

18 NCAC 06A .1804 EXEMPTION/SECTION 78C-8(A)(3)/CERTAIN BROKER-DEALERS

(a) For purposes of this Rule:

- (1) "Publicly distributed written materials" means written materials which are distributed to 35 or more persons who pay for those materials;
- (2) "Publicly made oral statements" means oral statements made simultaneously to 35 or more persons who pay for access to those statements; and
- (3) "Investment adviser" shall include an investment adviser covered under federal law as defined in G.S. 78C-2(4).

(b) An investment adviser registered as a broker-dealer pursuant to Section 15 of the Securities Exchange Act of 1934 shall be exempt from Section 78C-8(a)(3) of the Act in connection with any transaction in relation to which that broker-dealer acts as an investment adviser:

- (1) solely by means of publicly distributed written materials or publicly made oral statements;
- (2) solely by means of written materials or oral statements not purporting to meet the objectives or needs of specific individuals or accounts;
- (3) solely through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security; or
- (4) any combination of the foregoing services.

This exemption shall apply only if the materials and oral statements disclose that, if the purchaser of the advisory communication uses the investment adviser's services in connection with the sale or purchase of a security which is a subject of the communication, the investment adviser may act as principal for its own account or as agent for another person. Compliance by the investment adviser with the foregoing disclosure requirement shall not relieve it of any other disclosure obligations under the Act.

*History Note: Authority G.S. 78C-8(f); 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;
Amended Eff. August 1, 1998;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.*