

18 NCAC 06A .1308 ADVERTISING

(a) For the purposes of this Rule, "Advertising" shall mean any of the following to be used or circulated with the sale and promotion of a public offering of securities: advertisement; display; pamphlet; brochure; letter; article or communication published in any newspaper, magazine or periodical; or script; or any recording; or any radio or television announcement, broadcast or commercial.

(b) Filing of Advertising Materials. At least 10 days before use within this state, the issuer shall file with the Administrator all advertising and sales material that will be published, exhibited, broadcast, or otherwise used, directly or indirectly, in the offer or sale of a security.

(c) Except where the conditions of G.S. 78A-2(2)d.3. or 78A-2(2)d.4. are met, all advertising circulated within this state for registered securities must carry the name of at least one North Carolina registered dealer which can legally make an offering of the securities in this state.

(d) The following devices or sales presentations, and the use thereof in any advertising shall be deceptive or misleading practices:

- (1) Comparison charts or graphs showing a distorted, unfair or unrealistic relationship between the issuer's past performance, progress or success and that of another company, business, industry or investment media;
- (2) Lay-out, format, size, kind and color of type used so as to attract attention to favorable or incomplete portions of the advertising matter, or to minimize less favorable, modified or modifying portions necessary to make the entire advertisement a fair and truthful representation;
- (3) Statements or representations which predict future profit, success, appreciation, performance or otherwise relate to the merit or potential of the securities unless such statements or representations clearly indicate that they represent solely the opinion of the publisher thereof;
- (4) Generalizations, generalized conclusions, opinions, representations and general statements based upon a particular set of facts and circumstances unless those facts and circumstances are stated and modified or explained by such additional facts or circumstances as are necessary to make the entire advertisement a full, fair, and truthful representation;
- (5) Sales kits or film clips, displays or exposures, which, alone or by sequence and progressive compilation, tend to present an accumulative or composite picture or impression of certain, or exaggerated potential, profit, safety, return or assured or extraordinary investment opportunity or similar benefit to the prospective purchaser;
- (6) Distribution of any non-factual or inaccurate data or material by words, pictures, charts, graphs, or otherwise, based on conjectural, unfounded, extravagant, or flamboyant claims, assertions, predictions or excessive optimism;
- (7) Any package or bonus deal, prize, gift, gimmick or similar inducement, combined with or dependent upon the sale of some other product, contract or service, unless such unit or combination has been fully disclosed and specifically described and identified in the application as the security being offered; or
- (8) Other devices or sales presentations that are fraudulent or would tend to work a fraud under G.S. 78A-8 or 78A-10.

(e) The disseminator of the advertising shall be responsible for its accuracy, reliability and conformance with the Act and this Rule.

(f) The terms "prospectus, pamphlet, circular, form letter, advertisement, advertising or other sales literature", as used in G.S. 78A-27(b)(12) and those same terms plus the term "advertising communication" used in G.S. 78A-49(d) shall not include a notice, circular, advertisement, letter or communication in respect of the security if it states from whom a written prospectus or offering circular may be obtained, and does no more than identify the security, the price thereof, and the name of one or more registered dealers through whom the security is available.

*History Note: Authority G.S. 78A-8(2); 78A-49(a);
Eff. April 1, 1981;
Amended Eff. October 1, 1988; January 1, 1984;
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.*