

18 NCAC 06A .1802 CUSTODY/CLIENT FUNDS OR SECURITIES BY INVESTMENT ADVISERS

- (a) It shall be unlawful for any investment adviser to take or have custody of any securities or funds of any client unless:
- (1) the investment adviser notifies the administrator in writing that the investment adviser has or may have custody. Such notification may be given on Form ADV;
 - (2) the securities of each client are segregated;
 - (3) the following conditions are satisfied:
 - (A) all client funds are deposited in one or more bank accounts containing only clients' funds,
 - (B) such account or accounts are maintained in the name of the investment adviser as agent or trustee for such clients, and
 - (C) the investment adviser maintains a separate record for each such account showing the name and address of the bank where the account is maintained, the dates and amounts of deposits in and withdrawals from the account, and the exact amount of each client's beneficial interest in the account;
 - (4) immediately after accepting custody or possession of funds or securities from any client, the investment adviser notifies the client in writing of the place where and the manner in which the funds and securities will be maintained and subsequently, if and when there is a change in the place where or the manner in which the funds or securities are maintained, the investment adviser gives written notice thereof to the client;
 - (5) at least once every three months, the investment adviser sends each such client an itemized statement showing the funds and securities in the investment adviser's custody at the end of such period and all debits, credits and transactions in the client's account during such period; and
 - (6) at least once every calendar year, an independent certified public accountant verifies all client funds and securities by actual examination at a time chosen by the accountant without prior notice to the investment adviser. A report stating that such accountant has made an examination of such funds and securities, and describing the nature and extent of the examination, shall be filed with the administrator within 30 days after each such examination.
- (b) This Rule shall not apply to an investment adviser also registered as a broker-dealer under Section 15 of the Securities Exchange Act of 1934 if the broker-dealer is:
- (1) Subject to and in compliance with SEC Rule 15c3-1 (Net Capital Requirements for Brokers or Dealers), 17 C.F.R. 240.15c3-1 under the Securities Exchange Act of 1934, or
 - (2) A member of an exchange whose members are exempt from SEC Rule 15c3-1, 17 C.F.R. 240.15c3-1 under the provisions of Paragraph (b)(2) thereof, and the broker-dealer is in compliance with all rules and settled practices of the exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the accounts of customers.

*History Note: Authority G.S. 78C-18(a); 78C-18(b); 78C-30(a);
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. October 1, 1997;
Temporary Amendment Expired June 28, 1998;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.*