

**18 NCAC 06A .1206 LIMITED OFFERING EXEMPTION PURSUANT TO G.S. 78A-17(17)**

(a) Transactions made in reliance upon Rule 505 of Regulation D promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended, and 17 C.F.R. 230.505 (1982) (as subsequently amended), including any offer or sale made exempt by application of Rule 508(a), as made effective in Release No. 33-6389 and as amended in Release Nos. 33-6437, 33-6663, 33-6758, and 33-6825, shall be exempt from the requirements of G.S. 78A-24, provided there is compliance with the conditions and limitations of this Rule .1206 and Rules .1207 and .1208 of this Section.

(b) No exemption under this Rule is available for the offer or sale of securities if the issuer or any other person or entity to which Rule .1206 applies is disqualified pursuant to Rule .1207 of this Section unless the administrator, upon application and a showing of good cause by the issuer, or such other person or entity, modifies or waives the disqualification. For purposes of this Rule, "good cause" means a substantial reason amounting in law to a legal excuse for noncompliance with a restriction imposed by Rule .1207, and shall be relevant to considerations of the public interest, the protection of the investing public, the age and nature of the particular disqualifying event, the business experience, qualifications, and disciplinary history of the disqualified person, the need for full disclosure of information relevant to investment decisions, and the burden and cost of compliance with regulatory requirements applicable to the transaction in the absence of the availability of the exemption.

(c) No commission, discount, finder's fee or other similar remuneration or compensation shall be paid, directly or indirectly, to any person for soliciting any prospective purchaser of any security sold to a resident of this State in reliance upon the exemption provided by this Rule unless such person is either registered pursuant to G.S. 78A-36 or exempt from registration thereunder or the issuer reasonably believes that such person is so registered or exempt therefrom.

(d) In all sales to those accredited investors defined in 17 C.F.R. 230.501(a)(5) who reside in this State (except sales to such accredited investors made by or through a dealer registered under G.S. 78A-36) and in all sales to nonaccredited investors who reside in this State the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that the following conditions are satisfied:

(1) In the case of a security other than a viatical settlement contract:

- (A) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his/her other security holdings and as to his/her financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed 10 percent of the investor's net worth, it is suitable; or
- (B) The purchaser, either alone or with his/her purchaser representative(s), has such knowledge and experience in financial and business matters that he/she is or they are capable of evaluating the merits and risks of the prospective investments.

(2) In the case of a viatical settlement contract, the requirements of Rule .1320 of this Chapter.

(e) In all sales of direct participation programs securities pursuant to the exemption provided by this Rule, the provisions of Rule .1313 of this Chapter regarding registered offerings of direct participation program securities shall be applicable. In all sales pursuant to the exemption provided by this Rule of viatical settlement contracts, the provisions of Rule .1320 of this Chapter shall be applicable.

(f) Any prospectus or disclosure document used in this state in connection with an offer or sale of securities made in reliance upon the exemption provided by this Rule shall disclose conspicuously the legend(s) required by the provisions of Rule .1316 of this Chapter and, in the case of a viatical settlement contract, shall set forth the purchaser's right of rescission pursuant to both G.S. 78A-56 and Rule .1501 of this Chapter.

(g) Nothing in the exemption provided by this Rule is intended to or shall be construed as in any way relieving the issuer or any person acting on behalf of the issuer from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of the Act.

(h) Transactions which are exempt under this Rule may not be combined with offers or sales exempt under any other rule or section of this Act; however, nothing in this limitation shall act as an election. Should for any reason, an offer and sale of securities made in reliance upon the exemption provided by this Rule fail to comply with all of the conditions hereof, the issuer may claim the availability of any other applicable exemption.

(i) A failure to comply with a term, condition or requirement of Paragraphs (c) and (d) of this Rule will not result in loss of the exemption from the requirements of G.S. 78A-24 for any offer or sale to a particular individual or entity if the person relying on the exemption shows:

- (1) the failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; and
- (2) the failure to comply was insignificant with respect to the offering as a whole; and

- (3) a good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of Paragraphs (c) and (d) of this Rule.

Where an exemption is established only through reliance upon this Paragraph (i) of this Rule, the failure to comply shall nonetheless be actionable by the administrator under G.S. 78A-47.

(j) In any proceeding involving this Rule, the burden of proving the exemption or an exception from a definition or condition is upon the person claiming it.

(k) In view of the objective of this Rule and the purpose and policies underlying the Act, this exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this Rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this Rule or Rules .1207 and .1208 of this Section. The administrator may, by order, waive any condition of or limitation upon the availability of the exemption provided by this Rule.

(l) In determining whether to waive a condition of or limitation on the availability of the exemption provided by this Rule, the Administrator shall consider matters and information relevant to the public policy intended by G.S. 78A, which is the protection of the investing public from persons effecting securities transactions by employing devices, schemes, or artifices to defraud, making untrue statements of material fact or misleading omission of material fact, and engaging in acts, practices, or courses of business which operate or would operate as a fraud or deceit upon any person. Such considerations shall include, but not be limited to the following:

- (1) the need for full and adequate disclosure of information relevant to investment decisions;
- (2) the business history, qualifications, and disciplinary history of the person or persons effecting the securities transactions;
- (3) the experience, suitability, character, expertise, and financial strength of the offerers in the particular transaction;
- (4) the costs of compliance with applicable regulatory requirements;
- (5) the benefits to the particular investors and to the general investing public of compliance with applicable regulatory requirements;
- (6) the terms, conditions, and provisions of the particular securities transaction; and
- (7) any other factors which are relevant to the protection of the investing public.

(m) The exemption provided by this Rule shall be known and may be cited as the "North Carolina Limited Offering Exemption."

*History Note: Authority G.S. 78A-17(17); 78A-49(a); 78A-56;  
Eff. January 1, 1984;  
Temporary Rule Eff. October 1, 1983, for a period of 120 days to expire on January 29, 1984;  
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Amended Eff. October 1, 2000; August 1, 1998;  
Temporary Amendment Eff. April 1, 2002;  
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Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.*