

18 NCAC 06A .1104 DEFINITIONS

As used in this Chapter, the following terms mean:

- (1) "Act" shall mean the North Carolina Securities Act, Chapter 78A of the North Carolina General Statutes, as same has been or may be from time to time amended.
- (2) "Commercial Paper," as referred to in G.S. 78A-16(10), shall mean any note, draft, bill of exchange or bankers acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance not exceeding nine months, exclusive of days of grace, or any renewal thereof, the maturity of which is likewise limited or any guarantee of such paper or of any such renewal. Commercial paper shall also exemplify the following characteristics:
 - (a) prime quality negotiable paper of a type not ordinarily purchased by the general public;
 - (b) issued to facilitate well recognized types of current operational business requirements; and
 - (c) of a type eligible for discounting by Federal Reserve Banks.The Division hereby incorporates by reference the concepts of "commercial paper" found in SEC Release No. 33-4412, September 20, 1961, (1961 WL 61632).
- (3) "Direct Participation Program" shall mean a program which provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof. A program may be composed of one or more legal entities or programs but when used in these Rules the term shall include each of the separate entities or programs making up the overall program and the overall program itself. Excluded from this definition are viatical settlement contracts as defined in G.S. 78A-2(13), Subchapter S corporate offerings, real estate investment trusts, tax qualified pension and profit sharing plans pursuant to Sections 401 and 403 (a) of the Internal Revenue Code and individual retirement plans under Section 408 of that Code, and any company registered pursuant to the Investment Company Act of 1940.
- (4) "SEC" shall mean the Securities and Exchange Commission.
- (5) "NASD" shall mean the National Association of Securities Dealers, Inc.
- (6) "NASAA" shall mean the North American Securities Administrators Association, Inc.
- (7) "CRD" shall mean the Central Registration Depository.
- (8) "Investment Contract" as used in G.S. 78A-2(11) includes:
 - (a) Any investment in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor. In this Subparagraph a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment or of a third party; and
 - (b) Any investment by which an offeree furnishes initial value to an offeror, and a portion of this initial value is subjected to the risks of the enterprise, and the furnishing of this initial value is induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise, and the offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.
- (9) "Recognized Securities Manual" shall mean a publication which contains the information required by G.S. 78A-17(2)a. and which has been designated, pursuant to G.S. 78A-49 and Rule .1202 of this Chapter, as a "recognized securities manual" by the administrator.
- (10) "Form D" shall mean the document adopted by the Securities and Exchange Commission, in effect on September 1, 1996 and as may be amended by the SEC from time to time, entitled "FORM D; Notice of Sale of Securities pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption," including Part E and the Appendix.

History Note: Authority G.S. 78A-49(a);
Eff. April 1, 1981;
Amended Eff. September 1, 1990; October 1, 1988; January 1, 1984;

Temporary Amendment Eff. October 1, 1997;
Amended Eff. August 1, 1998;
Temporary Amendment Eff. April 1, 2002;
Amended Eff. April 1, 2003;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December
6, 2016.