

18 NCAC 06A .1510 LIMITED LIABILITY COMPANY MEMBERSHIP INTERESTS AS SECURITIES

(a) Membership interests, as defined in G.S. 57C-1-03(15), in a limited liability company shall be presumed to be securities within the meaning of G.S. 78A-2(11) in either of the following circumstances:

- (1) where the articles of organization of the limited liability company provide that all members of the limited liability company are not necessarily managers by virtue of their status as members; or
- (2) where all members by virtue of their status as members are managers of the limited liability company and the number of members is greater than 15.

(b) Among the factors that will be considered by the Securities Division as evidence offered to rebut or support the presumption in Paragraph (a) of this Rule are:

- (1) whether investors retain, under the limited liability company's operating agreement, the right to exercise practical and actual control over the managerial decisions of the enterprise;
- (2) whether the number of members of the limited liability company is so great as to render the managerial powers afforded them by the operating agreement insignificant and meaningless;
- (3) whether the promoter has some particular or special skill which is necessary for the successful operation and management of the limited liability company and, without which, the enterprise will likely be unsuccessful; and
- (4) whether special circumstances render meaningless the managerial powers given by the operating agreement to the members.

*History Note: Authority G.S. 78A-2(11); 78A-49(a);
Temporary Adoption Eff. May 31, 1994, For a Period of 180 Days or Until the Permanent Rule
Becomes Effective, Whichever is Sooner;
Eff. December 1, 1994;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6,
2016.*