



Senate

General Assembly

File No. 168

January Session, 2003

Substitute Senate Bill No. 1000

Senate, April 3, 2003

The Committee on Banks reported through SEN. FINCH of the 22nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING INVESTMENT ADVISERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 36b-7 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2003*):

3 (a) A broker-dealer, agent, investment adviser or investment adviser
4 agent may obtain an initial or renewal registration by filing with the
5 commissioner or other depository as the commissioner may by
6 regulation or order designate an application together with a consent to
7 service of process pursuant to subsection (g) of section 36b-33. The
8 application shall contain such information as the commissioner may
9 require. On and after January 1, 2005, the commissioner (1) shall not
10 approve any such application filed by an investment adviser or an
11 investment adviser agent for an initial registration unless the applicant
12 passes an examination administered by the commissioner pursuant to
13 section 5 of this act, and (2) shall not approve any such application
14 filed by an investment adviser or investment adviser agent for a
15 renewal registration unless the applicant complies with the continuing

16 education requirements of section 4 of this act and passes an
17 examination administered by the commissioner pursuant to section 5
18 of this act.

19 (b) The application for an initial or renewal registration for an
20 investment adviser or an investment adviser agent shall include a
21 statement to be signed by the applicant, in which the applicant
22 represents that the applicant (1) will not charge or receive
23 compensation in connection with the rendering of investment advice
24 unless such compensation is fair and reasonable, determined on an
25 equitable basis and adequately disclosed to each client, (2) will ensure
26 that each broker-dealer selected by the investment adviser or
27 investment adviser agent to effect transactions in securities for the
28 account of a client is registered pursuant to chapter 672a, and (3) will
29 provide to the commissioner any adverse financial or disciplinary
30 information required by the commissioner. Each applicant shall also
31 disclose in the application (A) any criminal record of the applicant, and
32 (B) any pending litigation against the applicant concerning any
33 business or personal matter that could reflect on the integrity of the
34 applicant with regard to the applicant's employment as an investment
35 adviser or investment adviser agent.

36 Sec. 2. Section 36b-9 of the general statutes is repealed and the
37 following is substituted in lieu thereof (*Effective October 1, 2003*):

38 The commissioner may require that each application for registration
39 of a broker-dealer [or investment adviser] be accompanied by a true
40 and correct statement of financial condition, in such form and
41 containing such data as the commissioner may require. The
42 commissioner shall require that each application for registration of an
43 investment adviser or an investment adviser agent be accompanied by
44 a true and correct statement of financial condition in such form and
45 containing such data as the commissioner may require. Such statement
46 of financial condition shall be sworn to, before a person qualified to
47 administer oaths, by the applicant, and shall state that the alleged facts
48 therein contained are true to [his] the applicant's own knowledge. If

49 such applicant is a partnership, such oath shall be made by a general
50 partner thereof, and, if such applicant is a corporation or other form of
51 association, such oath shall be made by an executive officer thereof.
52 Such statement of financial condition shall be kept in a confidential file
53 and shall not be open to the public.

54 Sec. 3. Section 36b-14 of the general statutes is repealed and the
55 following is substituted in lieu thereof (*Effective October 1, 2003*):

56 (a) (1) Every registered investment adviser and investment adviser
57 agent shall make, keep and preserve such accounts, correspondence,
58 memoranda, papers, books and other records as the commissioner by
59 regulation prescribes. All such records shall be preserved for such
60 period as the commissioner by regulation prescribes.

61 (2) Every investment adviser that is registered with the Securities
62 and Exchange Commission or excepted from the definition of
63 investment adviser under Section 202(a)(11) of the Investment
64 Advisers Act of 1940, and every registered broker-dealer, shall make,
65 keep and preserve such accounts, correspondence, memoranda,
66 papers, books and other records as the Securities and Exchange
67 Commission requires. All such records shall be preserved for such
68 period as the Securities and Exchange Commission requires.

69 (3) All records referred to in this subsection may be stored on
70 microfilm, microfiche or on an electronic data processing system or
71 similar system utilizing an internal memory device provided that a
72 printed copy of any such record is immediately accessible.

73 (b) (1) Every registered investment adviser and registered
74 investment adviser agent shall file such financial reports as the
75 commissioner by regulation prescribes.

76 (2) Every registered investment adviser and registered investment
77 adviser agent shall also file with the commissioner, on the date of issue
78 or publication to the investing public, one copy of (A) any prospectus,
79 pamphlet, circular, form letter or other sales literature addressed or

80 intended for general distribution to clients or prospective clients of the
81 investment adviser, and (B) any advertisement offering investment
82 advisory services to such clients or prospective clients. Every
83 registered investment adviser and registered investment adviser agent
84 shall promptly report to the commissioner any financial problem of the
85 adviser or agent that could affect the impartiality of the advice
86 provided by the adviser or agent to clients.

87 [(2)] (3) Every investment adviser that is registered with the
88 Securities and Exchange Commission or excepted from the definition
89 of investment adviser under Section 202(a)(11) of the Investment
90 Advisers Act of 1940, and every registered broker-dealer, shall file
91 such financial reports as the commissioner by regulation prescribes,
92 except that the commissioner shall not require the filing of financial
93 reports that are not required to be filed with the Securities and
94 Exchange Commission.

95 (c) If the information contained in any document filed with the
96 commissioner under this section is or becomes inaccurate or
97 incomplete in any material respect, the person making the filing shall
98 promptly file a correcting amendment unless notification of the
99 correction has been given under sections 36b-2 to 36b-33, inclusive.

100 (d) All the records of a registered investment adviser, a registered
101 investment adviser agent and a registered broker-dealer referred to in
102 subsection (a) of this section are subject at any time or from time to
103 time to such reasonable periodic, special or other examinations by the
104 commissioner, within or without this state, as the commissioner deems
105 necessary or appropriate in the public interest or for the protection of
106 investors. Every registered investment adviser, every registered
107 investment adviser agent and every registered broker-dealer shall keep
108 such records open to examination by the commissioner and, upon the
109 commissioner's request, shall provide copies of any such records to the
110 commissioner. For the purpose of avoiding unnecessary duplication of
111 examinations, the commissioner, insofar as the commissioner deems it
112 practicable in administering this subsection, may cooperate with the

113 securities administrators of other states, the Securities and Exchange
114 Commission, and any national securities exchange or national
115 securities association registered under the Securities Exchange Act of
116 1934.

117 Sec. 4. (NEW) (*Effective July 1, 2003*) The Commissioner of Banking
118 shall adopt regulations, in accordance with the provisions of chapter
119 54 of the general statutes, establishing continuing education
120 requirements on and after January 1, 2004, for persons registered as
121 investment advisers or investment adviser agents, as defined in section
122 36b-3 of the general statutes. On and after January 1, 2005, a
123 registration for an investment adviser or investment adviser agent may
124 not be renewed unless the investment adviser or investment adviser
125 agent submits to the commissioner proof of compliance with such
126 continuing education requirements. The commissioner shall update
127 such regulations at least every two years.

128 Sec. 5. (NEW) (*Effective July 1, 2003*) The Commissioner of Banking
129 shall adopt regulations, in accordance with the provisions of chapter
130 54 of the general statutes, establishing examination requirements,
131 including an examination fee, for applicants for initial or renewal
132 registration as investment advisers or investment adviser agents, as
133 defined in section 36b-3 of the general statutes, on and after January 1,
134 2005. Such examinations for applicants for renewal registration as
135 investment advisers or investment adviser agents shall include topics
136 covered in the continuing education required under section 4 of this
137 act. The commissioner shall update such regulations at least every two
138 years.

139 Sec. 6. (NEW) (*Effective October 1, 2003*) Each registered investment
140 adviser and registered investment adviser agent, as defined in section
141 36b-3 of the general statutes, shall give a written statement to each
142 client (1) indicating that any membership of such adviser or agent in a
143 professional organization is not a representation of the integrity of the
144 adviser or agent or the quality of the services that the adviser or agent
145 will provide to the customer, and (2) providing the telephone number

146 of the Department of Banking office that provides information to the
147 public concerning investment advisers and investment adviser agents.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>
Sec. 3	<i>October 1, 2003</i>
Sec. 4	<i>July 1, 2003</i>
Sec. 5	<i>July 1, 2003</i>
Sec. 6	<i>October 1, 2003</i>

Statement of Legislative Commissioners:

References to "investment adviser agent" were added in section 4 for statutory consistency with subsection (a) of section 1.

BA *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Type	FY 04 \$	FY 05 \$
Banking Dept.	BF - Cost	Potential Significant	Potential Significant

Note: BF=Banking Fund

Municipal Impact: None

Explanation

The bill could result in significant costs to the Department of Banking (DOB). The bill requires a number of additional requirements for registered investment advisors and registered investment advisor agents. These requirements include: 1) passing an examination, 2) complying with continuing education, 3) submitting a statement pledging that the advisor is registered and will charge fair and reasonable prices and will submit adverse information as needed, 4) disclosing a criminal record and pertinent pending litigation, 5) submitting a statement of financial condition, 6) keeping records and accounts, 7) filing financial reports as needed, 8) filing sales literature and advertisements and 9) allowing examination of records by DOB examiners.

The DOB would be charged with determining compliance with these requirements. There are about 5,300 investment advisors registered in Connecticut. The level of additional staff and associated cost that would be required to review the application information, develop continuing education requirements and examine the records of these individuals periodically is not known at this time but would

likely be significant.¹

¹ OFA defines "significant" as exceeding \$100,000.

OLR Bill Analysis

sSB 1000

AN ACT CONCERNING INVESTMENT ADVISERS**SUMMARY:**

This bill creates several new requirements for registered investment advisers and investment adviser agents. It requires them to (1) take an examination administered by the banking commissioner as a condition for registration, (2) meet continuing education requirements, (3) file with the commissioner copies of their sales literature and advertisements, (4) notify the commissioner of any litigation or other circumstances that could compromise their business integrity, and (5) make certain disclosures to clients and prospective clients.

EFFECTIVE DATE: October 1, 2003, except for the provisions requiring the commissioner to adopt continuing education and examination regulations, which take effect July 1, 2003.

REGISTRATION

The bill increases the requirements that applicants must meet for an initial or renewal registration as an investment adviser or investment adviser agent. Starting July 1, 2005, it prohibits the banking commissioner from approving an application for (1) an initial registration unless the applicant passes an examination the commissioner administers or (2) a renewal registration unless the applicant meets the continuing education requirements and passes an examination the commissioner administers.

The bill requires initial and renewal registration applications for investment advisers and investment adviser agents to include a signed statement that the applicant will (1) not charge or receive compensation for investment advice unless the compensation is fair, reasonable, determined on an equitable basis, and adequately disclosed to each client; (2) make sure that each broker-dealer he uses to buy and sell securities for a client's account is properly registered; and (3) provide to the commissioner any adverse financial or disciplinary information he requests. It also requires applicants to disclose in their application any criminal record or pending litigation

against them concerning a business or personal matter that could affect their integrity as an investment adviser or investment adviser agent.

The bill requires applications for investment adviser agent registration to contain a true and correct statement of the applicant's financial condition in a form and including such data as the commissioner requires. Investment advisers must already provide this information.

FILING REQUIREMENTS

The bill requires registered investment advisers and investment adviser agents to file with the commissioner, on the date of publication or issue to the investing public, a copy of (1) any prospectus, pamphlet, circular, form letter, or other sales literature addressed or intended for general distribution to clients or prospective clients and (2) any advertisement offering investment services to clients or prospective clients. It requires registered investment advisers and investment adviser agents to report promptly to the commissioner any financial problem that could affect the impartiality of their advice to clients. The bill also applies to investment adviser agents several provisions of law already applicable to investment advisers concerning maintenance of records and reports and the commissioner's examination of them.

CONTINUING EDUCATION REQUIREMENT

The bill requires the commissioner to adopt regulations establishing continuing education requirements applicable on and after January 1, 2004 for people registered as investment advisers and investment adviser agents. It prohibits an adviser or agent from renewing his registration on and after January 1, 2005 without submitting to the commissioner proof of compliance with the continuing education requirements. The bill requires the commissioner to update the regulations at least every two years.

EXAMINATION REQUIREMENT

The bill requires the commissioner to adopt regulations establishing examination requirements, including an examination fee, for applicants for initial or renewal registration as investment advisers or investment adviser agents on and after January 1, 2005. Examinations for renewal registration must include topics covered in the required continuing education. The bill requires the commissioner to update

the regulations at least every two years.

DISCLOSURES TO CLIENTS

The bill requires registered investment advisers and investment adviser agents to give to each client a written statement (1) indicating that the adviser or agent's membership in a professional organization does not represent the adviser or agent's integrity or the quality of services he will provide to customers and (2) providing the telephone number of the Department of Banking office that gives information to the public about investment advisers and investment adviser agents.

COMMITTEE ACTION

Banks Committee

Joint Favorable Substitute
Yea 18 Nay 1