

18 NCAC 06A .1803 AGENCY CROSS TRANSACTIONS

(a) For purposes of this Rule, "agency cross transaction for an advisory client" means a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, including an investment adviser representative, acts as a broker for both the advisory client and another person on the other side of the transaction. When acting in such capacity such person is required to be registered as a dealer in this state unless excluded from the definition of "dealer" in N.C. Gen. Stat. Section 78A-2(2).

(b) An investment adviser effecting an agency cross transaction for an advisory client shall be in compliance with Section 78C-8(a)(3) of the Act if the following conditions are met:

- (1) The advisory client executes a written consent prospectively authorizing the investment adviser to effect agency cross transactions for such client;
- (2) Before obtaining such written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as broker for, receive commissions from and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions;
- (3) At or before the completion of each agency cross transaction, the investment adviser or any other person relying on this Rule sends the client a written confirmation. The written confirmation shall include:
 - (A) a statement of the nature of the transaction,
 - (B) the date the transaction took place,
 - (C) an offer to furnish, upon request, the time when the transaction took place, and
 - (D) the source and amount of any other remuneration the investment adviser received or will receive in connection with the transaction.

In the case of a purchase, if the investment adviser was not participating in a distribution, or, in the case of a sale, if the investment adviser was not participating in a tender offer, the written confirmation may state whether the investment adviser has been receiving or will receive any other remuneration and that the investment adviser will furnish the source and amount of such remuneration to the client upon the client's written request;

- (4) At least annually, and with or as part of any written statement or summary of the account from the investment adviser, the investment adviser or any other person relying on this Rule sends the client a written disclosure statement identifying:
 - (A) the total number of agency cross transactions during the period for the client since the date of the last such statement or summary; and
 - (B) the total amount of all commissions or other remuneration the investment adviser received or will receive in connection with agency cross transactions for the client during the period;
- (5) Each written disclosure and confirmation required by this Rule must include a conspicuous statement that the client may revoke the written consent required under Subparagraph (b)(1) of this Rule at any time by providing written notice to the investment adviser; and
- (6) No agency cross transaction may be effected in which the same investment adviser recommended the transaction to both any seller and any purchaser.

(c) Nothing in this Rule shall be construed to relieve an investment adviser or investment adviser representative from acting in the best interests of the client, including fulfilling his duty with respect to the best price and execution for the particular transaction for the client nor shall it relieve any investment adviser representative of any other disclosure obligations imposed by the Act.

*History Note: Authority G.S. 78C-8(a); 78C-8(f); 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.*