

SECTION .1500 - MISCELLANEOUS PROVISIONS

18 NCAC 06A .1501 RESCISSION OFFERS

(a) All rescission offers under G.S. 78A-56(g) shall be typed or printed and shall be captioned in bold print or type "Rescission Offer." Offers must set forth in bold type the name of the security with respect to which the offer is made and the date of the transaction involved. Offers must be signed by the offeror or its authorized officer.

(b) Every rescission offer to a purchaser under G.S. 78A-56(g)(1) shall set forth with particularity the facts out of which liability under G.S. 78A-56 may have arisen and, in the event of a violation of G.S. 78A-56(a)(2), the correct, true, or omitted facts. It shall advise the purchaser of his potential rights under G.S. 78A-56 if a violation of that section were found and state the effect on those rights of the purchaser's failure to accept the offer within 30 days from its receipt. The offer shall include a form for the purchaser's written acceptance of the offer addressed to the offeror or the depository to which it is to be sent. The offer must expire by its own terms at midnight of the 30th day following its receipt by the purchaser and must provide, by its terms, that acceptance is effective if the purchaser either delivers his written acceptance to the address specified in the offer or mails that acceptance, postage prepaid, with a postmark not later than midnight of the thirtieth day following his receipt of the offer. The offer shall not require that the purchaser return the security with his acceptance; the offer may, however, require that the purchaser deliver any security he still holds and/or a verified statement of the transactions in which he disposed of any security to the offeror or to a depository specified in the offer within a period of not less than 45 days from the receipt of the offer in order to receive payment thereunder. The offer may provide that any offeree who delivers a timely written acceptance but fails to deliver any security held by him and/or the statement of the transactions in which he disposed of any security within the time specified in the offer shall be deemed to have failed to accept such an offer in writing within a specified period as required by G.S. 78A-56(g)(1).

(c) Every rescission offer to a seller pursuant to G.S. 78A-56(g)(2) shall set forth with particularity the facts out of which liability under G.S. 78A-56 may have arisen and, in the event of a violation of G.S. 78A-56(a)(2), the correct, true, or omitted facts. It shall advise the seller of his rights under G.S. 78A-56 if a violation of that section is found and state the effect on those rights of the seller's failure to accept the offer within 30 days from the receipt. The offer shall include a form for the seller's written acceptance of the offer addressed to the offeror or the depository to which it is to be sent. The offer must expire by its own terms at midnight of the 30th day following its receipt by the seller and must provide, by its terms, that acceptance is effective if the seller either delivers his written acceptance to the address specified in the offer or mails that acceptance, postage prepaid, with a postmark not later than midnight of the thirtieth day following his receipt of the offer. The offeror is not required to return the security with the offer:

- (1) If the offeror has not disposed of the security, the offer may require that the seller deliver the sum necessary to rescind to the offeror or to a depository specified in the offer within a period of not less than 45 days from the receipt of the offer in order to receive the security. The offer may provide that any offeree who delivers a timely written acceptance but fails to deliver the sum necessary to rescind the transaction within the time specified in the offer shall be deemed to have failed to accept such an offer in writing within a specified period as required by G.S. 78A-56(g)(2).
- (2) If the offeror has disposed of the security, the offer shall specify the period of time by which the offeror shall submit any damages as required by G.S. 78A-56(g)(2) to the seller, if the seller accepts and delivers a timely written acceptance.

(d) The person making the rescission offer shall file a copy of the rescission offer with the Administrator at least 10 days before delivering the offer to the offeree. The copy filed with the Administrator shall be addressed to: Rescission Offers, North Carolina Securities Division, P.O. Box 29622, Raleigh, North Carolina 27626-0622.

(e) A seller who makes a rescission offer pursuant to G.S. 78A-56(l) shall include in that rescission offer an undertaking by the seller to refund all the purchaser's money, without deductions, within seven business days after the date of receipt by the seller of the purchaser's notice of rescission or cancellation. The rescission offer shall be transmitted by the seller to the purchaser by certified mail, return receipt requested.

*History Note: Authority G.S. 78A-49; 78A-56;
Eff. April 1, 1981.
Temporary Amendment Eff. April 1, 2002; January 14, 2002;
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Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.*