

18 NCAC 06A .1213 TRANSACTIONAL EXEMPTION PURSUANT TO G.S. 78A-17(19)

Conditions of Eligibility for Exemption. For the purposes of eligibility for the exemption provided at G.S. 78A-17(19), an offer or sale of any viatical settlement contract or any fractionalized or pooled interest therein in a transaction must meet all of the following criteria:

- (1) Suitability Standards. Sales of viatical settlement contracts may be made only to purchasers meeting the requirements of Rule .1320 of this Chapter.
- (2) Purchase Not for Resale. Each purchaser must represent in writing that the purchaser is purchasing for investment and for the purchaser's own account or trust account, if the purchaser is a trustee, and not with a view to or for sale in connection with a distribution of the security.
- (3) Required Disclosures. The information set forth in G.S. 78A-13 and in Rule .1319 shall be disclosed in accordance with that section.
- (4) Rescission by Purchaser. Each purchaser shall be provided with written notice of his or her rights of rescission as set forth in G.S. 78A-56 and in Rule .1501 of this Chapter.
- (5) Exemption Filing and Fee. A notice of the issuer's intent to sell securities in reliance on G.S. 78A-17(19), signed by the issuer or by an authorized officer of the issuer and notarized, together with a nonrefundable filing fee of five hundred dollars (\$500.00), payable to the Secretary of State, shall be filed with the Administrator not later than ten business days before any offers or sales of securities are made pursuant to G.S. 78A-17(19). Such notice shall include:
 - (a) The issuer's name, the issuer's type of business organization, the state in which the issuer is organized, the date the issuer intends to begin selling securities within or from this state, and the issuer's principal business;
 - (b) A consent to service of process naming the Secretary of State as agent for service of process;
 - (c) Such financial statements as may be required to be disclosed under G.S. 78A-13;
 - (d) the names and CRD numbers, if any, of all persons who will be offering the securities for sale in or from the State of North Carolina; and
 - (e) an undertaking to notify the Administrator in writing of any material change or material omission in the information filed with the Administrator pursuant to this Rule not later than five business days following the change or discovery of the omission.
- (6) No Commissions to Unregistered Sellers. No commission or remuneration is paid directly or indirectly for soliciting any prospective purchaser, except to a registered salesman of a registered dealer.
- (7) Filing of Advertising Materials. At least 10 days before use within this state, the issuer files with the Administrator all advertising and sales materials that will be published, exhibited, broadcast, or otherwise used, directly or indirectly, in the offer or sale of a viatical settlement contract in this state, including the written disclosures required by G.S. 78A-13 and by Rule .1319 of this Chapter.
- (8) Legends Required. Any prospectus or disclosure document used in this state in connection with an offer and sale of securities made in reliance upon the exemption provided by this Rule shall disclose conspicuously the appropriate legends:
 - (a) THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE;
 - (b) 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; and
 - (c) 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.

History Note: Authority G.S. 78A-13, 78A-14, 78A-17(19), 78A-49, 78A-56;
Temporary Adoption Eff. April 1, 2002;
Temporary Adoption Eff. July 1, 2002;
Eff. April 1, 2003;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.