

18 NCAC 06A .1707 INVESTMENT ADVISER BROCHURE RULE

(a) General Requirements. Unless otherwise provided in this Rule, an investment adviser, registered or required to be registered pursuant to Section 78C-16 of the Act, shall offer and deliver to each advisory client and prospective advisory client a firm brochure and one or more supplement(s) as required by this Section. The brochure and supplement(s) must contain all information required by Part 2 of Form ADV [CFR279.1], and such other information as the Administrator may require by this Section.

(b) Offer and Delivery Requirements.

- (1) An investment adviser shall deliver:
 - (A) The current brochure required by this Section to a client or prospective client, and
 - (B) The current brochure supplement(s) for each investment adviser representative who will provide advisory services to the client. For purposes of this Section, an investment adviser representative will provide advisory services to a client if the investment adviser representative will:
 - (i) Regularly communicate investment advice to that client; or
 - (ii) Formulate investment advice for assets of that client; or
 - (iii) Make discretionary investment decisions for assets of that client; or
 - (iv) Solicit, offer or negotiate for the sale of or sell investment advisory services.
- (2) The documents required in Subparagraph (1) of this Paragraph shall be delivered:
 - (A) Not less than 48 hours prior to entering into any investment advisory contract with such client or prospective client; or
 - (B) At the time of entering into any such contract, if the client has a right to terminate the contract without penalty within five business days after entering into the contract.
- (3) An investment adviser shall, at least once a year, without charge, deliver or offer in writing to deliver to each of its clients the current brochure and any current brochure supplement(s) required by Paragraph (b)(1) of this Section. If a client accepts the written offer, the investment adviser must send to that client the current brochure and supplements within seven days after the investment adviser is notified of the acceptance.

(c) Delivery to Limited Partners. If the adviser is the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then for purposes of this Section the investment adviser must treat each of the partnership's limited partners, the company's members, or the trust's beneficial owners as a client. For purposes of this Section, a limited liability partnership or limited liability limited partnership is a "limited partnership."

(d) Wrap Fee Program Brochures.

- (1) If the investment adviser is a sponsor of a wrap fee program, then the brochure, required to be delivered by Paragraph (b)(1) of this Section to a client or prospective client of the wrap fee program, must be a wrap fee brochure containing all information required by Form ADV. Any additional information in a wrap fee brochure must be limited to information applicable to wrap fee programs that the investment adviser sponsors.
- (2) The investment adviser does not have to offer or deliver a wrap fee brochure if another sponsor of the wrap fee program offers or delivers to the client or prospective client of the wrap fee program a wrap fee program brochure containing all the information the investment adviser's wrap fee program brochure must contain.
- (3) A wrap fee brochure does not take the place of any brochure supplement(s) that the investment adviser is required to deliver under Paragraph (b)(1)(B) of this Section.

(e) Delivery of Updates and Amendments. The investment adviser must amend its brochure and any brochure supplement(s) and deliver the amendments to clients promptly when information contained in the brochure or brochure supplement(s) becomes materially inaccurate. The instructions to Part 2 of Form ADV contain updating and delivery instructions that the investment adviser must follow. An amendment will be considered to be delivered promptly if the amendment is delivered within 30 days of the event that requires the filing of the amendment.

(f) Multiple Brochures. If an investment adviser renders substantially different types of investment advisory services to different clients, the investment adviser may provide them with different brochures, provided that each client receives all applicable information about services and fees. The brochure delivered to a client may omit any information required by Part 2A of Form ADV if such information is applicable only to a type of investment advisory service or fee that is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(g) Other Disclosure Obligations. Nothing in this Rule shall relieve any investment adviser from any obligation pursuant to any provision of the Act or the rules and regulations thereunder or other federal or state law to disclose any information to its clients or prospective clients not specifically required by this Rule.

(h) Conversion Rule. All investment advisers registered or required to be registered under the Act must deliver to each of their clients their current brochure and all required brochure supplements within 30 days from the date of making its initial filing with IARD.

(i) Definitions. For the purposes of this Rule:

- (1) "Current brochure" and "current brochure supplement" mean the most recent revision of the brochure or brochure supplement, including all subsequent amendments (i.e., stickers).
- (2) "Entering into," in reference to an investment advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.
- (3) "Sponsor" of a wrap fee program means an investment adviser that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of other investment advisers in the program.
- (4) "Wrap fee program" means an advisory program under which a specified fee or fees, not based directly upon transactions in a client's account, is charged for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and the execution of client transactions.

*History Note: Authority G.S. 78C-18(b); 78C-30(a); 78C-30(b);
Temporary Rule Eff. January 2, 1989, for a Period of 180 Days to Expire on June 30, 1989;
Eff. February 1, 1989;
Temporary Amendment Eff. January 14, 2002;
Amended Eff. April 1, 2003;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.*