

18 NCAC 06A .1715 INVESTMENT ADVISER REGISTRATION DEPOSITORY

(a) Use of IARD. Unless otherwise provided, all investment adviser and investment adviser representative applications, amendments, reports, notices, related filings and fees required to be filed with the Administrator pursuant to the rules promulgated under this Act, shall be filed electronically with and transmitted to the Investment Adviser Registration Depository ("IARD") operated by the National Association of Securities Dealers. If in its administration of the IARD, the NASD determines to utilize the Central Registration Depository ("CRD") for applications, amendments, reports, notices, and related filing and fees required of investment adviser representatives, the term "IARD" as used in this Section shall encompass such use of the CRD. The following additional conditions relate to such electronic filings:

- (1) Electronic Signature. When a signature or signatures are required by the particular instructions of any filing to be made through IARD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to IARD.
- (2) When filed. Solely for purposes of a filing made through IARD, a document is considered filed with the Administrator when all fees are received and the filing is accepted by IARD on behalf of the State.

(b) Electronic Filing. Notwithstanding Paragraph (a) of this Rule, the electronic filing of any particular document and the collection of related processing fees shall not be required until such time as IARD provides for receipt of such filings and fees. Any documents or fees required to be filed with the Administrator that are not permitted to be filed with or cannot be accepted by IARD shall be filed directly with the Administrator.

(c) Hardship Exemptions. This Rule provides two "hardship exemptions" from the requirements to make electronic filings as required by the rules.

- (1) Temporary Hardship Exemption.
 - (A) Investment advisers registered or required to be registered under the Act who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD may request a temporary hardship exemption from the requirements to file electronically.
 - (B) To request a temporary hardship exemption, the investment adviser must:
 - (i) File Form ADV-H [17- CFR 279.3] in paper format with the Securities Division (P.O. Box 29622, Raleigh, NC 27626-0525) no later than one business day after the filing (that is the subject of the Form ADV-H) was due; and
 - (ii) Submit the filing that is the subject of the Form ADV-H in electronic format to IARD no later than seven business days after the filing was due.
 - (C) Effective Date -- Upon Filing. The temporary hardship exemption shall be deemed effective upon receipt by the Administrator of the complete Form ADV-H.
- (2) Continuing Hardship Exemption.
 - (A) Criteria for Exemption. A continuing hardship exemption shall be granted only if the investment adviser is able to demonstrate that it cannot comply with the electronic filing requirements of this Rule because neither the necessary hardware or software nor alternative means of compliance (e.g. public library internet access or a service provider) are available.
 - (B) To apply for a continuing hardship exemption, the investment adviser must:
 - (i) File Form ADV-H [17- CFR 279.3] in paper format with the Administrator at least 20 business days before a filing is due; and
 - (ii) If a filing is due to more than one administrator, the Form ADV-H must be filed with the administrator where the investment adviser's principal place of business is located. The administrator who receives the application shall grant or deny the application within 10 business days after the filing of Form ADV-H.
 - (C) Effective Date -- Upon Approval. The exemption is effective upon approval by the Administrator. The time period of the exemption shall be no longer than one year after the date on which the Form ADV-H is filed. If the Administrator approves the application, the investment adviser must, no later than five business days after the exemption approval date, submit filings to IARD in paper format (along with the appropriate processing fees) for the period of time for which the exemption is granted.
- (3) Recognition of Exemption. The decision to grant or deny a request for a hardship exemption shall be made by the administrator where the investment adviser's principal place of business is located,

which decision shall be followed by the administrator in the other state(s) where the investment adviser is registered.

*History Note: Authority G.S. 78C-20; 78C-30;
Temporary Adoption Eff. January 14, 2002;
Eff. April 1, 2003;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.*