No order may be entered under any part of this section except
41 the first sentence of subsection (c) without (1) appropriate prior
42 notice to the applicant or registrant (as well as the employer or
43 prospective employer if the applicant or registrant is an agent or
44 investment adviser representative), (2) opportunity for hearing,
45 or (3) written findings of fact and conclusions of law.

