

CHAPTER 06 - SECURITIES DIVISION

SUBCHAPTER 06A – RECODIFIED RULES

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History Note: Authority G.S. 78A-1; 78A-45; 147-36;
Eff. February 1, 1976;
Repealed Eff. April 1, 1981.

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History Note: Authority G.S. 78A-17(3); 78A-36(a); 78A-36(b); 78A-37(a); 78A-38(a); 78A-38(b); 78A-39; 78A-39(a);
78A-39(d); 78A-49(c); 78A-63(f);
Eff. February 1, 1976;
Repealed Eff. April 1, 1981.

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History Note: Authority G.S. 78A-49(a);
Eff. February 1, 1976;
Repealed Eff. April 1, 1981.

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History Note: Authority G.S. 78A-2(2); 78A-28(b); 78A-29(b)(2); 78A-49(a); 78A-50(c); 132-1.1;

Eff. February 1, 1976;
Repealed Eff. April 1, 1981.

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History Note: Authority G.S. 78A-17(9); 78A-18(b); 78A-50(e);
Eff. February 1, 1976;
Repealed Eff. April 1, 1981.

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History Note: Authority G.S. 78A-10(a); 78A-26(c); 78A-28(b); 78A-29(f); 78A-49(a);
Eff. February 1, 1976;
Repealed Eff. April 1, 1981.

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History Note: Authority G.S. 78A-16(5); 78A-49(a); 78A-49(b);
Eff. November 10, 1980;
Repealed Eff. April 1, 1981.

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History Note: Authority G.S. 78A-28(9);
Eff. February 1, 1976;
Repealed Eff. April 1, 1981.

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History Note: Authority G.S. 78A-29(a)(2)(f); 78A-28(b); 78A-49(a);

Eff. February 1, 1976;
Repealed Eff. April 1, 1981.

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History Note: Authority G.S. 78A-30;
Eff. September 1, 1979;
Repealed Eff. April 1, 1981.

SECTION .1100 - GENERAL PROVISIONS

18 NCAC 06A .1101 LOCATION AND HOURS

The Securities Division of the Department of the Secretary of State is located at the Old Revenue Complex, 2 S. Salisbury Street, Raleigh, North Carolina 27601. All REGULAR MAIL shall be sent to: North Carolina Securities Division, Department of the Secretary of State, P.O. Box 29622, Raleigh, North Carolina 27626-0622. All OVERNIGHT MAIL shall be sent to: North Carolina Securities Division, Department of the Secretary of State, Old Revenue Complex, 2 S. Salisbury Street, Raleigh, North Carolina 27601. Office hours for the public are 8:00 a.m. to 5:00 p.m. Monday through Friday, except state holidays.

History Note: Authority G.S. 78A-49(a); 147-36;
Eff. April 1, 1981;
Amended Eff. April 1, 2003; October 1, 2000; October 1, 1988; November 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1102 PURPOSE

The purpose of the North Carolina Securities Act is the regulation of the sale of securities for the protection of the investing public. This is accomplished by securities being registered or exempt, dealers and salesmen being registered and other activities including investigating complaints, conducting hearings and any other action required by the Act.

History Note: Authority G.S. 78A-1; 78A-49(a);
Eff. April 1, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1103 ADMINISTRATION (REPEALED)

History Note: Authority G.S. 78A-45(a);
Eff. April 1, 1981;
Amended Eff. January 1, 1984;
Repealed Eff. April 1, 2009.

18 NCAC 06A .1104 DEFINITIONS

As used in this Chapter, the following terms mean:

- (1) "Act" shall mean the North Carolina Securities Act, Chapter 78A of the North Carolina General Statutes, as same has been or may be from time to time amended.
- (2) "Commercial Paper," as referred to in G.S. 78A-16(10), shall mean any note, draft, bill of exchange or bankers acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance not exceeding nine months, exclusive of days of grace, or any renewal thereof, the maturity of which is likewise limited or any guarantee of such paper or of any such renewal. Commercial paper shall also exemplify the following characteristics:

- (a) prime quality negotiable paper of a type not ordinarily purchased by the general public;
- (b) issued to facilitate well recognized types of current operational business requirements; and
- (c) of a type eligible for discounting by Federal Reserve Banks.

The Division hereby incorporates by reference the concepts of "commercial paper" found in SEC Release No. 33-4412, September 20, 1961, (1961 WL 61632).

- (3) "Direct Participation Program" shall mean a program which provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof. A program may be composed of one or more legal entities or programs but when used in these Rules the term shall include each of the separate entities or programs making up the overall program and the overall program itself. Excluded from this definition are viatical settlement contracts as defined in G.S. 78A-2(13), Subchapter S corporate offerings, real estate investment trusts, tax qualified pension and profit sharing plans pursuant to Sections 401 and 403 (a) of the Internal Revenue Code and individual retirement plans under Section 408 of that Code, and any company registered pursuant to the Investment Company Act of 1940.
- (4) "SEC" shall mean the Securities and Exchange Commission.
- (5) "NASD" shall mean the National Association of Securities Dealers, Inc.
- (6) "NASAA" shall mean the North American Securities Administrators Association, Inc.
- (7) "CRD" shall mean the Central Registration Depository.
- (8) "Investment Contract" as used in G.S. 78A-2(11) includes:
 - (a) Any investment in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor. In this Subparagraph a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment or of a third party; and
 - (b) Any investment by which an offeree furnishes initial value to an offeror, and a portion of this initial value is subjected to the risks of the enterprise, and the furnishing of this initial value is induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise, and the offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.
- (9) "Recognized Securities Manual" shall mean a publication which contains the information required by G.S. 78A-17(2)a. and which has been designated, pursuant to G.S. 78A-49 and Rule .1202 of this Chapter, as a "recognized securities manual" by the administrator.
- (10) "Form D" shall mean the document adopted by the Securities and Exchange Commission, in effect on September 1, 1996 and as may be amended by the SEC from time to time, entitled "FORM D; Notice of Sale of Securities pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption," including Part E and the Appendix.

History Note: Authority G.S. 78A-49(a);
 Eff. April 1, 1981;
 Amended Eff. September 1, 1990; October 1, 1988; January 1, 1984;
 Temporary Amendment Eff. October 1, 1997;
 Amended Eff. August 1, 1998;
 Temporary Amendment Eff. April 1, 2002;
 Amended Eff. April 1, 2003;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

SECTION .1200 - EXEMPTIONS

18 NCAC 06A .1201 DESIGNATED SECURITIES EXCHANGES (REPEALED)

History Note: Authority G.S. 78A-16(8);
 Eff. April 1, 1981;
 Amended Eff. May 1, 1995;

Repealed Eff. September 1, 2008.

18 NCAC 06A .1202 RECOGNIZED SECURITIES MANUALS

(a) The publications recognized by the administrator as securities manuals for the purposes set forth in G.S. 78A-17(2)a. shall be:

- (1) Standard and Poor's Corporation Records,
- (2) Mergent's Industrial Manual,
- (3) Mergent's Over-the-Counter Industrial Manual,
- (4) Mergent's International Manual, and
- (5) Periodic supplements to each recognized securities manual.

Other publications may be recognized by the administrator, on a case by case basis, upon a showing that the information required by G.S. 78A-17(2)a. is actually contained in the publication.

(b) None of the publications in Paragraph (a) shall be recognized as relating to the securities of a particular issuer unless all of the information required by G.S. 78A-17(2)a. is contained in the publication, and:

- (1) such information has been continuously published in that securities manual for at least fifteen months preceding the commencement of a distribution in reliance on G.S. 78A-17(2)a.; or
- (2) during the twelve months preceding the commencement of a distribution in reliance on G.S. 78A-17(2)a., the issuer's common stock or equivalent security has traded at the price of five dollars (\$5.00) or more per share for a period of at least thirty consecutive days as quoted in the Wall Street Journal or similar national publication; or
- (3) as of the end of its most recent fiscal year, the issuer had:
 - (A) a tangible net worth (i.e., net worth computed by excluding intangible assets) of at least one million dollars (\$1,000,000), and
 - (B) net income, after taxes, or at least one hundred fifty thousand dollars (\$150,000); or
- (4) during the twelve months preceding a distribution in reliance on G.S. 78A-17(2)a., the issuer completed a public offering of securities which raised at least five million dollars (\$5,000,000).

*History Note: Authority G.S. 78A-17(2)a.; 78A-49(a);
Eff. April 1, 1981;
Amended Eff. October 1, 2000; February 1, 1991; September 1, 1990; October 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.*

18 NCAC 06A .1203 INFORMATION FILED BY REGISTERED DEALER

The exemption for nonissuer distributions, other than by a controlling person of an outstanding security, under G.S. 78A-17(2)b. shall be applicable to the offer and sale of any security, the issuer of which is required to file reports under Section 13 or 15(d) of the Securities Exchange Act of 1934, has been so required for at least 15 months prior to such sale and has filed all such required reports during such 15 month period if, prior to such sale, the registered dealer files with the administrator a statement certifying that copies of the following documents, and amendments thereto, with respect to the issuer of such security are on file with the dealer:

- (1) the most recent Annual Report of the issuer on Securities and Exchange Commission Form 10-K filed with the Securities and Exchange Commission;
- (2) all quarterly and current reports of the issuer on Securities and Exchange Commission Form 10-Q and 8-K filed with the Securities and Exchange Commission subsequent to the end of the fiscal year for which the Annual Report referred to in Part (1) was filed and prior to the sale;
- (3) all amendments to any of the reports referred to in Parts (1) and (2) filed with the Securities and Exchange Commission prior to such sale;
- (4) all definitive proxy statements and information statements filed with the Securities and Exchange Commission under Section 14 of the Securities Exchange Act of 1934:
 - (a) within 12 months prior to the sale and
 - (b) with respect to meetings of shareholders of the issuer held within 12 months prior to such sale;and
- (5) all registration statements and all post-effective amendments thereto filed by the issuer with the Securities and Exchange Commission under the Securities Act of 1933 within 12 months prior to the sale.

History Note: Authority G.S. 78A-17(2)b.; 78A-49(a);

Eff. April 1, 1981;

Amended Eff. October 1, 1988;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1204 LIMITED OFFERINGS (REPEALED)

History Note: Filed as a Temporary Repeal Eff. October 1, 1983, for a Period of 120 Days to Expire on January 29, 1984;

Authority G.S. 78A-17(9)(a); 78A-18; 78A-49(a);

Eff. April 1, 1981;

Repealed Eff. January 1, 1984.

18 NCAC 06A .1205 LIMITED OFFERINGS PURSUANT TO G.S. 78A-17(9)

(a) Any issuer relying upon the exemption provided by G.S. 78A-17(9) in connection with an offering of a security made in reliance upon Rule 505 of Regulation D promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended, 17 C.F.R. 230.505 (1982) (and as subsequently amended) shall comply with the provisions of Rules .1206, .1207 and .1208 of this Section; provided that such compliance shall not be required if the security is offered and sold only to persons who will be actively engaged, on a regular basis, in the management of the issuer's business; and provided further, that compliance with provisions of Paragraphs (a), (b), and (c) of Rule .1208 of this Section shall not be required, except in the case of the offer and sale of a viatical settlement contract, if the security is offered to not more than five individuals who reside in this State.

(b) Any issuer relying upon the exemption provided by G.S. 78A-17(9) in connection with an offering of a direct participation program security made solely in reliance upon an exemption from registration contained in Section 4(2) or Section 3(a)(11) of the Securities Act of 1933 as amended, or made solely in reliance upon Rule 504 of Regulation D promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended, 17 C.F.R. 230.504 (1982), (and as subsequently amended), or any person relying upon the exemption provided by G.S. 78A-17(9) in connection with an offering of a viatical settlement contract, shall comply with the following conditions and limitations:

- (1) No commission, discount, finder's fee or other similar remuneration or compensation shall be paid, directly or indirectly, to any person for soliciting any prospective purchaser of the security sold to a resident of this State unless such person is either registered pursuant to G.S. 78A-36 or exempt from registration thereunder or the issuer reasonably believes that such person is so registered or exempt therefrom.
- (2) In all offers or sales of direct participation program securities, the provisions of Rule .1313 of this Chapter regarding registered offerings of direct participation program securities shall be applicable; provided that such compliance shall not be required with respect to offers or sales to individuals who will be actively engaged, on a regular basis, in the management of the issuer's business. In all sales of viatical settlement contracts, the provisions of Rule .1320 shall be applicable.
- (3) Any prospectus or disclosure document used in offering the securities in this state shall disclose the legend(s) as required by the provisions of Rule .1316 of this Chapter.
- (4) Not less than 10 business days prior to any sale of the securities to a resident of this State which shall include but not be limited to the receipt by the issuer, or any person acting on the issuer's behalf of a signed subscription agreement of, or the receipt of consideration from, a purchaser, the issuer shall file with the administrator, or cause to be so filed:
 - (A) A statement signed by the issuer and acknowledged before a notary public or other similar officer:
 - (i) identifying the issuer (including name, form of organization, address and telephone number);
 - (ii) identifying the person(s) who will be selling the securities in this State (and in the case of such persons other than the issuer and its officers, partners and employees, describing their relationship with the issuer in connection with the transaction and the basis of their compliance with or exemption from the requirements of G.S. 78A-36) and describing any commissions, discounts, fees or other remuneration or compensation to be paid to such persons;
 - (iii) containing a summary of the proposed offering including:
 - (I) a description of the securities to be sold;
 - (II) the name(s) of all general partners of an issuer which is a partnership and, with respect to a corporate issuer or any corporate general partner(s) of any issuer

this Rule, "good cause" means a substantial reason amounting in law to a legal excuse for noncompliance with a restriction imposed by Rule .1207, and shall be relevant to considerations of the public interest, the protection of the investing public, the age and nature of the particular disqualifying event, the business experience, qualifications, and disciplinary history of the disqualified person, the need for full disclosure of information relevant to investment decisions, and the burden and cost of compliance with regulatory requirements applicable to the transaction in the absence of the availability of the exemption.

(c) No commission, discount, finder's fee or other similar remuneration or compensation shall be paid, directly or indirectly, to any person for soliciting any prospective purchaser of any security sold to a resident of this State in reliance upon the exemption provided by this Rule unless such person is either registered pursuant to G.S. 78A-36 or exempt from registration thereunder or the issuer reasonably believes that such person is so registered or exempt therefrom.

(d) In all sales to those accredited investors defined in 17 C.F.R. 230.501(a)(5) who reside in this State (except sales to such accredited investors made by or through a dealer registered under G.S. 78A-36) and in all sales to nonaccredited investors who reside in this State the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that the following conditions are satisfied:

(1) In the case of a security other than a viatical settlement contract:

(A) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his/her other security holdings and as to his/her financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed 10 percent of the investor's net worth, it is suitable; or

(B) The purchaser, either alone or with his/her purchaser representative(s), has such knowledge and experience in financial and business matters that he/she is or they are capable of evaluating the merits and risks of the prospective investments.

(2) In the case of a viatical settlement contract, the requirements of Rule .1320 of this Chapter.

(e) In all sales of direct participation programs securities pursuant to the exemption provided by this Rule, the provisions of Rule .1313 of this Chapter regarding registered offerings of direct participation program securities shall be applicable. In all sales pursuant to the exemption provided by this Rule of viatical settlement contracts, the provisions of Rule .1320 of this Chapter shall be applicable.

(f) Any prospectus or disclosure document used in this state in connection with an offer or sale of securities made in reliance upon the exemption provided by this Rule shall disclose conspicuously the legend(s) required by the provisions of Rule .1316 of this Chapter and, in the case of a viatical settlement contract, shall set forth the purchaser's right of rescission pursuant to both G.S. 78A-56 and Rule .1501 of this Chapter.

(g) Nothing in the exemption provided by this Rule is intended to or shall be construed as in any way relieving the issuer or any person acting on behalf of the issuer from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of the Act.

(h) Transactions which are exempt under this Rule may not be combined with offers or sales exempt under any other rule or section of this Act; however, nothing in this limitation shall act as an election. Should for any reason, an offer and sale of securities made in reliance upon the exemption provided by this Rule fail to comply with all of the conditions hereof, the issuer may claim the availability of any other applicable exemption.

(i) A failure to comply with a term, condition or requirement of Paragraphs (c) and (d) of this Rule will not result in loss of the exemption from the requirements of G.S. 78A-24 for any offer or sale to a particular individual or entity if the person relying on the exemption shows:

(1) the failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; and

(2) the failure to comply was insignificant with respect to the offering as a whole; and

(3) a good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of Paragraphs (c) and (d) of this Rule.

Where an exemption is established only through reliance upon this Paragraph (i) of this Rule, the failure to comply shall nonetheless be actionable by the administrator under G.S. 78A-47.

(j) In any proceeding involving this Rule, the burden of proving the exemption or an exception from a definition or condition is upon the person claiming it.

(k) In view of the objective of this Rule and the purpose and policies underlying the Act, this exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this Rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this Rule or Rules .1207 and .1208 of this Section. The administrator may, by order, waive any condition of or limitation upon the availability of the exemption provided by this Rule.

(l) In determining whether to waive a condition of or limitation on the availability of the exemption provided by this Rule, the Administrator shall consider matters and information relevant to the public policy intended by G.S. 78A, which is the protection of the investing public from persons effecting securities transactions by employing devices, schemes, or artifices to defraud, making untrue statements of material fact or misleading omission of material fact, and engaging in acts, practices, or courses of business which operate or would operate as a fraud or deceit upon any person. Such considerations shall include, but not be limited to the following:

- (1) the need for full and adequate disclosure of information relevant to investment decisions;
- (2) the business history, qualifications, and disciplinary history of the person or persons effecting the securities transactions;
- (3) the experience, suitability, character, expertise, and financial strength of the offerers in the particular transaction;
- (4) the costs of compliance with applicable regulatory requirements;
- (5) the benefits to the particular investors and to the general investing public of compliance with applicable regulatory requirements;
- (6) the terms, conditions, and provisions of the particular securities transaction; and
- (7) any other factors which are relevant to the protection of the investing public.

(m) The exemption provided by this Rule shall be known and may be cited as the "North Carolina Limited Offering Exemption."

History Note: Authority G.S. 78A-17(17); 78A-49(a); 78A-56; Eff. January 1, 1984; Temporary Rule Eff. October 1, 1983, for a period of 120 days to expire on January 29, 1984; Amended Eff. September 1, 1990; October 1, 1988; Temporary Amendment Eff. October 1, 1997; Amended Eff. October 1, 2000; August 1, 1998; Temporary Amendment Eff. April 1, 2002; Amended Eff. April 1, 2003; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1207 DISQUALIFICATIONS FROM RELIANCE UPON CERTAIN EXEMPTIONS

(a) No exemption under G.S. 78A-17(17) or any rule promulgated thereunder, G.S. 78A-16(9), or any other exemption made by rule subject to the disqualifications of this Rule .1207 shall be available for the securities of any issuer if the issuer, any of its directors, executive officers, general partners or beneficial owners of ten percent or more of any class of its equity securities, any of its promoters currently connected with it in any capacity, any affiliates, or any person (other than a dealer or salesman currently registered under G.S. 78A-36) who has been or will be paid any commission, discount, finder's fee or similar remuneration or compensation directly or indirectly, for soliciting any prospective purchaser of any security of the issuer offered or sold to residents of this State:

- (1) Has filed a registration statement which is the subject of a currently effective stop order entered pursuant to any state's law within five years prior to the filing of the statement required by Rule .1208 of this Section;
- (2) Has been convicted within five years prior to the filing of the statement required by Rule .1208 of this Section of any felony or misdemeanor in connection with the offer, purchase or sale of any security or in connection with the making of any false filing with the United States Securities and Exchange Commission or any state securities administrator, or of any felony involving fraud or deceit, including but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud;
- (3) Is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five years prior to the filing of the statement required by Rule .1208 of this Section or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to the filing of the statement required by Rule .1208 of this Section;
- (4) Is currently subject to any state administrative enforcement order or judgment which prohibits, denies or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities entered within five years prior to the filing of the statement required by Rule .1208 of this Section;

- (5) Is currently subject to any order, judgement, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years prior to the filing of the statement required by Rule .1208 of this Section, permanently restraining or enjoining such person from engaging in or continuing any conduct or practice in connection with the offer, purchase or sale of any security or in connection with the making of any false filing with the United States Securities and Exchange Commission or any state securities administrator; or
 - (6) Is currently subject to a United States Postal Service false representation order entered within five years prior to the filing of the statement required by Rule .1208 of this Section;
 - (7) The prohibitions of Subparagraphs (1), (3) and (4) of this Rule shall not apply if the person subject to the disqualifying order is duly registered or licensed to conduct securities related business in the state in which the administrative order or judgment was entered against such person;
 - (8) Any disqualification caused by this Rule .1207 is automatically waived if the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that this exemption or a comparable exemption be denied with regard to the present offering.
- (b) For purposes of this Rule .1207 only, the term issuer shall include the corporate general partner(s) or joint venturers or proposed corporate general partner(s) or joint venturers of any partnership or joint venture or proposed partnership or joint venture.

*History Note: Authority G.S. 78A-17(17); 78A-49(a);
 Temporary Rule Eff. October 1, 1983, for a Period of 120 Days to Expire on January 29, 1984;
 Eff. January 1, 1984;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.*

18 NCAC 06A .1208 TRANSACTIONS EXEMPT UNDER RULE .1206: FILING REQUIREMENTS

- (a) Not less than 10 business days prior to any sale of a security sold in reliance upon the exemption provided by Rule .1206 of this Section, which sale shall include but not be limited to the receipt by the issuer, or any person acting on the issuer's behalf of a signed subscription agreement of, or the receipt of consideration from, a purchaser, the issuer shall file with the administrator, or cause to be so filed, the following:
- (1) A Form D (Notice of Sales of Securities Pursuant to Regulation D and/or Uniform Limited Offering Exemption). All parts of this form, including the Appendix, shall be completed. The Form D shall be signed by a person with express written authorization to do so by the issuer, and shall be attached to a statement containing the supplemental information required by Paragraph (c) of this Rule.
 - (2) A copy of any written document or materials proposed to be used in connection with the offer and sale of the securities to be sold; provided, however, if any such documents or materials are not available to be filed 10 business days prior to any sale of the securities to a person who resides in this State, they shall be filed when available, but, in any event, no later than five business days before any such sale. Supplements or amendments to any such written document or materials shall be filed within 5 business days after delivery to any prospective purchaser of the securities. Notwithstanding the foregoing, any written materials, disclosures required by G.S. 78A-13, and advertising subject to G.S. 78A-14 proposed to be used in connection with the offer and sale of viatical settlement contracts shall be filed with the Administrator not later than 10 days before the first sale of such securities in this State, and any supplements to such materials shall be filed with the Administrator not later than 5 days prior to their delivery to any prospective purchaser.
 - (3) A consent to service of process naming the North Carolina Secretary of State as service agent using the Uniform Consent to Service of Process (Form U-2) signed by the issuer and acknowledged before a notary public or similar officer; and accompanied by a properly executed Corporate Resolution (Form U-2A), if applicable.
 - (4) A non-refundable filing fee as established by G.S. 78A-17(17), payable to the North Carolina Secretary of State.
- (b) The issuer shall file or caused to be filed with the administrator any amended Form D filed with the U.S. Securities and Exchange Commission in connection with the transaction, not later than five business days after such filing with the SEC.
- (c) To comply with Subparagraph (a)(1) of this Rule, the issuer shall file with the administrator a statement signed by a person with express written authorization to execute such statement on its behalf containing the following representations:

- (1) that the securities will be sold in reliance upon an exemption from the registration requirements of Section 5 of the Securities Act of 1933, as amended;
 - (2) that, to the best of the issuer's knowledge, the issuer is not disqualified by the provisions of Rule .1207 of this Section from relying upon the exemption provided by Rule .1206 of this Section;
 - (3) that the issuer will furnish to the administrator, upon written request, evidence of compliance with Rule .1206 of this Section;
 - (4) that all persons who will be selling the securities in this state are in compliance with or exempt from the requirements of G.S. 78A-36; and
 - (5) that the issuer will notify the administrator in writing of the names and titles of all officers, directors, partners, or employees of the issuer who will be engaged in the offer or sale of the securities in this state. Such notice to the administrator shall be made prior to any offer of securities in this state.
- (d) Any filing pursuant to this Rule shall be amended by filing with the administrator such information and changes as may be necessary to correct any material misstatement or omission in the filing.
- (e) The provisions of this Rule shall not apply to offers or sales of a security made pursuant to Rule .1206 of this Section if the security is offered to not more than five individuals who reside in this State, except for offers or sales of viatical settlement contracts.

History Note: Authority G.S. 78A-17(17); 78A-49(a); Eff. January 1, 1984; Temporary Rule Eff. October 1, 1983, for a Period of 120 Days to Expire on January 29, 1984; Amended Eff. September 1, 1990; October 1, 1988; Temporary Amendment Eff. November 1, 2002; April 1, 2002; Amended Eff. August 1, 2004; April 1, 2003; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1209 NONPROFIT SECURITIES

(a) The exemption provided by G.S. 78A-16(9) from the registration requirements of G.S. 78A-24 for securities offered, or to be offered, and sold by any person operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association shall not be available where:

- (1) The issuer is disqualified by Rule .1207 of this Section. For the purposes of determining the availability of the exemption provided by G.S. 78A-16(9), the issuer also shall be disqualified under Rule .1207 of this Section where the trustee of a trust indenture under which the securities are to be issued is subject to the disqualifications of Subparagraphs (a)(1) through (6) of Rule .1207 of this Section.
- (2) The issuer, or any affiliate or predecessor has had any material default within five years prior to commencement of the offering in the payment of:
 - (A) principal, interest, dividend or sinking fund installment on any security or indebtedness for borrowed money; or
 - (B) rentals under material leases with terms of three years or more.
- (3) Any part of the net earnings of the nonprofit issuer inures to the benefit of any other person.
- (4) The issuer fails to comply with the requirements of Paragraph (b) of this Rule and, if applicable or appropriate, Paragraphs (c) and (d) of this Rule.

Provided, however, that the administrator may modify or waive, upon the showing of good cause in writing, any disqualification that results from Subparagraphs (a), (1), (2) or (3) of this Rule.

(b) No commission, discount, finder's fee or other similar remuneration or compensation shall be paid, directly or indirectly, to any person for soliciting any prospective purchaser of any security sold to a resident of this State in reliance upon this exemption unless such person is either registered pursuant to G.S. 78A-36 or exempt from registration thereunder or the issuer reasonably believes that such person is so registered or exempt therefrom.

(c) The nonprofit issuer should provide each offeree a written document providing full disclosure of all material facts. A prospectus, pamphlet, circular or similar literature providing the following minimum disclosures, if applicable, normally will suffice for this purpose; provided, however that nothing in this Paragraph shall be construed as in any manner relieving any person from the full disclosure requirements of G.S. 78A-8(2):

- (1) The Cover or First Page:
 - (A) The name of the issuer;
 - (B) Title of securities;

- (C) In tabular form, the per unit and aggregate price to the public, underwriting or selling commissions and expenses, and net proceeds to the issuer;
 - (D) Name of dealer or financial adviser;
 - (E) Names of trustee and paying agent;
 - (F) If the offering is being made only to certain persons, a description of such offerees;
 - (G) The appropriate disclaimer and/or legend, pursuant to the provisions of Rule .1316 of this Chapter, shall appear in boldface type;
 - (H) If appropriate, the following statement shall appear in boldface: **THIS OFFERING IS SUBJECT TO CERTAIN RISKS.** (See "Risk Factors"); and
 - (I) The date of the disclosure document.
- (2) A Table of Contents.
- (3) The Issuer:
- (A) The name, address, organization (state in which organized, date organized, statute under which organized, and form of organization) and purpose of the issuer;
 - (B) The history of the issuer;
 - (C) A description of the general area and location of the issuer;
 - (D) Accreditation and regulation of the issuer;
 - (E) The number of paid employees and a description of any employee benefit plans;
 - (F) Any affiliation between the issuer and the dealer, or any officers, directors or general partners or any person holding a similar position of either, with any building contractor or supplier who has an interest in or may receive any of the proceeds of the offering or with any trustee of a trust indenture under which the securities are to be issued.
- (4) Risk Factors: Where appropriate, risk factors in connection with the offering must be disclosed. Reference to risk factors should note the page number of the disclosure document at which they may be found or further disclosure is made. Risk factors that should be considered include, but are not limited to, the following examples:
- (A) There is no market for the securities, and there is no assurance that a market will develop. Consequently, investors may not be able to resell any securities purchased should they need to or wish to do so for emergency purposes or otherwise.
 - (B) The issuer is primarily dependent upon contributions of the membership to meet expenses for operation of the issuer and payments of principal and interest of the securities. The issuer may not receive sufficient funds to meet these obligations.
 - (C) During the past . . . fiscal years, the issuer has operated at a loss, and is currently not earning sufficient income to pay the principal and interest on the securities offered hereby. There is no assurance the issuer will be able to meet debt service requirements in the future.
 - (D) These securities will mature and become payable on . . . and it is anticipated the issuer will attempt to refinance them at that time. There is no assurance that refinancing funds will be available at that time or that such funds will be available at terms acceptable to the issuer.
 - (E) These securities are not secured by land, buildings or equipment of the issuer. In the event of default, the investor has the status of an unsecured creditor.
 - (F) The issuer has defaulted on a previous issue of securities. This issue is for the purpose of refinancing.
 - (G) The trust indenture permits the issuer further to encumber the property securing these securities through the future issuance of additional securities.
- (5) Use of Proceeds:
- (A) An itemized statement as to the application of the proceeds of the offering. If additional funds are needed to accomplish the stated purposes, this should be disclosed, together with a statement showing how such funds will be obtained.
 - (B) If there is to be an escrow of funds, a description of the escrow arrangements.
- (6) Description of Property:
- (A) In addition to describing physical properties, a valuation of mortgaged property should be included as follows: Total valuation of existing land, buildings, improvements and equipment before the offering: \$____.____; and total valuation of land, buildings, improvements and equipment after the offering and upon completion of construction: \$____.____.

- (B) The person preparing any appraisals shall be identified, and his qualifications for serving as such shall be indicated.
- (7) Management and Control:
 - (A) The name and principal occupation of each officer, trustee, director, general partners or other persons holding similar positions. In the case of religious organizations, a brief summary of the background of the minister(s) and any other important church officials should be included.
 - (B) A description of any material transactions or proposed transactions between the issuer and such persons or any affiliate of such persons.
- (8) Material Litigation and Transactions. Any pending or threatened litigation which may materially affect the issuer's income. Any contracts with the issuer which, if terminated, would materially affect the issuer's income.
- (9) Description of Securities:
 - (A) Description of the indenture under which the securities are to be issued should include information as to:
 - (i) interest and interest payment dates,
 - (ii) default,
 - (iii) redemption,
 - (iv) subordination,
 - (v) sinking fund,
 - (vi) subsequent issues,
 - (vii) modification of the indenture,
 - (viii) insurance coverage on properties of the issuer, and
 - (ix) any other material facts regarding the rights of holders.
 - (B) A pay-back or maturity schedule.
 - (C) If guarantees of payment are made by any other person, information describing the ability of that person to guarantee, including financial statements, shall be included. Note: - A guarantee in and of itself involves the offering of a separate security which may require registration.
- (10) Plan of Distribution:
 - (A) The name and address of the dealer and fund raising adviser.
 - (B) The aggregate underwriting or selling commissions or similar compensation or remuneration.
 - (C) A brief description of any underwriting arrangements or distribution plan, including whether best efforts or firm commitment, and whether exclusive or nonexclusive.
- (11) Financial Statement:
 - (A) Balance sheet, within four months prior to the date of the first offer in reliance upon this exemption, prepared in accordance with generally accepted accounting principles.
 - (B) Income and expense statements for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet or such shorter period as the issuer has been in existence prepared in accordance with generally accepted accounting principles.
 - (C) Any statements or information necessary to explain extraordinary or non-recurring fluctuations in the statements supplied.
 - (D) If applicable, the number of pledging units and the average annual contribution per pledging unit.

In lieu of the disclosure document as described in this Paragraph, the issuer may use a disclosure document prepared in accordance with the Church Bond Guidelines prepared by NASAA published at Par. 1001 of CCH NASAA Reports, as may be amended from time to time, where such guidelines are applicable.

(d) Not less than five business days prior to any sale of a security in reliance upon the exemption provided by G.S. 78A-16(9) which shall include but not be limited to the receipt by the issuer, or any person acting on the issuer's behalf of a signed subscription agreement of, or the receipt of consideration from, a purchaser, the issuer shall file with the administrator, or cause to be so filed, the following information unless the content or time of filing is modified or waived by the administrator; provided, however that the filing is not required, unless requested by the administrator, where the offering is to be made exclusively to members of the nonprofit issuer and occupants of such members' households:

- (1) A statement, signed by the issuer and acknowledged before a notary public or other similar officer:
 - (A) Identifying the issuer, including the name, form of organization, date and state of organization, the nonprofit purpose for which the issuer is organized, address, telephone number and the appropriate representative to respond to questions;

- (B) Identifying who will be selling the securities in this state and whether commissions, remuneration or compensation will be paid and the terms thereof;
 - (C) Describing the securities to be sold, including the type, aggregate offering amount to be offered in this state and the issue of which they are a part;
 - (D) Representing that the issuer is not disqualified by Paragraph (a) of this Rule from reliance upon this exemption;
 - (E) Representing that a disclosure document as may be required by Paragraph (c) of this Rule will be delivered to each purchaser prior to consummation of a sale or execution of a subscription agreement, or a statement as to the reasons the issuer believes that the disclosure document is unnecessary or inappropriate;
 - (F) Representing that in the event of any material change in the security or offering or if the disclosure document becomes incomplete in any material respect or contains any statement which is in the light of the circumstances under which it is made, false or misleading with respect to any material fact, the sale or offer for sale pursuant to this exemption will immediately cease, and will not be resumed until corrective disclosures are prepared and all prior purchasers are provided rescission offers pursuant to G.S. 78A-56(g).
- (2) An opinion of counsel relating to the "not for private profit" status of the issuer, the formation and good standing of the issuer, legality of the securities to be issued, and the validity of the indenture under which the securities are to be issued, or a letter of determination of tax exempt status issued by the Internal Revenue Service.
 - (3) A consent to service of process (Form U-2) signed by the issuer and verified by a notary public or similar officer, naming the Secretary of State as service agent and accompanied by a corporate resolution of the board of directors, (Form U-2A), if applicable, authorizing the consent.

(e) Nothing in this Rule .1209 is intended to or should be construed as in any way relieving the issuer or any person acting on behalf of the issuer from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of the Act.

(f) Should for any reason, an offer and sale of securities made in reliance upon the exemption provided by G.S. 78A-16(9) fail to comply with all of the conditions hereof, the issuer may claim the availability of any other applicable exemption.

(g) Any offer or sale shall be deemed to have been made in compliance with the exemption provided by G.S. 78A-16(9) if the issuer has substantially complied in all material respects with this Rule and G.S. 78A-16(9) would otherwise be available.

(h) In view of the objective of this Rule and the purpose and policies underlying the Act, the exemption provided by G.S. 78A-16(9) is not available to any issuer with respect to any transaction which although in technical compliance with the exemption provided by G.S. 78A-16(9) and this Rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this Rule.

*History Note: Authority G.S. 78A-16(9); 78A-49(a);
Eff. January 1, 1984;
Amended Eff. October 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.*

18 NCAC 06A .1210 SECURITIES EXCHGS/AUTO QUOTATION SYS APPROVED/ADMINISTRATOR

For purposes of G.S. 78A-16(15), the following securities exchanges and automated quotation systems are approved provided such exchanges or systems comply with the provisions of Paragraphs (1) through (4) of the Memorandum of Understanding regarding a Model Uniform Marketplace Exemption From State Securities Registration Requirements [SEC Release 33-6810 (December 16, 1988), CCH NASAA Reports, par. 2,351] or the Memorandum of Understanding between The North American Securities Administrators Association, Inc. and The Philadelphia Stock Exchange, Inc., incorporated herein by reference. The incorporated material may be obtained, free of charge, from the North Carolina Securities Division, Department of the Secretary of State, P.O. Box 29622, Raleigh, North Carolina 27626-0622:

- (1) New York Stock Exchange;
- (2) American Stock Exchange;
- (3) Pacific Stock Exchange;
- (4) Midwest Stock Exchange;
- (5) NASDAQ National Market System;
- (6) Chicago Board Options Exchange; and
- (7) Philadelphia Stock Exchange.

History Note: Authority G.S. 78A-16(15); 150B-21.6; 78A-(49);
Eff. February 1, 1991;
Temporary Adoption Eff. December 8, 1990 for a period of 180 days to expire on June 5, 1991;
Temporary Adoption Eff. June 11, 1990 for a period of 180 days to expire on December 8, 1990;
ARRC Objection Lodged June 21, 1990;
ARRC Objection Removed August 20, 1990;
ARRC Objection Lodged December 20, 1990;
Amended Eff. April 1, 2003; October 1, 2000; May 1, 1995; August 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1211 NOTICE FILING PROCEDURES FOR RULE 506 OFFERINGS

An issuer offering a security that is a "covered security" under Section 18(b)(4)(D) of the Securities Act of 1933 shall file a notice on SEC Form D, a consent to service of process on a form prescribed by the Administrator, and pay a fee as established by G.S. 78A-31(b) no later than 15 days after the first sale in this State of such security covered under federal law. An issuer is not required to file any amendments to a Form D unless the amendment reflects a change in the offering in this State.

History Note: Authority G.S. 78A-31(b); 78A-49(a);
Temporary Adoption Eff. October 1, 1997;
Eff. August 1, 1998;
Temporary Amendment Eff. November 1, 2002;
Amended Eff. August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1212 NOTICE FILING PROCEDURES FOR OFFERINGS OF INVESTMENT COMPANY SECURITIES

(a) In lieu of filing a copy of the federal registration statement, an investment company offering securities covered under Section 18(b)(2) of the Securities Act of 1933, as amended, may satisfy the notice filing requirement of G.S. 78A-31(a) by filing the fees required by that section, together with Form NF, Uniform Investment Company Notice Filing. This filing need not be made nor fees paid on any security issued by an investment company if such security is exempt pursuant to the provisions of G.S. 78A-16 or G.S. 78A-17.

(b) By filing Form NF, an investment company thereby agrees that, upon receipt of a request from the Securities Division, the investment company will promptly provide to the Division a copy of its current prospectus and statement of additional information, if any, as filed with the Securities and Exchange Commission.

(c) By executing the Form NF, the investment company thereby agrees, that for purposes of complying with the laws of this State, such execution shall be deemed to be the consent of the investment company to have the Administrator irrevocably appointed as its agent in this State upon whom may be served any notice, process or pleading in any action or proceeding against it arising out of, or in connection with, the sale of securities covered by such Form NF or arising out of the violation of the securities laws of this State; and that any action or proceeding against the investment company may be commenced in any court of competent jurisdiction and proper venue within this State by service of process upon the Administrator with the same effect as if the investment company was organized or created under the laws of this State and had been served lawfully with process in this State. In the event any notice, process or pleading is served on the investment company through the Administrator, the Administrator shall promptly provide a copy of such notice, process, or pleading to the person indicated in Item 5 of Form NF.

(d) Upon filing Form NF and paying fee required by G.S. 78A-31(a)(1), the securities of the investment company may be offered for sale and sold into, from, and within this State until the expiration of the notice filing period pursuant to G.S. 78A-31(a)(4). In order to offer or sell its securities after the expiration of its notice filing, the investment company must extend its notice filing as provided in Paragraph (e) of this Rule. In the event that the Securities Division requests that the investment company provide it with a copy of the investment company's prospectus or statement of additional information, such request shall not restrict the ability of the investment company to offer its securities for sale in this State provided that the Division has received the Form NF and fees as required by G.S. 78A-31(a).

(e) A notice filing may be renewed by the investment company by filing a current Form NF and paying such fees as are required by G.S. 78A-31(a) within two months after the expiration of the prior notice filing period. Each renewal of a notice filing shall expire on December 31.

(f) Amendments to increase the amount of shares to be offered may be made by filing a revised Form NF, together with the fees required by G.S. 78A-31(a)(5).

*History Note: Authority G.S. 78A-31(a); 78A-49(a);
Temporary Adoption Eff. October 1, 1997;
Eff. August 1, 1998;
Temporary Amendment Eff. January 1, 1999;
Codifier determined that agency findings did not meet criteria for temporary rule;
Temporary Amendment Eff. September 29, 1999;
Amended Eff. August 1, 2000;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.*

18 NCAC 06A .1213 TRANSACTIONAL EXEMPTION PURSUANT TO G.S. 78A-17(19)

Conditions of Eligibility for Exemption. For the purposes of eligibility for the exemption provided at G.S. 78A-17(19), an offer or sale of any viatical settlement contract or any fractionalized or pooled interest therein in a transaction must meet all of the following criteria:

- (1) Suitability Standards. Sales of viatical settlement contracts may be made only to purchasers meeting the requirements of Rule .1320 of this Chapter.
- (2) Purchase Not for Resale. Each purchaser must represent in writing that the purchaser is purchasing for investment and for the purchaser's own account or trust account, if the purchaser is a trustee, and not with a view to or for sale in connection with a distribution of the security.
- (3) Required Disclosures. The information set forth in G.S. 78A-13 and in Rule .1319 shall be disclosed in accordance with that section.
- (4) Rescission by Purchaser. Each purchaser shall be provided with written notice of his or her rights of rescission as set forth in G.S. 78A-56 and in Rule .1501 of this Chapter.
- (5) Exemption Filing and Fee. A notice of the issuer's intent to sell securities in reliance on G.S. 78A-17(19), signed by the issuer or by an authorized officer of the issuer and notarized, together with a nonrefundable filing fee of five hundred dollars (\$500.00), payable to the Secretary of State, shall be filed with the Administrator not later than ten business days before any offers or sales of securities are made pursuant to G.S. 78A-17(19). Such notice shall include:
 - (a) The issuer's name, the issuer's type of business organization, the state in which the issuer is organized, the date the issuer intends to begin selling securities within or from this state, and the issuer's principal business;
 - (b) A consent to service of process naming the Secretary of State as agent for service of process;
 - (c) Such financial statements as may be required to be disclosed under G.S. 78A-13;
 - (d) the names and CRD numbers, if any, of all persons who will be offering the securities for sale in or from the State of North Carolina; and
 - (e) an undertaking to notify the Administrator in writing of any material change or material omission in the information filed with the Administrator pursuant to this Rule not later than five business days following the change or discovery of the omission.
- (6) No Commissions to Unregistered Sellers. No commission or remuneration is paid directly or indirectly for soliciting any prospective purchaser, except to a registered salesman of a registered dealer.
- (7) Filing of Advertising Materials. At least 10 days before use within this state, the issuer files with the Administrator all advertising and sales materials that will be published, exhibited, broadcast, or otherwise used, directly or indirectly, in the offer or sale of a viatical settlement contract in this state, including the written disclosures required by G.S. 78A-13 and by Rule .1319 of this Chapter.
- (8) Legends Required. Any prospectus or disclosure document used in this state in connection with an offer and sale of securities made in reliance upon the exemption provided by this Rule shall disclose conspicuously the appropriate legends:
 - (a) THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE;
 - (b) IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN

RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE; and

- (c) THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

History Note: Authority G.S. 78A-13, 78A-14, 78A-17(19), 78A-49, 78A-56;
Temporary Adoption Eff. April 1, 2002;
Temporary Adoption Eff. July 1, 2002;
Eff. April 1, 2003;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

SECTION .1300 - REGISTRATION OF SECURITIES

18 NCAC 06A .1301 REGISTRATION BY NOTIFICATION

Application for registration by notification shall be filed with the administrator using the Uniform Application to Register Securities (Form U-1). Supplemental information demonstrating eligibility for registration under this provision and the documents and information called for by G.S. 78A-25(b) shall be attached.

History Note: Authority G.S. 78A-25; 78A-49(a);
Eff. April 1, 1981;
Amended Eff. October 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1302 REGISTRATION BY COORDINATION

Application for registration by coordination shall be filed with the administrator using the Uniform Application To Register Securities (Form U-1). Documents necessary to establish eligibility for registration by coordination shall be attached.

History Note: Authority G.S. 78A-26; 78A-49(a);
Eff. April 1, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1303 REGISTRATION BY QUALIFICATION

(a) Application for registration by qualification shall be filed with the administrator using the Uniform Application To Register Securities (Form U-1). Documents necessary to establish eligibility for registration by qualification shall be attached.

(b) As a condition to registration by qualification the applicant shall prepare a prospectus which shall, after approval by the administrator, be sent or given to each person to whom an offer is made before or concurrently with whichever of the following events first occurs:

- (1) the first written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution;
- (2) the confirmation of any sale made by or for the account of any such person;
- (3) payment pursuant to any such sale; or
- (4) delivery of the security pursuant to any sale.

(c) The prospectus requirement of Paragraph (b) of this Rule may be satisfied by the use of the NASAA Form U-7 (Small Corporate Offerings Registration Form) (as found at CCH NASAA Reports 5057) if the use of that form is allowed by the instructions to Form U-7 for the securities offering being registered.

History Note: Authority G.S. 78A-27(d); 78A-49(a);
Eff. April 1, 1981;
Amended Eff. September 1, 1990; October 1, 1988; January 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1304 SECURITIES REGISTRATION AND FILING FEES

(a) All fees are payable to the Office of the Secretary of State and shall be submitted with the application for original, renewal, or additional registration. The filing fee shall be retained by the administrator in all cases.

(b) The aggregate offering amount of an original or amended registration may be increased prior to or after the effectiveness of the registration by providing the administrator the following:

- (1) An additional registration filing fee of fifty dollars (\$50.00) if such filing occurs after the effective date of the offering; and
- (2) An amendment to the Uniform Application to Register Securities (Form U-1).

Additional registrations shall be effective when the administrator so orders.

History Note: Authority G.S. 78A-28(b); 78A-28(j); 78A-31(a); 78A-49(a);
Eff. April 1, 1981;
Amended Eff. September 1, 1990; October 1, 1988; January 1, 1984; July 1, 1982;
Temporary Amendment Eff. October 1, 1997;
Amended Eff. August 1, 1998;
Temporary Amendment Eff. January 1, 1999;
Codifier determined that agency findings did not meet criteria for temporary rule;
Temporary Amendment Eff. September 29, 1999;
Amended Eff. August 1, 2000;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1305 SPONSORSHIP BY DEALER

(a) Except where the conditions of G.S. 78A-2(2)d.3. or 78A-2(2)d.4. are met, no securities will be considered for registration unless the application therefor is sponsored by a North Carolina registered dealer with a statement of its desire and intent to offer such securities to the investing public in North Carolina. Sponsorship of an issue by a North Carolina registered dealer may be accomplished by the dealer signing the application form as applicant, or in lieu thereof, the sponsoring dealer may wire or write the administrator stating its intention to sponsor the issue in this State. The statement of sponsorship will not be accepted from the dealer's attorney unless a power of attorney has been given to the attorney by the dealer and a copy of the power of attorney is submitted together with letter of sponsorship.

(b) No issuer shall be permitted to qualify as a dealer for the purpose of offering its own securities pursuant to a registration in this State.

History Note: Authority G.S. 78A-2(2); 78A-49(a);
Eff. April 1, 1981;
Amended Eff. October 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1306 CONFIRMATION OF REGISTRATION

Registrations are effective upon confirmation in writing by the administrator and shall remain effective until the offering is completed, unless a stop order is in effect. It is recommended that a dealer make no sales or related transactions until confirmation of registration is received.

History Note: Authority G.S. 78A-25(c); 78A-26(c); 78A-27(c); 78A-29; 78A-49(a);
Eff. April 1, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1307 COMMISSIONS AND EXPENSES

(a) The aggregate amount of all payments including commissions, compensation, discounts, fees, remuneration, mark-ups, and service charges paid or to be paid, directly or indirectly, to underwriters, dealers, salesmen and finders with respect to the public offering of securities shall not exceed ten percent of the aggregate selling price of the securities. For the purposes of

this Paragraph (a), the aggregate amount of all payments shall exclude payments related to justifiable due diligence investigation of the issuer.

(b) The aggregate amount of all payments including commissions, discounts, fees, remuneration, mark-ups, and service charges as computed in Paragraph (a) of this Rule and other selling expenses as described in Paragraph (d) of this Rule incurred or to be incurred in connection with the offer or sale of securities:

- (1) Twenty percent of the gross proceeds of the offering for public offerings of two million five hundred thousand dollars (\$2,500,000) or less;
- (2) Eighteen percent of the gross proceeds of the offering for public offerings over two million five hundred thousand dollars (\$2,500,000) and up to seven million five hundred thousand dollars (\$7,500,000); or
- (3) Fifteen percent of the gross proceeds of the offering for public offerings that exceed seven million five hundred thousand dollars (\$7,500,000).

(c) In an application to register securities where warrants, options or rights to purchase shares below the offering price are granted to underwriters, dealers and other persons with respect to the public offering of securities, there shall be included in the calculation pursuant to Paragraph (a) of this Rule an amount equal to the difference between the lowest price at which the warrants, options or rights may be exercised and the public offering price of the securities at the time of effectiveness of registration, less any amount paid for such warrants, options or rights. In cases where no market value for the warrants, options or rights exists, a presumed fair value of twenty percent of the public offering price of the shares to which the warrants, options or rights pertain shall be used for purposes of the calculation of payments pursuant to Paragraph (a) of this Rule, unless evidence indicates that a contrary valuation exists. For purposes of Paragraph (a) of this Rule, any future registration rights of underwriter's options, warrants, or shares at the issuer's expense shall be valued at one percent of the public offering, and any right of first refusal will be valued at one percent of the public offering. Payments as provided in Paragraph (a) of this Rule which are made or to be made in connection with the sale of securities by a person in which the issuer has an interest or which is controlled by or is under common control with the issuer shall be deemed to have been made by the issuer.

(d) Selling expenses as referred to in Paragraph (b) of this Rule may include, but are not limited to, the following:

- (1) Solicitation, conversion, or exercise fees, which shall be valued at the lesser of actual cost or one percent if the fees are payable within one year of the offering;
- (2) Consulting or financial advisory agreements or any other type of agreement or fees, however designated, which shall be valued at actual cost;
- (3) Attorney's fees for services in connection with the issue and sale of the securities and their qualification for sale under applicable laws and regulations;
- (4) Auditors' and accountants' fees;
- (5) The cost of printing prospectuses, circulars and other documents required to comply with securities laws and regulations;
- (6) Charges of transfer agents, registrars, indenture trustees, escrow holders, depositories, engineers, appraisers, and other experts;
- (7) Cost of authorizing and preparing the securities, including issue taxes and stamps; and
- (8) Other expenses incurred in connection with the public offering of securities as determined by the administrator.

(e) The issuer shall file with the administrator, within 120 days after the termination of the public offering, a written report setting forth the actual amounts of selling expenses incurred in the public offering. The selling expenses are to be broken down by the categories as in Paragraphs (a), (c), and (d) of this Rule.

(f) A public offering or sale of securities that includes offers or sales by selling security holders may be disallowed by the administrator unless the following conditions are met:

- (1) Selling security holders shall pay a pro rata share of all additional selling expenses that are the result of the inclusion of their shares in the public offering;
- (2) The prospectus or offering document shall disclose the amount of selling expenses which the selling securities holders shall pay; and
- (3) With the exception of underwriter's or broker-dealer's compensation, the provisions of Paragraphs (f)(1) and (f)(2) of this Rule shall not apply:
 - (A) if the security holders have a written agreement with the issuer that was entered into one year or more prior to the filing of the public offering, whereby the issuer has agreed to pay all of the selling security holders' selling expenses, and if the selling securities holders have held their securities for at least one year prior to the filing of the public offering; or

- (B) if the security holders have a written agreement with the issuer, whereby the issuer has agreed to pay all of the selling securities holders' selling expenses, and if the agreement was arrived at through arm's-length negotiations.

(g) In the event of noncompliance with Paragraph (a) of this Rule in reliance upon G.S. 78A-29(b)(1) the applicant shall provide the administrator the following:

- (1) A copy of the rule or rules, promulgated by a national securities association registered with the Securities and Exchange Commission pursuant to Section 15A of the Securities Exchange Act of 1934, to which the offering or dealer is subject;
- (2) A demonstration that the rule or rules were promulgated to provide safeguards against unreasonable profits or unreasonable rates or commissions or other charges;
- (3) Evidence of the application of the rule or rules to the offering in question, including substantive guidelines, policy statements and interpretations utilized in determining compliance therewith; and
- (4) Such other evidence of compliance with such rules as the administrator so requires.

History Note: Authority G.S. 78A-29(a)(2)f.; 78A-29(b)(2); 78A-49(a); Eff. April 1, 1981; Amended Eff. October 1, 1990; October 1, 1988; January 1, 1984; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1308 ADVERTISING

(a) For the purposes of this Rule, "Advertising" shall mean any of the following to be used or circulated with the sale and promotion of a public offering of securities: advertisement; display; pamphlet; brochure; letter; article or communication published in any newspaper, magazine or periodical; or script; or any recording; or any radio or television announcement, broadcast or commercial.

(b) Filing of Advertising Materials. At least 10 days before use within this state, the issuer shall file with the Administrator all advertising and sales material that will be published, exhibited, broadcast, or otherwise used, directly or indirectly, in the offer or sale of a security.

(c) Except where the conditions of G.S. 78A-2(2)d.3. or 78A-2(2)d.4. are met, all advertising circulated within this state for registered securities must carry the name of at least one North Carolina registered dealer which can legally make an offering of the securities in this state.

(d) The following devices or sales presentations, and the use thereof in any advertising shall be deceptive or misleading practices:

- (1) Comparison charts or graphs showing a distorted, unfair or unrealistic relationship between the issuer's past performance, progress or success and that of another company, business, industry or investment media;
- (2) Lay-out, format, size, kind and color of type used so as to attract attention to favorable or incomplete portions of the advertising matter, or to minimize less favorable, modified or modifying portions necessary to make the entire advertisement a fair and truthful representation;
- (3) Statements or representations which predict future profit, success, appreciation, performance or otherwise relate to the merit or potential of the securities unless such statements or representations clearly indicate that they represent solely the opinion of the publisher thereof;
- (4) Generalizations, generalized conclusions, opinions, representations and general statements based upon a particular set of facts and circumstances unless those facts and circumstances are stated and modified or explained by such additional facts or circumstances as are necessary to make the entire advertisement a full, fair, and truthful representation;
- (5) Sales kits or film clips, displays or exposures, which, alone or by sequence and progressive compilation, tend to present an accumulative or composite picture or impression of certain, or exaggerated potential, profit, safety, return or assured or extraordinary investment opportunity or similar benefit to the prospective purchaser;
- (6) Distribution of any non-factual or inaccurate data or material by words, pictures, charts, graphs, or otherwise, based on conjectural, unfounded, extravagant, or flamboyant claims, assertions, predictions or excessive optimism;
- (7) Any package or bonus deal, prize, gift, gimmick or similar inducement, combined with or dependent upon the sale of some other product, contract or service, unless such unit or combination has been fully disclosed and specifically described and identified in the application as the security being offered; or

(8) Other devices or sales presentations that are fraudulent or would tend to work a fraud under G.S. 78A-8 or 78A-10.

(e) The disseminator of the advertising shall be responsible for its accuracy, reliability and conformance with the Act and this Rule.

(f) The terms "prospectus, pamphlet, circular, form letter, advertisement, advertising or other sales literature", as used in G.S. 78A-27(b)(12) and those same terms plus the term "advertising communication" used in G.S. 78A-49(d) shall not include a notice, circular, advertisement, letter or communication in respect of the security if it states from whom a written prospectus or offering circular may be obtained, and does no more than identify the security, the price thereof, and the name of one or more registered dealers through whom the security is available.

History Note: Authority G.S. 78A-8(2); 78A-49(a);
Eff. April 1, 1981;
Amended Eff. October 1, 1988; January 1, 1984;
Temporary Amendment Eff. April 1, 2002;
Amended Eff. April 1, 2003;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1309 ADVERTISEMENTS NOT DEEMED PROSPECTUS: ETC. (REPEALED)

History Note: Authority G.S. 78A-49(a);
Eff. April 1, 1981;
Repealed Eff. January 1, 1984.

18 NCAC 06A .1310 OFFERING PRICE

(a) A waiver of the two-day advance filing of the final offering price requirement of G.S. 78A-26(c)(iii) shall be permitted if the final pricing information is furnished to the administrator contemporaneously with notice of the Securities and Exchange Commission effectiveness.

(b) The final offering price information shall be filed in the following format:

Re: (Title of Offering)

Date SEC effective:

Total number of units/shares/interests:

Total aggregate dollar amount:

Initial public offering price:

Underwriting commission (percentage):

States in which registration has been withdrawn and the reason for the withdrawal.

History Note: Authority G.S. 78A-26(c); 78A-49(a);
Eff. April 1, 1981;
Amended Eff. September 1, 1995; October 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1311 SHELF REGISTRATIONS (REPEALED)

History Note: Authority G.S. 78A-49(a);
Eff. April 1, 1981;
Repealed Eff. January 1, 1984.

18 NCAC 06A .1312 REGISTRATION OF REAL ESTATE SECURITIES (REPEALED)

History Note: Authority G.S. 78A-49(a);
Eff. April 1, 1981;
Amended Eff. January 1, 1984;
Repealed Eff. October 1, 1988.

18 NCAC 06A .1313 REGISTRATION OF DIRECT PARTICIPATION PROGRAM SECURITIES

(a) As a condition to the registration of direct participation program securities, the issuer or dealer(s) effecting sales of such securities pursuant to such registration shall:

- (1) deliver to each offeree of the security in this State prior to any sale of the security to such offeree, a written statement of the investor suitability standards which each offeree must meet in order to purchase the security. The statement may be contained in any offering circular, prospectus or other written document delivered to the offeree; and
- (2) determine, prior to the sale of the security to each person in this State, that the person meets the investor suitability standards applicable to the security. For purposes of this determination, the issuer or dealer(s) shall be entitled to rely conclusively upon a written statement or questionnaire signed by the person and received in good faith and without knowledge that the information stated therein is inaccurate.

(b) The minimum investor suitability standards which shall be imposed for registered offerings of direct participation program securities are as follows:

- (1) The investor shall either have a minimum net worth of two hundred twenty-five thousand dollars (\$225,000) or a minimum net worth of sixty thousand dollars (\$60,000) and had during the last tax year or estimates that the investor will have during the current tax year, taxable income of at least sixty thousand dollars (\$60,000) without regard to the investment in the security.
- (2) Net worth shall be determined exclusive of principal residence, mortgage thereon, home furnishings and automobiles. In the case of sales to fiduciary accounts, the investor suitability standards shall be met by the fiduciary or the fiduciary account or by the donor who directly or indirectly supplies the funds to purchase the securities.

(c) The administrator will permit the substitution of lower suitability standards if such lower standards are consistent with the standards outlined in the NASAA policy statement for that specific type of program. (See CCH NASAA Reports for such policy statements.)

(d) The administrator may modify or waive, upon the showing of good cause, the requirements of Paragraphs (a), (b) and (c) of this Rule, in whole or in part, with respect to a particular security, offering or transaction or the administrator may require higher investor suitability standards with respect to a particular security offering or transaction where necessary for the protection of investors. For purposes of this Rule, "good cause" means a substantial reason related to the investor protection goals intended to be served by the investor suitability requirements of Paragraphs (a), (b), or (c) of this Rule, determined with respect to the relative investment experience, financial sophistication, and financial substance of the offerees; the amounts of the proposed individual investments in the proposed offering; the business history and financial substance of the issuer of the securities; and the relative risk of loss presented by the particular business activity of the issuer.

*History Note: Authority G.S. 78A-49(a);
Eff. April 1, 1981;
Amended Eff. May 1, 2005; October 1, 1988; January 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.*

18 NCAC 06A .1314 ESCROW AGREEMENTS

Where, as a condition to registration of a security in North Carolina, an escrow agreement is required, such agreement shall provide that all funds shall be returned immediately to the investors in full, without reduction of any fees, commissions or expenses unless a specified dollar amount of offering proceeds are received by the escrow agent within a specified period. The time period specified in any escrow agreement may be extended for a time certain if agreed upon by all persons who have theretofore contracted to purchase the security. The escrow agent shall be a federal bank regulated by the Comptroller of the Currency or a state bank regulated by the appropriate state authority. Other depositories may be approved by the administrator on a case by case basis. The provisions of the NASAA "Statement of Policy Regarding the Impoundment of Proceeds", as found at CCH NASAA Reports 2151 et seq. (as may be amended from time to time), are incorporated herein by reference. Where an escrow agreement is required as a condition of registration of a security in North Carolina, the NASAA Model Security Escrow Agreement, as found at CCH NASAA Reports 1651, may be used to satisfy such requirement.

*History Note: Authority G.S. 78A-28(g); 78A-49(a);
Eff. April 1, 1981;
Amended Eff. September 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.*

18 NCAC 06A .1315 NOTICE OF COMPLETION OF OFFERING/FINAL SALES REPORT

Each issuer shall provide to the administrator, within thirty days of completion of the offering of registered securities, the following information:

- (1) Date of completion of the offering;
- (2) Aggregate offering amount of securities sold in this state expressed in units and dollars;
- (3) Except where the offering was made by or through sponsoring dealer(s) pursuant to Rule .1305 of this Section, the aggregate amount of commissions, discounts, finder's fees or other similar remuneration or compensation paid for soliciting any purchasers of the securities in this state, and the name(s) of the person(s) to whom such amount was paid;
- (4) Where material deviations of the sources and uses of the proceeds of the offering have occurred as compared with the proposed sources and uses of the proceeds as previously disclosed to the administrator, then the issuer shall provide a written explanation of such deviations; and
- (5) Other information as the administrator may require by order.

*History Note: Authority G.S. 78A-49(a);
Eff. April 1, 1981;
Amended Eff. January 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.*

18 NCAC 06A .1316 LEGENDS REQUIRED

(a) The information required by this Rule .1316 shall be printed in capital letters in bold-face roman type at least as high as ten-point modern type, and at least two points leaded.

- (1) The following information shall appear on the cover page of any prospectus utilized for the purpose of offering and selling securities subject to registration by the provisions of the Securities Act of 1933, as amended, and subject to registration by the provisions of Chapter 78A of the North Carolina General Statutes:

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE;

- (2) The following information, to the extent appropriate, shall appear on the cover page of any document utilized in connection with the offer and sale of securities which are exempt from registration under the Securities Act of 1933, as amended, but subject to a filing requirement under Chapter 78A of the North Carolina General Statutes:

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE; and

- (3) If these securities are offered or sold pursuant to Section 4(2) of the Securities Act of 1933, as amended, or under the provisions of Regulation D, the following statement shall also appear on the cover page of any offering document utilized in connection with the offer and sale of the securities:

THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

(b) Any prospectus which depicts the United States Securities and Exchange Commission's comparable legend pursuant to a registration statement filed under the Securities Act of 1933 or a letter of notification under Regulation A or a schedule under Regulation B of the General Rules and Regulations of the Securities Act of 1933 will be considered in compliance with Paragraph (a).

History Note: Authority G.S. 78A-10(a); 78A-49(a); 78A-49(b);

Eff. January 1, 1984;
Amended Eff. September 1, 1990; October 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1317 AMENDMENT OF FILINGS

Where any information in or exhibits attached to a registration statement is amended in any way subsequent to the filing of such statement, the applicant shall file with the administrator in a timely fashion a copy of such registration statement and exhibits with such amendments clearly marked thereon.

History Note: Authority G.S. 78A-49(a);
Eff. October 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1318 AUTOMATIC WITHDRAWAL OF APPLICATION FOR REGISTRATION

Where an application for registration of a security has remained pending for at least one year following the date of its filing, and the delay in completion of its examination by the administrator is due to a deficiency in filing attributable to the applicant, the administrator shall withdraw such application automatically and shall retain all fees submitted with it.

History Note: Authority G.S. 78A-29(a); 78A-49(a);
Eff. October 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1319 REQUIRED DISCLOSURES: VIATICAL SETTLEMENT CONTRACTS

(a) Disclosures Prior to Payment of Consideration. On or before the date the viatical settlement purchaser remits consideration pursuant to the purchase agreement, the purchaser shall be provided with the following written disclosures in addition to any disclosures set forth in G.S. 78A-13:

- (1) An explanation of how the insurance company will be notified of the insured's death and who will be responsible for filing a claim for benefits with the insurance company;
- (2) The name and address of the person who will receive notices from the insurance company, including, but not limited to, notices of a change in status of the insurance policy, a change in premium payments, a reduction in death benefits on a converted policy, and the end of the term for a term life insurance policy; and
- (3) The specific services to be provided by the escrow agent, and the fees charged by the escrow agent.

(b) Disclosures Prior to Closing. At least five business days prior to the date the purchase agreement is signed, the purchaser shall receive the following written disclosures in addition to any disclosures set forth in G.S. 78A-13:

- (1) No one can accurately predict the life expectancy of the insured. Many factors, including the nature of an insured's illness and improvements in medical treatments, can significantly affect the accuracy of a life expectancy prediction. Life expectancy predictions for persons who are elderly but not ill may be especially inaccurate;
- (2) Because Internal Revenue Code Section 408(a)(3) requires that no part of the trust funds of an individual retirement account may be invested in life insurance contracts, the Internal Revenue Service may disallow viatical settlement contracts held as investments inside IRA's; and
- (3) If an investment in a viatical settlement contract is made with qualified retirement plan funds, the investor may have difficulty taking the mandatory distributions beginning at age 70 1/2 because liquid funds may not be available from the plan's investments.

(c) Disclosure of the information listed in G.S. 78A-13 and in this Rule shall not be deemed to relieve any person of the duty to comply with the antifraud provisions of the North Carolina Securities Act.

History Note: Authority G.S. 78A-8; 78A-9; 78A-10; 78A-11; 78A-12; 78A-13; 78A-17(9); 78A-49;
Temporary Adoption Eff. April 1, 2002;
Eff. April 1, 2003;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1320 VIATICAL SETTLEMENT CONTRACT SUITABILITY REQUIREMENTS

- (a) Suitability Standards. Sales of viatical settlement contracts may be made only to either accredited investors as defined in 17 C.F.R. 230.501(a), (and as subsequently amended) or to qualified institutional buyers as defined in 17 C.F.R. 230.144A, (and as subsequently amended).
- (b) Limit on Size of Investment. The amount of the investment of any purchaser may not exceed five percent of the net worth of that purchaser.
- (c) The administrator may require higher investor suitability standards with respect to a particular security offering or transaction where necessary for the protection of investors.

*History Note: Authority G.S. 78A-49; 78A-13(b)(2)l; 78A-17(19);
Temporary Adoption Eff. April 1, 2002;
Eff. April 1, 2003;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.*

SECTION .1400 - REGISTRATION OF DEALERS AND SALESMEN

18 NCAC 06A .1401 APPLICATION FOR REGISTRATION OF DEALERS

- (a) The application for registration as a dealer shall contain the following:
- (1) an executed Uniform Application for Registration as a Dealer (Form BD) and the appropriate schedules thereto or the appropriate successor form;
 - (2) a fee as required by G.S. 78A-37(b);
 - (3) evidence of current registration as a dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934;
 - (4) evidence of compliance with Rule .1410 of this Section; and
 - (5) any other information necessary for the Administrator to determine whether the Administrator may take action pursuant to G.S. 78A-39.
- (b) The application for registration as a dealer shall be filed as follows:
- (1) NASD member dealers shall file applications for initial registration in the State of North Carolina with the NASAA/NASD Central Registration Depository, P.O. Box 37441, Washington, D.C. 20013 and shall file a manually executed Form BD directly with the Securities Division. Applications for renewal of registration shall be filed only with the Central Registration Depository (see Rule .1406 of this Section);
 - (2) Non-NASD member dealers shall file all applications for registration in the State of North Carolina directly with the Securities Division.
- (c) The dealer shall file with the administrator, as soon as practicable but in no event later than 30 days following such event, notice of any disciplinary action taken against the dealer by any exchange of which the dealer is a member; the Securities and Exchange Commission; the Commodity Futures Trading Commission; any national securities association registered with the Securities and Exchange Commission pursuant to Section 15A of the Securities Exchange Act of 1934 or any state securities commission and of any civil suit filed against the dealer alleging violation of any federal or state securities laws. If the information contained in any document filed with the administrator is or becomes inaccurate or incomplete in any material respect, the dealer shall file a correcting amendment as soon as practicable but in no event later than 30 days following the date on which such information becomes inaccurate or incomplete.
- (d) Registration becomes effective at noon of the 30th day after a completed application is filed or such earlier time upon issuance of a license or written notice of effective registration, unless proceedings are instituted pursuant to G.S. 78A-39. The administrator may by order defer the effective date after the filing of any amendment but no later than noon of the 30th day after the filing of the amendment.
- (e) Every dealer shall notify the administrator of any change of address, the opening or closing of any office (including the office of any salesman operating apart from the dealer's premises) or any material change thereto, in writing as soon as practicable or by filing concurrently upon filing with NASD an appropriate amendment or schedule to Form BD or any successor form.

*History Note: Authority G.S. 78A-36(a); 78A-37(a); 78A-37(b); 78A-37(d); 78A-38(c); 78A-49(a);
Eff. April 1, 1981;
Amended Eff. September 1, 1990; October 1, 1988; January 1, 1984; November 1, 1982;
Temporary Amendment Eff. October 1, 1997;
Amended Eff. August 1, 1998;
Temporary Amendment Eff. November 1, 2002;*

Amended Eff. August 1, 2004;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1402 APPLICATION FOR REGISTRATION OF SALESMEN

- (a) The application for registration as a salesman shall contain the following:
- (1) an executed Uniform Application for Securities and Commodities Industry Representative and/or Agent (Form U-4) or the appropriate successor form;
 - (2) a fee as required by G.S. 78A-37(b); and
 - (3) evidence of a passing grade of seventy percent on either:
 - (A) the Uniform Securities Agent State Law Examination (USASLE - Series 63); or
 - (B) both the Uniform Combined State Law Examination (Series 66 Exam) and the General Securities Representative Examination (Series 7 Exam) as well as the appropriate NASD examination as required by Rule .1413 of this Section.
- (b) The application for registration as a salesman shall be filed as follows:
- (1) NASD member dealers shall file all salesman applications for registration in the State of North Carolina with the NASAA/NASD Central Registration Depository, P.O. Box 9401, Gaithersburg, MD 28898-9401.
 - (2) Non-NASD member dealers shall file all salesman applications for registration in the State of North Carolina directly with the Securities Division.
- (c) The salesman or the dealer for which the salesman is registered shall file with the administrator, as soon as practicable but in no event later than 30 days, notice of any disciplinary action taken against a salesman by any exchange of which the dealer is a member; the Securities and Exchange Commission; the Commodity Futures Trading Commission; any national securities association registered with the Securities and Exchange Commission pursuant to Section 15A of the Securities Exchange Act of 1934 or any state securities commission and of any civil suit, warrant, criminal warrant, or criminal indictment filed against the salesman alleging violation of any federal or state securities laws. If the information contained in any document filed with the administrator is or becomes inaccurate or incomplete in any material respect, the salesman or the dealer for which the salesman is registered shall file a correcting amendment as soon as practicable but in no event later than 30 days. Such filing shall be made by NASD member dealers and their salesmen to the NASAA/NASD Central Registration Depository and non-NASD member dealers and their salesmen shall make such filing directly with the Securities Division.
- (d) Registration becomes effective at noon of the 30th day after a completed application is filed or such earlier time upon approval of the application by the administrator, unless proceedings are instituted pursuant to G.S. 78A-39. The administrator may by order defer the effective date after the filing of any amendment but no later than noon of the 30th day after the filing of the amendment.
- (e) A salesman shall only be registered in this State with one dealer.

*History Note: Authority G.S. 78A-37(a); 78A-37(b); 78A-38(c); 78A-39(b)(4); 78A-49(a);
Eff. April 1, 1981;*

*Amended Eff. April 1, 2001; September 1, 1995; October 1, 1988; January 1, 1984; November 1, 1982;
Temporary Amendment Eff. November 1, 2002;*

Amended Eff. August 1, 2004;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1403 TERMINATION OF REGISTRATION OF DEALER

- (a) When a dealer seeks to terminate registration, notice shall be filed with the administrator on the Uniform Notice of Termination of a Broker-Dealer (Form BDW) or the appropriate successor form accompanied by any outstanding dealer's license. Termination shall not be effective until receipt by the administrator of any dealer's license that may be outstanding. Dealers shall be held accountable for all acts until actual receipt of any outstanding license by the administrator.
- (b) Termination by the Securities and Exchange Commission of a dealer's registration shall immediately terminate such dealer's registration in North Carolina. The dealer must file with the administrator a Uniform Notice of Termination of a Broker-Dealer (Form BDW) or the appropriate successor form accompanied by any outstanding dealer's license as soon as practicable but in no event later than 10 business days.
- (c) Terminating dealers shall comply with Rule .1408 of this Section with respect to each of their salesmen.

*History Note: Authority G.S. 78A-36(a); 78A-39(e); 78A-49(a);
Eff. April 1, 1981;*

Amended Eff. January 1, 1984;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1404 CHANGE IN NAME OF DEALER

Where only a change in the name of the dealer applicant or registrant occurs, an amended Form BD shall be filed with the administrator together with any amendments to the organizational documents, or accompanying letters of explanation, within 30 days of the date of the change. The dealer shall return its license and new license will be issued reflecting the name change. There will be no fee for reissuance of the license. Each salesman shall retain either his salesman's license if the dealer is a non-NASD member firm or his notice of NASAA/NASD Central Registration Depository effectiveness for North Carolina if the dealer is a NASD member firm and this license or notice shall suffice as evidence of licensing under the new dealer name until renewal.

*History Note: Authority G.S. 78A-37(c); 78A-49(a);
Eff. April 1, 1981;
Amended Eff. November 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.*

18 NCAC 06A .1405 DEALER MERGER/CONSOLIDATION/ACQUISITION/SUCCESSION

(a) When there is a merger, consolidation, acquisition, succession, or other fundamental change the surviving or new entity shall file with the administrator, prior to such fundamental change, an amended Form BD or successor form, with the plan of fundamental change and a letter or any documents of explanation including the date of mass transfer of salesmen pursuant to Paragraph (c) of this Rule if contemplated. As soon as practicable, but not later than 30 days after the fundamental change, the surviving or new entity shall file with the administrator the current financial statements of the surviving or new entity; the amended or new charter and by-laws; and, if applicable, a copy of the certificate of merger, consolidation or other fundamental change.

(b) The registration of the surviving or new entity will be granted by the administrator on the same date that the fundamental change becomes effective. Where the fundamental change results in a change in the name of the surviving or new entity from the name listed on any outstanding dealer's license, the license shall be returned and a new license reflecting the new name will be issued. There will be no fee for reissuance of a license.

(c) Dealers shall effect mass transfers of salesmen in the following manner:

- (1) Where the surviving or new entity is a NASD member firm, it shall follow the NASAA/NASD Central Registration Depository procedures for effecting a mass transfer of salesmen from the nonsurviving entity to the surviving or new entity. For any salesman not to be transferred, the surviving or new entity shall timely terminate registration of that salesman pursuant to the NASAA/NASD Central Registration Depository procedures. There will be no fee for these transfers.
- (2) Where the surviving or new entity is a non-NASD member firm, it shall file with the Securities Division a Form U-4 or successor form for each salesman to be transferred from the nonsurviving entity to the surviving or new entity and a Form U-5 or successor form for each salesman not to be transferred. Each transferred salesman shall retain his salesman's license or notice of registration which shall suffice as evidence of registration with the surviving or new entity until renewal. The transfer of the salesman is effective upon receipt of the Form U-4 or successor form by the Securities Division. All Form U-5's or successor forms shall be filed as soon as practicable but no later than 10 business days after the fundamental change. A regular application fee shall be paid by the surviving or new dealer for each agent in such transfer.

*History Note: Authority G.S. 78A-37(b); 78A-37(c); 78A-40(a); 78A-49(a);
Eff. April 1, 1981;
Amended Eff. September 1, 1995; January 1, 1984; November 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.*

18 NCAC 06A .1406 EXPIRATION AND RENEWAL OF DEALER REGISTRATION

(a) A dealer registration shall expire on December 31 of each year unless timely renewed.

(b) A NASD member firm shall renew according to NASAA/NASD Central Registration Depository procedures.

(c) A non-NASD member firm shall renew by filing the following with the administrator at least 15 days before the expiration date:

- (1) Application of Dealer In Securities For Renewal Of Registration;

- (2) Fee in the amount of two hundred dollars (\$200.00) for the dealer renewal payable to the North Carolina Secretary of State; and
- (3) Renewal of its salesmen pursuant to Rule .1407 of this Section.

History Note: Authority G.S. 78A-36(c); 78A-37(a); 78A-37(b); 78A-40(a); 78A-49(a);
 Eff. April 1, 1981;
 Amended Eff. October 1, 1988; January 1, 1984; November 1, 1982; March 1, 1982;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1407 EXPIRATION AND RENEWAL OF SALESMAN'S REGISTRATION

A salesman's registration shall expire on December 31 of each year unless renewed. A dealer shall file the following at least 15 days before the expiration date to renew its salesmen's registration:

- (1) Dealers that are NASD member firms shall renew all salesmen by complying with the procedures for renewal of salesmen as required by the NASAA/NASD Central Registration Depository along with the payment of fifty-five dollars (\$55.00) for each salesman made payable to the National Association of Securities Dealers.
- (2) Dealers that are non-NASD member firms shall renew all salesmen by filing with the Securities Division a listing of all salesmen to be renewed along with their current addresses and social security numbers. The salesman renewal list shall be submitted in alphabetical order as follows: last name, first name, middle name or maiden name; current address; social security number. A fee of fifty-five dollars (\$55.00) for each salesman made payable to the North Carolina Secretary of State shall be submitted along with the salesman renewal list.

History Note: Authority G.S. 78A-36(c); 78A-37(a); 78A-37(b); 78A-40(a); 78A-49(a);
 Eff. April 1, 1981;
 Amended Eff. September 1, 1995; October 1, 1988; January 1, 1984; November 1, 1982;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1408 TERMINATION OF SALESMAN'S REGISTRATION

(a) When a salesman withdraws, cancels or otherwise terminates registration, the dealer for which the salesman is registered shall file such information, as follows:

- (1) A Uniform Termination Notice For Securities Industry Registration (Form U-5) to be filed with the NASAA/NASD Central Registration Depository if the dealer is a NASD member firm; or
- (2) If the dealer is a non-NASD member firm then the Uniform Termination Notice For Securities Industry Registration (Form U-5) shall be filed directly with the Securities Division.

(b) The Uniform Termination Notice For Securities Industry Registration (Form U-5) shall be filed as soon as practicable after termination of the salesman, but in no event later than ten business days after the salesman terminates.

History Note: Authority G.S. 78A-36(b); 78A-40(a); 78A-49(a);
 Eff. April 1, 1981;
 Amended Eff. November 1, 1982;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1409 TRANSFER OF SALESMAN'S REGISTRATION

History Note: Authority G.S. 78A-36(b); 78A-49(a);
 Eff. April 1, 1981;
 Amended Eff. November 1, 1982;
 Legislative Objection Lodged Eff. February 1, 1983;
 Curative Amended Eff. February 1, 1983;
 Amended Eff. September 1, 1995; October 1, 1988; January 1, 1984;
 Expired Eff. January 1, 2017 pursuant to G.S. 150B-21.3A.

18 NCAC 06A .1410 MINIMUM FINANCIAL REQUIREMENTS FOR DEALERS

- (a) Each dealer registered or required to be registered under this Act shall comply with SEC Rules 15c3-1, 15c3-2, and 15c3-3 (17 C.F.R. 240.15c3-1, 17 C.F.R. 240.15c3-2, and 17 C.F.R. 240.15c3-3), as amended from time to time.
- (b) Any dealer who fails to maintain the minimum net capital requirement of Paragraph (a) of this Rule shall immediately suspend offers and sales of securities, notify the administrator within three business days of such fact, and shall not resume such operations until evidence has been submitted to and approved in writing by the administrator that the requirements of Paragraph (a) of this Rule have been met.

History Note: Authority G.S. 78A-37(d); 78A-49(a);
Eff. April 1, 1981;
Amended Eff. October 1, 1988, January 1, 1984;
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.

18 NCAC 06A .1411 RECORD KEEPING REQUIREMENTS FOR DEALERS

- (a) Unless otherwise provided by order of the Securities and Exchange Commission, each dealer registered or required to be registered under this Act shall make, maintain and preserve books and records in compliance with U.S. Securities and Exchange Commission Rules 17a-3 and 17a-4 (17 C.F.R. 240.17a-3 and 17 C.F.R. 240.17a-4) and with section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) and the rules promulgated thereunder, as amended from time to time.
- (b) To the extent required by the Securities Exchange Act of 1934 or the rules adopted thereunder, every dealer registered or required to be registered under this Act shall maintain within this State, in a readily accessible location, all records required by this Rule. A written request for the waiver of the provisions of this Section may be made to the administrator to permit any registered dealer to maintain any of the records required by this Section, in some place other than the State of North Carolina. In determining whether or not the provisions of this Section shall be waived the administrator may consider, among other things, whether the main office of the dealer is in a place outside the State of North Carolina or whether the dealer clears all or some of its transactions and uses all or some of the bookkeeping facilities of some other dealer whose main office is outside the State of North Carolina.

History Note: Authority G.S. 78A-38(a)(b)(d); 78A-49(a);
Eff. April 1, 1981;
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.

18 NCAC 06A .1412 FINANCIAL STATEMENTS

Each dealer registered or required to be registered under this Act shall comply with SEC Rule 17a-11 (17 C.F.R. 240.17a-11), as amended from time to time, and shall file with the Administrator upon request copies of notices and reports required under SEC Rules 17a-5, 17a-10, and 17a-11 (17 C.F.R. 240.17a-5, 17 C.F.R. 240.17a-10, and 17 C.F.R. 240.17a-11), as amended from time to time.

History Note: Authority G.S. 78A-38(b); 78A-49(c);
Eff. April 1, 1981;
Amended Eff. September 1, 1995;
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.

18 NCAC 06A .1413 SALESMAN EXAMINATION REQUIRED

- (a) Every application for registration as a salesman shall show evidence of a minimum passing grade of seventy percent on either:
- (1) the Uniform Securities Agent State Law Examination (USASLE - Series 63); or
 - (2) both the Uniform Combined State Law Examination (Series 66 Exam) and the General Securities Representative Examination (Series 7 Exam). These examinations are given by the National Association of Securities Dealers (NASD). Each application for registration must also show that the applicant has passed the appropriate NASD exam applicable to applicants for registration as a securities salesman. The

scheduled dates, times and locations may be obtained by contacting the NASD, Central Registration Depository, P.O. Box 9401, Gaithersburg, MD 28898-9401 (301) 590-6500 or the Securities Division.

(b) The requirement of Paragraph (a) of this Rule shall not apply to any salesman who has been registered continuously since April 1, 1981; provided that a lapse in registration in this State of less than one year shall not require compliance with Paragraph (a) of this Rule. New registrants after April 1, 1981 who have not been registered previously in this State and previously registered salesmen in this State whose registration has lapsed for one year or more shall comply with Paragraph (a) of this Rule.

(c) The administrator may, upon a showing of good cause, waive the requirements of Paragraph (a) of this Rule. For purposes of this Rule, "good cause" for waiver for the examination requirement is shown by a demonstration that the applicant's understanding of the ethics and legal guidelines applicable to securities salesmen is comparable to that shown by evidence of a passing grade on the examination for which waiver is sought.

(d) Termination of the salesman's registration with the NASD for violation of NASD rules shall automatically terminate the salesman's registration with the State of North Carolina.

*History Note: Authority G.S. 78A-39; 78A-39(b)(4); 78A-49(a);
Eff. April 1, 1981;
Amended Eff. April 1, 2001; September 1, 1995; January 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.*

18 NCAC 06A .1414 DISHONEST/UNETHICAL PRACTICES OF DEALERS AND SALESMEN

(a) All dealers and salesmen shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business and shall give particular attention to any conflicts of interest that may arise or exist. Acts and practices, including but not limited to those set forth in Paragraphs (b), (c), and (d) in this Rule, are considered contrary to such standards and may constitute grounds for denial, suspension or revocation of registration or censure of the registrant or such other action authorized by statute.

(b) Dishonest or unethical business practices in the securities business as used in G.S. 78A-39(a)(2)g. with regard to dealers include, but are not limited to, the following:

- (1) Causing any unreasonable and unjustifiable delay or engaging in a pattern of unreasonable and unjustifiable delays, in the delivery of securities purchased by any of the customers, or in the payment upon request of free credit balances reflecting completed transactions of any of the customers;
- (2) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;
- (3) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the dealer;
- (4) Executing a transaction on behalf of a customer without authorization to do so;
- (5) Exercising any discretionary power in effecting a transaction for customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;
- (6) Extending, arranging for or participating in arranging for credit to a customer in violation of the regulations of the Securities and Exchange Commission or the regulations of the Federal Reserve Board;
- (7) Executing any transaction in a margin account without obtaining from the customer a written margin agreement prior to settlement date for the initial transaction in the account;
- (8) Failing to segregate customers' free securities or securities in safekeeping;
- (9) Hypothecating a customer's securities without having a lien thereon unless a properly executed written consent of the customer is first obtained, except as permitted by rules of the Securities and Exchange Commission;
- (10) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;
- (11) Entering into a transaction for its own account with a customer with an unreasonable mark-up or mark-down, or with a customer other than a salesman registered with the dealer in which a commission is charged;

- (12) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable or indeterminate commission or profit;
- (13) Executing orders for the purchase by a customer of securities not registered under the provisions of the Act, unless the securities or transaction are exempt from registration under the Act;
- (14) Engaging in a course of conduct constituting an egregious violation of the rules of a national securities exchange or national securities association of which the dealer is a member with respect to any customer, transaction or business;
- (15) Introducing customer transactions on a "fully disclosed" basis to another dealer or salesman that is not registered under G.S. 78A-37 unless the customer is a person described in G.S. 78A-17(8);
- (16) Unreasonably or unjustifiably failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;
- (17) Offering to buy from or sell to any person any security at a stated price unless such dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell;
- (18) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless such dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by such dealer, or by any person for whom he is acting or with whom he is associated in such distribution, or any person controlled by, controlling or under common control with such dealer;
- (19) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:
 - (A) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;
 - (B) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this Part shall prohibit a dealer from entering bona fide agency cross transactions for its customers;
 - (C) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;
- (20) Guaranteeing a customer against loss in any securities account of such customer carried by the dealer or in any securities transaction effected by the dealer with or for such customer;
- (21) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such dealer believes that such quotation represents a bona fide bid for, or offer of, such security;
- (22) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be distribution of any non-factual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;
- (23) Failing to disclose to the customer that the dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for such customer for the purchase or sale of such security, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;
- (24) Failing to make a bona fide public offering of all of the securities allotted to a dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member;

- (25) Failing or refusing to furnish a customer, upon reasonable request, information to which he is entitled, or to respond to a formal written request or complaint;
- (26) Establishing, maintaining or operating an account under fictitious name or containing fictitious information;
- (27) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer;
- (28) Utilizing an agent or subagent in effecting or attempting to effect purchases or sales of securities where such agent or subagent is not registered as a salesman pursuant to G.S. 78A-37;
- (29) Associating, affiliating or entering into any arrangement with any person not registered as a dealer pursuant to G.S. 78A-37, for the purpose of engaging in the business of effecting transactions in securities, where the employees of such person, assisting the dealer in effecting transactions in securities, are not either registered as salesmen of the dealer or the activities of these employees are not limited to duties that are exclusively clerical in nature for which the dealer has provided adequate supervision including instruction, training and safeguards against violation of the Act;
- (30) Associating, affiliating or entering into any arrangement with any person not registered as a dealer pursuant to G.S. 78A-37 for the purpose of engaging in the business of effecting transactions in securities, where such person fails to conspicuously disclose to all customers, in any advertisement or literature published or distributed by such person:
 - (A) The identity of the registered dealer;
 - (B) That such person is not subject to regulation by the securities administrator of the State of North Carolina;
 - (C) The manner, form, and amount of compensation, commission or remuneration to be received by such person;
- (31) Representing the availability of financial or investment planning, consultation, or advisement when the representation does not accurately describe the nature of the services offered, the qualifications of the person offering the services, and the method of compensation for the services;
- (32) Engaging in any act or a course of conduct which resulted in the issuance by a securities agency or administrator of any state of an order to cease and desist the violation of the provisions of any state's securities act or rules (or the equivalent of any such order); or
- (33) Any other acts or practices that may be determined by the administrator to constitute dishonest or unethical practices in the securities business.

(c) Dishonest or unethical business practices in the securities business as used in G.S. 78A-39(a)(2)g. with regard to salesmen include, but are not limited to the following:

- (1) Borrowing or engaging in the practice of borrowing money or securities from a customer (other than any institution or organization whose normal business activities include lending or monies), or lending or engaging in the practice of lending money or securities to a customer;
- (2) Acting as a custodian for money, securities or an executed stock power of a customer;
- (3) Effecting securities transactions with a customer not recorded on the regular books or records of a dealer which a salesman represents, unless the transactions are disclosed to and authorized in writing by the dealer prior to execution of the transactions;
- (4) Establishing, maintaining or operating an account under a fictitious name, or containing fictitious information;
- (5) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the dealer which the salesman represents;
- (6) Dividing or otherwise splitting commissions, profits, or other compensation from the purchase or sale of securities in this State with any person not also registered as a salesman for the same dealer, or for a dealer under direct or indirect common control;
- (7) Entering into a transaction for salesman's own account with a customer in which a commission is charged;
- (8) Entering in a course of conduct constituting an egregious violation of the rules of a national securities exchange or national securities association of which the salesman is a member with respect to any customer, transaction or business;
- (9) Holding oneself out as representing any person other than the dealer for whom the salesman is registered and, in the case of a salesman whose normal place of business is not on the premises of the dealer, failing to conspicuously disclose the name of the dealer for whom the salesman is registered, when representing the dealer in effecting or attempting to effect purchases or sales of securities;

- (10) Engaging in conduct specified in Subparagraphs (b)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (12), (13), (15), (16), (19), (20), (21), (22), (25), (26), (31) or (32) of this Rule; or
- (11) Any other acts or practices that may be determined by the administrator to constitute dishonest or unethical practices in the securities business.

(d) The conduct set forth in Paragraph (b) and (c) of this Rule is not exhaustive. Engaging in other conduct such as forgery, embezzlement, non-disclosure, incomplete disclosure or misstatement of material facts, or manipulative, deceptive or fraudulent practices shall also be grounds for denial, suspension, or revocation of registration or censure of the registrant.

*History Note: Authority G.S. 78A-39(a)(2)g; 78A-49(a);
Eff. January 1, 1984;
Amended Eff. October 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.*

18 NCAC 06A .1415 REGISTRATION OF PARTNERS/EXECUTIVE OFFICERS/DIRECTORS

(a) Any partner, executive officer, director, or a person occupying a similar status or performing similar functions who represents a registered dealer in effecting or attempting to effect purchases or sales of securities shall be registered as a salesman pursuant to Paragraph (b) of this Rule.

(b) Automatic salesman registration for partners, executive officers or directors of a registered dealer or a person occupying a similar status or performing similar functions shall be obtained by filing an original or amended Form BD and any appropriate schedule thereto, providing the required disclosures regarding the registrant, and a written notice to the Securities Division identifying the registrant and that the registrant will engage in the activities as described in Paragraph (a) of this Rule; provided, however, if such information is currently on file with the administrator then the written notice only is required to be filed. Automatic registration shall lapse where a material change in the information reported on Form BD or any schedule thereto regarding the registrant has occurred and has not been reported to the Securities Division by filing an original or amended Form BD or the appropriate schedule thereto with current information within 10 business days of the material change. The dealer shall timely inform the Securities Division in writing when any registrant under this Paragraph ceases to engage in the activities described in Paragraph (a) of this Rule for the purposes of termination of the automatic salesman registration. Annual renewal is automatic upon renewal of the dealer registration.

(c) Failure to maintain a current automatic registration pursuant to Paragraph (b) of this Rule for those persons described in Paragraph (a) of this Rule may result in violation of G.S. 78A-36.

(d) Automatic registration may be denied, revoked, suspended, restricted or limited or the registrant censured as provided by G.S. 78A-39. Nothing in this Rule shall limit the administrator's authority to institute administrative proceedings against a dealer, or an applicant for dealer registration due to the qualifications of or disclosures regarding a person described in Paragraph (a) of this Rule.

(e) A salesman shall not be registered with more than one dealer regardless of whether registration is accomplished or contemplated under this Rule or Rule .1402 of this Section.

(f) For the purposes of this Rule "Executive Officer" shall mean the chief executive officer, the president, the principal financial officer, each vice president with responsibility involving policy making functions for a significant aspect of the dealer's business, the secretary, the treasurer, or any other person performing similar functions with respect to any organization whether incorporated or unincorporated.

*History Note: Authority G.S. 78A-2(9); 78A-36(a); 78A-36(b); 78A-37(a); 78A-49(a);
Eff. January 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.*

18 NCAC 06A .1416 REPORTING REQUIREMENTS OF DEALERS AND SALESMEN

(a) All bankruptcies of dealers or salesmen registered with the Securities Division must be reported to the administrator within 30 days after the filing of the petition for bankruptcy.

(b) All arbitrations involving dealers or salesmen registered with the Securities Division must be reported to the administrator within 30 days of the conclusion of the proceeding. Such report must include the terms of the settlement.

(c) Any fundamental alterations in the structure or operation of the dealer must be reported to the administrator within 30 days. For a period of 60 days following such notification, the administrator shall reserve the right to review the dealer's registration in light of the alterations reported. For the purposes of this Rule .1416, "fundamental alteration" is defined as any of the following:

- (1) the opening or closing of any office, including the office of any salesperson operating apart from the dealer's premises,
- (2) any merger, consolidation, acquisition, or succession participated in by the dealer, or
- (3) the replacement of any partner, executive officer, director, or any person occupying a similar status or performing similar functions, as well as any significant changes in the duties or responsibilities assigned to any such position.

History Note: Authority G.S. 78A-38(a); 78A-38(c); 78A-38(d); 78A-49(a);
 Eff. September 1, 1995;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1417 APPLICATION FOR LIMITED REGISTRATION OF CANADIAN SECURITIES DEALERS AND SALESMEN

(a) An applicant for limited registration as a dealer pursuant to G.S. 78A-36.1 (the "Dealer") shall file the following with the Administrator:

- (1) a representation that the Dealer does not have an office or physical presence in this state;
- (2) a representation that the Dealer is a resident of Canada;
- (3) a representation that the Dealer will engage only in the activities described in G.S. 78A-36.1(j) in this state;
- (4) a completed application for registration as a securities dealer in the form required by the jurisdiction in Canada in which the Dealer has its head office;
- (5) an originally executed copy of a Form U-2 or similar consent to service of process whereby the Dealer names the North Carolina Secretary of State as an agent duly authorized to accept service of process on behalf of the Dealer;
- (6) either:
 - (A) a certification by the securities regulatory agency of each jurisdiction in Canada from which the Dealer will be effecting transactions into this state stating that the Dealer is both registered and in good standing as a securities dealer in that jurisdiction, or
 - (B) a certification by the Investment Dealers Association of Canada confirming that the applicant maintains a membership in good standing with the Investment Dealers Association of Canada;
- (7) evidence that the Dealer is a member of a Canadian self-regulatory organization ("SRO"), the Bureau des services financiers, or a Canadian stock exchange; and
- (8) a filing fee as required by G.S. 78A-36.1(i) and G.S. 78A-37(b).

(b) An applicant for limited registration as a salesman (the "Salesman") intending to effect securities transactions in this state on behalf of a Canadian dealer registered under this section shall file the following with the Administrator:

- (1) a completed application for registration as a securities salesman in the form required by the jurisdiction in which the dealer has its head office;
- (2) an originally executed copy of a Form U-2 or similar consent to service of process whereby the Salesman names the North Carolina Secretary of State as an agent duly authorized to accept service of process on behalf of the Salesman;
- (3) a certification by the securities regulatory agency of the jurisdiction in Canada from which the Salesman will be effecting transactions into this state stating that the Salesman is both registered and in good standing as a securities salesman in that jurisdiction; and
- (4) a filing fee as required by G.S. 78A-36.1(i) and G.S. 78A-37(b).

(c) If any information contained in any document filed with the Administrator by any dealer or salesman who has registered pursuant to G.S. 78A-36.1 is or becomes inaccurate or incomplete in any material respect, the dealer or salesman shall file a correcting amendment as soon as practicable, but in no event later than 30 days following the date on which such information becomes inaccurate or incomplete.

History Note: Authority G.S. 78A-36.1; 78A-37(b); 78A-49;
 Temporary Adoption Eff. November 1, 2002; January 15, 2002;
 Eff. April 1, 2003;
 Amended Eff. August 1, 2004;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

SECTION .1500 - MISCELLANEOUS PROVISIONS

18 NCAC 06A .1501 RESCISSION OFFERS

(a) All rescission offers under G.S. 78A-56(g) shall be typed or printed and shall be captioned in bold print or type "Rescission Offer." Offers must set forth in bold type the name of the security with respect to which the offer is made and the date of the transaction involved. Offers must be signed by the offeror or its authorized officer.

(b) Every rescission offer to a purchaser under G.S. 78A-56(g)(1) shall set forth with particularity the facts out of which liability under G.S. 78A-56 may have arisen and, in the event of a violation of G.S. 78A-56(a)(2), the correct, true, or omitted facts. It shall advise the purchaser of his potential rights under G.S. 78A-56 if a violation of that section were found and state the effect on those rights of the purchaser's failure to accept the offer within 30 days from its receipt. The offer shall include a form for the purchaser's written acceptance of the offer addressed to the offeror or the depository to which it is to be sent. The offer must expire by its own terms at midnight of the 30th day following its receipt by the purchaser and must provide, by its terms, that acceptance is effective if the purchaser either delivers his written acceptance to the address specified in the offer or mails that acceptance, postage prepaid, with a postmark not later than midnight of the thirtieth day following his receipt of the offer. The offer shall not require that the purchaser return the security with his acceptance; the offer may, however, require that the purchaser deliver any security he still holds and/or a verified statement of the transactions in which he disposed of any security to the offeror or to a depository specified in the offer within a period of not less than 45 days from the receipt of the offer in order to receive payment thereunder. The offer may provide that any offeree who delivers a timely written acceptance but fails to deliver any security held by him and/or the statement of the transactions in which he disposed of any security within the time specified in the offer shall be deemed to have failed to accept such an offer in writing within a specified period as required by G.S. 78A-56(g)(1).

(c) Every rescission offer to a seller pursuant to G.S. 78A-56(g)(2) shall set forth with particularity the facts out of which liability under G.S. 78A-56 may have arisen and, in the event of a violation of G.S. 78A-56(a)(2), the correct, true, or omitted facts. It shall advise the seller of his rights under G.S. 78A-56 if a violation of that section is found and state the effect on those rights of the seller's failure to accept the offer within 30 days from the receipt. The offer shall include a form for the seller's written acceptance of the offer addressed to the offeror or the depository to which it is to be sent. The offer must expire by its own terms at midnight of the 30th day following its receipt by the seller and must provide, by its terms, that acceptance is effective if the seller either delivers his written acceptance to the address specified in the offer or mails that acceptance, postage prepaid, with a postmark not later than midnight of the thirtieth day following his receipt of the offer. The offeror is not required to return the security with the offer:

- (1) If the offeror has not disposed of the security, the offer may require that the seller deliver the sum necessary to rescind to the offeror or to a depository specified in the offer within a period of not less than 45 days from the receipt of the offer in order to receive the security. The offer may provide that any offeree who delivers a timely written acceptance but fails to deliver the sum necessary to rescind the transaction within the time specified in the offer shall be deemed to have failed to accept such an offer in writing within a specified period as required by G.S. 78A-56(g)(2).
- (2) If the offeror has disposed of the security, the offer shall specify the period of time by which the offeror shall submit any damages as required by G.S. 78A-56(g)(2) to the seller, if the seller accepts and delivers a timely written acceptance.

(d) The person making the rescission offer shall file a copy of the rescission offer with the Administrator at least 10 days before delivering the offer to the offeree. The copy filed with the Administrator shall be addressed to: Rescission Offers, North Carolina Securities Division, P.O. Box 29622, Raleigh, North Carolina 27626-0622.

(e) A seller who makes a rescission offer pursuant to G.S. 78A-56(l) shall include in that rescission offer an undertaking by the seller to refund all the purchaser's money, without deductions, within seven business days after the date of receipt by the seller of the purchaser's notice of rescission or cancellation. The rescission offer shall be transmitted by the seller to the purchaser by certified mail, return receipt requested.

*History Note: Authority G.S. 78A-49; 78A-56;
Eff. April 1, 1981.
Temporary Amendment Eff. April 1, 2002; January 14, 2002;
Amended Eff. May 1, 2003; April 1, 2003;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.*

18 NCAC 06A .1502 APPLICATION TO EXCHANGE SECURITIES

(a) The application and all accompanying documents shall be typed or printed and submitted to the administrator in duplicate. The application shall be signed and dated by the applicant or by a person authorized to act in the applicant's behalf.

- (b) The application shall contain the following information:
- (1) the name, state of incorporation, and principal office address of any person proposing to issue securities or deliver other consideration in the proposed exchange.
 - (2) a brief description of the proposed transaction.
 - (3) a list and a description of the securities or other consideration to be issued or delivered in the proposed exchange.
 - (4) a list and a description of the bona fide securities, claims or property interests for which the securities or other consideration referred to in Subparagraph (b)(3) of this Rule are to be exchanged, including the name and state of incorporation of the issuer of any such bona fide securities.
 - (5) a brief statement of the terms and conditions under which the securities or other consideration will be issued and exchanged or delivered and exchanged for the bona fide securities, claims or property interests.
 - (6) a list of the names of all persons to whom the securities will be issued or other consideration delivered in the exchange. If some or all of such persons are to receive the securities or other consideration by virtue of their ownership of shares of stock in a corporation, the applicant may comply with this requirement by submitting a list which shows the shareholders of the corporation and the number of shares held by each shareholder as of a date not more than 30 days prior to the filing of the application.
 - (7) a statement setting forth proposed findings of fact which the applicant requests that the administrator find and incorporate in the written decision with respect to the application.
 - (8) the date, which shall be within 30 days of the date of filing of the application, on which the applicant requests that the hearing be held.
 - (9) any additional information which the applicant desires the administrator to consider. The administrator may require the applicant to submit other information in addition to the information required by this Rule. The administrator may also waive or modify the requirements of this Rule by allowing the applicant to submit less information than this Rule would otherwise require.
- (c) The application shall be accompanied by the following documents:
- (1) any written agreement governing the proposed transaction.
 - (2) a copy of the notice of the hearing which the applicant will mail to all persons to whom the applicant proposes to issue securities or to deliver other consideration in the proposed transaction.
 - (3) an audited balance sheet, prepared in accordance with generally accepted accounting principles, as of the close of the most recent fiscal year of any corporation whose securities will be issued or exchanged in the proposed transaction.
 - (4) an audited income statement, prepared in accordance with generally accepted accounting principles, for the most recent fiscal year of any corporation whose securities will be issued or exchanged in the proposed transaction.
 - (5) any other documents which the applicant desires the administrator to consider. The administrator may require the applicant to submit other documents in addition to the documents required by this Rule. The administrator may also waive or modify the requirements of this Rule by allowing the applicant to submit fewer documents other than those which this Rule would otherwise require.
 - (6) a written undertaking to pay, upon receipt of an invoice from the administrator, the fee required by G.S. 78A-30(g) and Subparagraph (d)(4) of this Rule.
- (d) The procedure following application shall be as follows:
- (1) The administrator shall inform the applicant of any deficiencies in the application or of any additional information or documents required and may require the applicant to amend or resubmit the application to comply with the provisions of G.S. 78A-30 or the rules adopted pursuant thereto prior to setting a date for the hearing.
 - (2) Upon the filing of an application complying with the provisions of G.S. 78A-30 and the rules adopted pursuant thereto, the administrator shall inform the applicant of the date, hour and place of the hearing which shall be within 30 days after the filing of the application.
 - (3) The applicant shall mail by United States Mail, Postage Prepaid, notice of such hearing to all persons to whom it is proposed to issue securities or to deliver such other consideration in such exchange, not less than 10 days prior to such hearing. The applicant shall provide to the administrator, on or before the date of the hearing, a certification that the notice of hearing has been so mailed.
 - (4) Following the conclusion of the hearing, the Administrator shall transmit to the applicant an invoice for the fees required by G.S. 78A-30(g). These fees shall be calculated based upon the hours involved in the

examination of the application, the conduct of the hearing, and the preparation of any written response, as follows:

- (A) For the Hearing Officer, the amount of two hundred dollars (\$200.00) per hour.
 - (B) For each Assistant to the Hearing Officer, the amount of one hundred dollars (\$100.00) per hour.
- But in any event the fee shall be not less than five hundred dollars (\$500.00) nor more than five thousand (\$5000) per fairness hearing.

History Note: Authority G.S. 78A-30; 78A-49;
Eff. April 1, 1981;
Temporary Amendment Eff. January 1, 1999;
Codifier determined that agency findings did not meet criteria for temporary rule;
Temporary Amendment Eff. September 29, 1999;
Amended Eff. August 1, 2000;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1503 FORM OF CONSENT TO SERVICE OF PROCESS

If the filing of a consent to service of process is required by statute or rule, the consent shall name the Secretary of State as service agent and shall be filed using the Uniform Consent to Service of Process (Form U-2) and if applicable, the Uniform Form of Corporate Resolution (Form U-2A). Both Form U-2 and Form U-2A shall be properly signed and acknowledged before a notary.

History Note: Authority G.S. 78A-49(a); 78A-63(f);
Eff. April 1, 1981;
Amended Eff. January 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1504 REQUEST FOR INTERPRETATIVE OPINIONS: NO-ACTION LETTERS

(a) Requests for interpretative opinions and "no-action" letters shall be directed to the administrator and shall contain the following:

- (1) specific facts surrounding the proposed transaction in letter form with the identity of the persons involved;
- (2) the statutory and/or rule citation upon which the request is based;
- (3) statement of the applicant's requested interpretation supported by appropriate reasoning or justification and applicable case law or administrative opinions or decisions;
- (4) any other relevant information or exhibits that the applicant desires the administrator to consider; and
- (5) a fee in the amount of one hundred fifty dollars (\$150.00).

(b) An interpretative opinion or "no-action" letter shall not be considered an absolute exemption or exception from a definition. The burden of proving an exemption or exception from a definition shall remain upon the person claiming it should the necessity of proof arise.

(c) The administrator may, in his discretion, honor or deny requests for interpretative opinions or "no-action" letters.

History Note: Authority G.S. 78A-18(b); 78A-49(a); 78A-50(e);
Eff. April 1, 1981;
Amended Eff. October 1, 1988; January 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1505 LEGENDS REQUIRED (REPEALED)

History Note: Authority G.S. 78A-10(a); 78A-17(9)(a); 78A-49(b);
Eff. April 1, 1981;
Repealed Eff. January 1, 1984.

18 NCAC 06A .1506 PUBLIC INFORMATION (REPEALED)

History Note: Authority G.S. 78A-46(a); 78A-49(a); 78A-49(g); 78A-50(c); 132-1.1;
Eff. April 1, 1981;

Amended Eff. January 1, 1984;
Repealed Eff. August 1, 1998.

18 NCAC 06A .1507 IMPLICATIONS OF REGISTRATION OR EXEMPTION

The filing of an application for registration, the fact an application has been filed, or the fact a security is effectively registered does not constitute a finding that any document filed under this Chapter is true, complete and not misleading. The fact an exemption is available for a security does not mean the administrator has passed upon the merits of the claim, or recommended or given approval to any person, security or transaction.

History Note: Authority G.S. 78A-10(a); 78A-49(a);
Eff. April 1, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1508 FAILURE TO FURNISH INFORMATION

Failure to furnish requested information or evidence of compliance and/or the failure of any issuer, dealer, salesman, or interested person to comply with any rule or order:

- (1) May result in an application for registration being denied; or
- (2) If a registration has been approved, an order of revocation may lie requiring a rescission offer to be made to all purchasers.

History Note: Authority G.S. 78A-29(b)(2); 78A-49(a);
Eff. April 1, 1981;
Amended Eff. January 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1509 FORMS (REPEALED)

History Note: Authority G.S. 78A-49;
Eff. April 1, 1981;
Amended Eff. September 1, 1990; October 1, 1988; January 1, 1984;
Temporary Amendment Eff. October 1, 1997;
Repealed Eff. August 1, 1998.

18 NCAC 06A .1510 LIMITED LIABILITY COMPANY MEMBERSHIP INTERESTS AS SECURITIES

(a) Membership interests, as defined in G.S. 57C-1-03(15), in a limited liability company shall be presumed to be securities within the meaning of G.S. 78A-2(11) in either of the following circumstances:

- (1) where the articles of organization of the limited liability company provide that all members of the limited liability company are not necessarily managers by virtue of their status as members; or
- (2) where all members by virtue of their status as members are managers of the limited liability company and the number of members is greater than 15.

(b) Among the factors that will be considered by the Securities Division as evidence offered to rebut or support the presumption in Paragraph (a) of this Rule are:

- (1) whether investors retain, under the limited liability company's operating agreement, the right to exercise practical and actual control over the managerial decisions of the enterprise;
- (2) whether the number of members of the limited liability company is so great as to render the managerial powers afforded them by the operating agreement insignificant and meaningless;
- (3) whether the promoter has some particular or special skill which is necessary for the successful operation and management of the limited liability company and, without which, the enterprise will likely be unsuccessful; and
- (4) whether special circumstances render meaningless the managerial powers given by the operating agreement to the members.

History Note: Authority G.S. 78A-2(11); 78A-49(a);
Temporary Adoption Eff. May 31, 1994, For a Period of 180 Days or Until the Permanent Rule Becomes Effective, Whichever is Sooner;

Eff. December 1, 1994;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

SECTION .1600 - REGISTRATION OF QUALIFIED BUSINESSES

18 NCAC 06A .1601	PURPOSE
18 NCAC 06A .1602	PROCEDURE FOR APPLICATION FOR REGISTRATION
18 NCAC 06A .1603	AMENDMENT OF APPLICATION
18 NCAC 06A .1604	OBTAINING CERTIFICATES OF REGISTRATION

*History Note: Authority G.S. 105-163.013;
Temporary Rule Eff. January 1, 1988 For a Period of 180 Days to Expire on June 29, 1988;
Eff. March 1, 1988;
Amended Eff. April 1, 2003; March 1, 1996; September 1, 1990;
Expired Eff. January 1, 2017 pursuant to G.S. 150B-21.3A.*

18 NCAC 06A .1605 REPORTING REQUIREMENT/TERMINATION/QUALIFIED INVEST (REPEALED)

*History Note: Filed as a Temporary Rule Eff. January 1, 1988 For a Period of 180 Days to Expire on June 29, 1988;
Authority G.S. 105-163.013(a);
Eff. March 1, 1988;
Repealed Eff. March 1, 1996.*

18 NCAC 06A .1606 REPORTING REQUIREMENT/TERMINATION/QUALIFIED INVEST (REPEALED)

*History Note: Filed as a Temporary Rule Eff. January 1, 1988 for a Period of 180 Days to Expire on June 29, 1988;
Authority G.S. 105-163.013;
Expired Eff. March 1, 1988.*

18 NCAC 06A .1607 FORMS

*History Note: Authority G.S. 105-163.013(d);
Eff. September 1, 1990;
Amended Eff. March 1, 1996;
Expired Eff. January 1, 2017 pursuant to G.S. 150B-21.3A.*

SECTION .1700 - REGISTRATION OF INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

18 NCAC 06A .1701 DEFINITIONS

For purposes of Chapter 78C of the North Carolina General Statutes and Sections .1700 and .1800 of these Rules, the following definitions shall apply:

- (1) "Accountant" shall mean a person who holds himself out to be an "accountant" or a "certified public accountant" as those terms are defined at Section 93-1(a) of the North Carolina General Statutes.
- (2) "Act" shall mean the North Carolina Investment Advisers Act, Chapter 78C of the North Carolina General Statutes, as may be amended from time to time.
- (3) "Dealer" shall have the same meaning as that set forth in Section 78A-2(2) of the North Carolina General Statutes.
- (4) "Salesman" shall have the same meaning as that set forth in Section 78A-2(9) of the North Carolina General Statutes.
- (5) "Financial Planner" [as used in G.S. 78C-2(1)] includes a person who provides or offers to provide advisory services to clients or to prospective clients regarding the management of their financial resources based on an analysis of individual client needs. The Division hereby incorporates by reference the concepts of "financial planning" found in Section I of SEC Release No. IA-1092, October 8, 1987, 52 F.R. 38400 (CCH Federal Securities Law Reporter 56,156E).

- (6) "Holds [oneself] out" [as used in G.S. 78C-2(1)] means advertises, announces, represents, communicates, publishes, discloses, or makes known, by any means or manner, that one will provide or is willing to provide the services referred to in G.S. 78C-2(1) to other persons.
- (7) The performance of investment advisory services is "solely incidental" [within the meaning of G.S. 78C-2(1)(c) and (d)] to the practice of a profession or to the conduct of a business when the person performing such services neither makes any charge nor receives any compensation, either direct or indirect, that is properly allocable to his rendering of such services. The Division hereby incorporates by reference the concepts found in Sections II (A)(3) and II (B) of SEC Release IA-1092, October 8, 1987, 52 F.R. 38400 (CCH Federal Securities Law Reporter 56,156E).

*History Note: Authority G.S. 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;
 Amended Eff. September 1, 1990;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.*

18 NCAC 06A .1702 APPLICATION FOR INVESTMENT ADVISER REGISTRATION/NOTICE FILING FOR INVESTMENT ADVISER COVERED UNDER FEDERAL LAW

(a) The application for initial registration as an investment adviser pursuant to Section 78C-17(a) of the Act shall be made by completing Form ADV (Uniform Application for Investment Adviser Registration) (17 C.F.R. 279.1) in accordance with the form instructions and by filing the form with IARD (the Investment Adviser Registration Depository). The initial application shall also include the following:

- (1) Proof of compliance by the investment adviser with the examination requirements of Rule .1709;
- (2) Such financial statements as set forth in Rule .1708, including at the time of application, a copy of the balance sheet for the last fiscal year, and if such balance sheet is as of a date more than 45 days from the date of filing of the application, an unaudited balance sheet prepared as set forth in Rule .1708 as of a date within 45 days of the date of filing;
- (3) Evidence of compliance with the minimum financial requirements of Rule .1704;
- (4) A copy of the surety bond required by Section 78C-17(e), if applicable upon request of the Administrator;
- (5) The fee required by Section 78C-17(b) of the Act; and
- (6) Any other information the administrator may from time to time require which is relevant to the applicant's qualifications to engage in the business of acting as an investment adviser.

(b) The application for annual renewal of registration as an investment adviser shall be filed with IARD and shall include the following:

- (1) A copy of the surety bond required by Rule .1705, if applicable upon request of the Administrator; and
- (2) The fee required by Section 78C-17(b) of the Act.

(c) Updates and amendments to the ADV shall be subject to the following requirements:

- (1) An investment adviser must file with IARD, in accordance with the instructions in the Form ADV, any amendments to the investment adviser's form ADV;
- (2) An amendment shall be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of the amendment; and
- (3) Within 90 days of the end of the investment adviser's fiscal year, an investment adviser must file with IARD an updated Form ADV.

(d) Registration becomes effective at noon of the 30th day after a completed application is filed or such earlier time upon issuance of a license or written notice of effective registration, unless proceedings are instituted pursuant to G.S. 78C-19. The administrator may by order defer the effective date after the filing of any amendment but no later than noon of the 30th day after the filing of the amendment.

(e) An application for initial or renewal registration is not considered filed for purposes of G.S. 78C-17 until the required fee and all required submissions have been received by the Administrator.

(f) The registration of an investment adviser shall expire on December 31 of each year unless timely renewed.

(g) The notice filing for an investment adviser covered under federal law pursuant to G.S. 78C-17(a1) shall be filed with IARD on an executed Form ADV. A notice filing of an investment adviser covered under federal law shall be deemed filed when the fee required by G.S. 78C-17(c) and the Form ADV are filed with and accepted by IARD on behalf of the State.

(h) Notice filings for investment advisers covered under federal law shall expire on December 31 each year unless renewed prior to expiration. The renewal of the notice filing for an investment adviser covered under federal law pursuant to G.S. 78C-

17(a1) shall be made by completing Form ADV in accordance with the form instructions and by filing the form with IARD. The renewal of the notice filing for an investment adviser covered under federal law shall be deemed filed when the fee required by G.S. 78C-17(b)(1) is filed with and accepted by IARD on behalf of the State.

(i) Until IARD provides for the filing of Part 2 of Form ADV, the Administrator shall deem filed Part 2 of Form ADV if an investment adviser covered under federal law provides, within five days of a request, Part 2 of Form ADV to the Administrator. Because the Administrator deems Part 2 of the Form ADV to be filed, an investment adviser covered under federal law is not required to submit Part 2 of Form ADV to the Administrator unless requested.

History Note: Authority G.S. 78C-16(b); 78C-16(d); 78C-17(a); 78C-17(a1); 78C-17(b); 78C-17(b1); 78C-17(e); 78C-18(d); 78C-19(a); 78c-20; 78C-30(a); 78C-30(b); 78C-30(c); 78C-30(d); 78C-46(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. October 1, 1997;
Amended Eff. August 1, 1998;
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.

18 NCAC 06A .1703 APPLICATION/INVESTMENT ADVISER REPRESENTATIVE REGISTRATION

(a) The application for initial registration as an investment adviser representative pursuant to Section 78C-17(a) of the Act shall be made by completing Form U-4 (Uniform Application for Securities Industry Registration or Transfer) in accordance with the form instructions and by filing the Form U-4 with IARD. The initial application shall include the following:

- (1) Proof of compliance by the investment adviser representative with the examination requirements of Rule .1709; and
- (2) The fee required by Section 78C-17(b) of the Act.

(b) The application for annual renewal of registration as an investment adviser representative shall be filed with IARD. The application for annual renewal or registration shall include the fee required by G.S. 78C-17(b).

(c) Updates and amendments to the Form U-4 shall be subject to the following requirements:

- (1) The investment adviser representative is under a continuing obligation to update information required by Form U-4 as changes occur;
- (2) An investment adviser representative and the investment adviser must file promptly with IARD any amendments to the representative's Form U-4; and
- (3) An amendment will be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of the amendment.

(d) An application for initial or renewal registration is not considered filed for purposes of G.S. 78C-17 until the required fee and all required submissions have been received by the Administrator.

History Note: Authority G.S. 78C-16(b); 78C-17(a); 78C-17(b); 78C-18(d); 78C-19(a); 78C-20; 78C-30(a); 78C-30(b); 78C-46(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. October 1, 1997;
Amended Eff. August 1, 1998;
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.

18 NCAC 06A .1704 MINIMUM FINANCIAL REQUIREMENTS FOR INVESTMENT ADVISERS

(a) Unless an investment adviser posts a bond pursuant to Rule .1705, an investment adviser registered or required to be registered under the Act who has custody of client funds or securities shall maintain at all times a minimum net worth of thirty-five thousand dollars (\$35,000.00), and every investment adviser registered or required to be registered under the Act who has discretionary authority over client funds or securities but does not have custody of client funds or securities shall maintain at all times a minimum net worth of ten thousand dollars (\$10,000.00).

(b) Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser registered or required to be registered under the Act shall by the close of business on the next business day notify the

administrator if such investment adviser's total net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a written report with the administrator of its financial condition, including the following:

- (1) a trial balance of all ledger accounts;
- (2) a statement of all client funds or securities which are not segregated;
- (3) a computation of the aggregate amount of client ledger debit balances; and
- (4) a statement as to the number of client accounts.

(c) For purposes of this Rule, the term "net worth" shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as current assets under generally accepted accounting principles), deferred charges, subordinated loans, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature; home, home furnishings, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

(d) The administrator may require that a current appraisal be submitted in order to establish the worth of any asset.

(e) Every investment adviser that has its principal place of business in a state other than this state shall maintain such capital as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's minimum capital requirements, if any.

*History Note: Authority G.S. 78C-17(d); 78C-18(c)(d); 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;
Amended Eff. September 1, 1995;
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.*

18 NCAC 06A .1705 BONDING REQUIREMENTS FOR CERTAIN INVESTMENT ADVISERS

(a) Every investment adviser having custody of or discretionary authority over client funds or securities shall be bonded in an amount of not less than thirty-five thousand dollars (\$35,000.00) by a bonding company qualified to do business in this state or in lieu thereof may provide evidence of a deposit of cash or securities in such amount. The requirements of this Rule shall not apply to those applicants or registrants who comply with the requirements of Rule .1704.

(b) Should an investment adviser's bond be terminated by the surety resulting in the investment adviser's failure to meet the requirements of Paragraph (a) of this Rule and the bond was not terminated due to fault of the investment adviser, then the investment adviser shall be provided a reasonable time period up to six months, without the necessity of ceasing to do business as an investment adviser, to obtain another bond in order to meet the requirements of Paragraph (a) of this Rule provided that the investment adviser notifies the administrator in writing within two business days of the termination of the bond and files such further information as the administrator may require regarding the financial status of the investment adviser until evidence of compliance with Paragraph (a) of this Rule is provided.

(c) The surety bond shall be filed with the administrator on Form NCIAB (North Carolina Securities Division Investment Adviser's Bond) or on a form whose terms are substantially equivalent to the terms of Form CDCS-1A and which is approved as the substantial equivalent by the Administrator. Evidence of a deposit of cash or securities shall be filed with the administrator on Form CDCS-1A (Certification of Deposit of Cash or Securities -- Investment Advisers) or on a form whose terms are substantially equivalent to the terms of Form CDCS-1A and which is approved as the substantial equivalent by the Administrator.

(d) An investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of Paragraph (a) of this Rule, provided that the investment adviser is registered as an investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to bonding, if any.

*History Note: Authority G.S. 78C-17(d); 78C-18(b); 78C-18(c); 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.*

18 NCAC 06A .1706 RECORD-KEEPING REQUIREMENTS FOR INVESTMENT ADVISERS

(a) Except as otherwise provided in Paragraph (j) of this Rule, every investment adviser registered or required to be registered under the Act shall make and keep true, accurate and current the following books, ledgers and records:

- (1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger;
- (2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts;
- (3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank or dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated;
- (4) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser;
- (5) All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such;
- (6) All trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser;
- (7) Originals of all written communications received and copies of all written communications sent by such investment adviser relating to:
 - (A) Any recommendation made or proposed to be made and any advice given or proposed to be given,
 - (B) Any receipt, disbursement or delivery of funds or securities, or
 - (C) The placing or execution of any order to purchase or sell any security; provided, however,
 - (i) that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and
 - (ii) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than ten persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof;
- (8) A list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client;
- (9) All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser, or copies thereof;
- (10) All written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such;
- (11) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommending the purchase or sale of a specific security, which the investment adviser circulates or distributes, directly or indirectly, to ten or more persons (other than clients receiving investment supervisory services or persons connected with such investment adviser), and if such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication does not state the reasons for such recommendation, a memorandum of the investment adviser indicating the reasons thereof;
- (12) The following records:
 - (A) A record of every transaction in a security in which the investment adviser or any advisory representative of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except:

- (i) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and
 - (ii) Transactions in securities which are direct obligations of the United States
Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.
- (B) For purposes of this Subparagraph (a)(12), the term "advisory representative" shall mean any partner, officer or director of the investment adviser; any employee who makes any recommendation, who participates in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which recommendation shall be made; any employee who, in connection with his duties (other than clerical, ministerial or administrative duties), obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations; and any of the following persons who obtain information concerning securities recommendations being made by such investment adviser prior to the effective dissemination of such recommendations or of the information concerning such recommendations:
 - (i) any person in a control relationship to the investment adviser,
 - (ii) any affiliated person of such controlling person, and
 - (iii) any affiliated person of such affiliated person.
 "Control" shall have the same meaning as that set forth in Section 2(a)(9) of the Investment Company Act of 1940, as amended.
- (C) An investment adviser shall not be deemed to have violated the provisions of this Subparagraph (a)(12) because of his failure to record securities transactions of any advisory representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded;
- (13) Records required of investment advisers primarily engaged in other businesses:
 - (A) Notwithstanding the provisions of Subparagraph (a)(12) in this Rule, where the investment adviser is primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except:
 - (i) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and
 - (ii) Transactions in securities which are direct obligations of the United States
Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.
 - (B) An investment adviser is "primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients" when, for each of its three most recent fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50 percent of:
 - (i) its total sales and revenues; and
 - (ii) its income (or loss) before income taxes and extraordinary items;

from such other business or businesses.

(C) For purposes of this Subparagraph (13), the term "advisory representative", when used in connection with a company primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, shall mean any partner, officer, director or employee of the investment adviser who makes any recommendation, who participates in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which recommendation shall be made, or who, in connection with his duties (other than clerical, ministerial or administrative duties), obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations; and any of the following persons who obtain information concerning securities recommendations being made by such investment adviser prior to the effective dissemination of such recommendations or of the information concerning such recommendations:

- (i) any person in a control relationship to the investment adviser,
- (ii) any affiliated person of such controlling person, and
- (iii) any affiliated person of such affiliated person.

"Control" shall have the same meaning as that set forth in Section 2(a)(9) of the Investment Company Act of 1940, as amended (see G.S. 78A-2(10)).

(D) An investment adviser shall not be deemed to have violated the provisions of this Subparagraph (13) because of his failure to record securities transactions of any advisory representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded;

(14) A copy of the following:

- (A) A copy of each written statement and each amendment or revision thereof, given or sent to any client or prospective client of such investment adviser in accordance with the provisions of Rule .1707;
- (B) any summary of material changes that is required by Part 2 of Form ADV but is not contained in the written statement; and
- (C) a record of the dates that each written statement, and each amendment or revision thereof, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

(15) A memorandum describing any legal or disciplinary event listed in Schedule D of Form ADV or in any Form U-4 relating to any of the investment adviser's investment adviser representatives and presumed to be material, if the event involved the investment adviser or any of its investment adviser representatives or supervised persons and is not disclosed in the written statements described in Paragraph (a)(14)(A) of this Section. The memorandum must explain the investment adviser's determination that the presumption of materiality is overcome, and must discuss the factors described in those items.

(16) For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser:

- (A) evidence of a written agreement to which the adviser is a party related to the payment of such fee;
- (B) a signed and dated acknowledgement of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and
- (C) a copy of the solicitor's written disclosure statement.

The written agreement, acknowledgment and solicitor disclosure statement will be considered to be in compliance with Rule .1717. For purposes of this Rule, the term "solicitor" shall mean any person or entity who, for compensation, acts as an agent of an investment adviser in referring potential clients.

(17) Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to Disclosure Reporting Pages (DRPs U-4) must be retained by the investment adviser (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

(b) If an investment adviser subject to Paragraph (a) of this Rule has custody or possession of securities or funds of any client, the records required to be made and kept under Paragraph (a) of this Rule shall also include:

- (1) A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to such accounts;

- (2) A separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each such purchase and sale, and all debits and credits;
 - (3) Copies of confirmations of all transactions effected by or for the account of any such client; and
 - (4) A record for each security in which any such client has a position, which record shall show the name of each such client having any interest in each security, the amount or interest of each such client, and the locations of each such security.
- (c) Every investment adviser subject to Paragraph (a) of this Rule who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:
- (1) Records showing separately for each such client the securities purchased and sold, and the date, amount and price of each such purchase and sale; and
 - (2) For each security in which any such client has a current position, information from which the investment adviser can promptly furnish the name of each such client, and the current amount or interest of such client.
- (d) Any books or records required by this Rule may be maintained by the investment adviser in such manner that the identity of any client to whom such investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.
- (e) Duration requirement for maintenance of records:
- (1) All books and records required to be made under the provisions of Paragraphs (a) to (c)(1), inclusive, of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser.
 - (2) Partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.
- (f) An investment adviser subject to Paragraph (a) of this Rule, before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this Rule for the remainder of the period specified in this Rule, and shall notify the administrator in writing of the full address where such books and records will be maintained during such period.
- (g) Preservation and maintenance of records:
- (1) The records required to be maintained and preserved pursuant to this Rule may be immediately produced or reproduced by photograph on film or, as provided in Subparagraph (g)(2) of this Rule, on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:
 - (A) arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;
 - (B) be ready at all times to provide, and promptly provide, any facsimile enlargement of film or computer printout or copy of the computer storage medium which the administrator by its examiners or other representatives may request;
 - (C) store separately from the original one other copy of the film or computer storage medium for the time required;
 - (D) with respect to records stored on a computer storage medium, maintain procedures for maintenance and preservation of, and access to, records from loss, alteration, or destruction; and
 - (E) with respect to records stored on photographic film, at all times have available for the administrator's examination of its records pursuant to Section 78C-18(e) of the Act, facilities for immediate, legible projection of the film and for producing legible facsimile enlargements.
 - (2) Pursuant to Subparagraph (g)(1) of this Rule an adviser may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or are received by the adviser solely on electronic media or by electronic data transmission.
- (h) For purposes of this Rule, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.
- (i) Every registered investment adviser shall maintain within this state, in a readily accessible location, all records required by this Rule. A written request for the waiver of the provisions of this Section may be made to the administrator to permit any

registered investment adviser to maintain any of the records required by this Rule in some place other than the State of North Carolina. In determining whether or not the provisions of this Rule shall be waived, the administrator may consider, among other things, whether the main office of the investment adviser is in a place outside the State of North Carolina or whether the investment adviser uses all or some of the bookkeeping facilities of some other investment adviser whose main office is outside the State of North Carolina.

(j) Every investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of this section, provided the investment adviser is licensed in such state and is in compliance with such state's record keeping requirements, if any.

*History Note: Authority G.S. 78C-18(a); 78C-18(b); 78C-18(e); 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;
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.*

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.*

18 NCAC 06A .1708 FINANCIAL REPORTING REQUIREMENTS FOR INVESTMENT ADVISERS

- (a) Every registered investment adviser who has custody of client funds or securities or who requires payment of advisory fees six months or more in advance and in excess of five hundred dollars (\$500.00) per client shall file with the administrator an audited balance sheet as of the end of the investment adviser's fiscal year.
- (1) Each balance sheet filed pursuant to this Rule must be:
 - (A) examined in accordance with generally accepted auditing standards and prepared in conformity with generally accepted accounting principles;
 - (B) audited by an independent public accountant or an independent certified public accountant; and
 - (C) accompanied by an opinion of the accountant as to the report of financial position, and by a note stating the principles used to prepare it, the basis of included securities, and any other explanations required for clarity.

(b) Every registered investment adviser who has discretionary authority over client funds or securities, but not custody, shall file with the administrator a balance sheet, which need not be audited, but which must be prepared in accordance with generally accepted accounting principles and represented by the investment adviser or the person who prepared the statement as true and accurate, as of the end of the investment adviser's fiscal year.

(c) The financial statements required by this Rule shall be filed with the administrator within 90 days following the end of the investment adviser's fiscal year.

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

18 NCAC 06A .1709 EXAM REQUIRE/INVESTMENT ADVISERS: REPRESENTATIVES

(a) Examination Requirements. A person applying to be registered as an investment adviser or investment adviser representative under the Investment Advisers Act shall provide the Administrator with proof that he or she has obtained a passing score on either:

- (1) the Uniform Investment Adviser Law Examination (Series 65 Exam); or
- (2) the General Securities Representative Examination (Series 7 Exam) and the Uniform Combined State Law Examination (Series 66 Exam).

In the event the applicant for registration as an investment adviser is an entity, rather than an individual, the examination shall be taken on behalf of the applicant by one of its officers, a general partner, a manager, or other managing executive of comparable status and position.

(b) Grandfathering. An individual who has not been registered in any jurisdiction for a period of two years shall be required to comply with the examination requirements of Paragraph (a) of this Rule.

(c) Waivers. The examination requirement shall not apply to an individual who currently holds one of the following professional designations:

- (1) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;
 - (2) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;
 - (3) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;
 - (4) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;
 - (5) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.;
- or
- (6) such other professional designation as the Administrator may by order recognize.

*History Note: Authority G.S. 78C-19(b)(5); 78C-30(a); 78C-30(b);
Temporary Rule Effective January 2, 1989, for a Period of 180 Days to Expire on June 30, 1989;
Eff. February 1, 1989;
Amended Eff. April 1, 2001;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.*

18 NCAC 06A .1710 TERMINATION/WITHDRAWAL/INVESTMENT ADVISER REGISTRATIONS

(a) Investment advisers. The application for withdrawal of registration as an investment adviser pursuant to Section 78C-19(e) of the Act shall be completed by following the instructions on Form ADV-W (Notice of Withdrawal from Registration as Investment Adviser) (17 C.F.R. 279.2) and filed upon Form ADV-W with IARD.

(b) Investment adviser representatives. The application for withdrawal of registration as an investment adviser representative pursuant to Section 78C-19(e) of the Act shall be completed by following the instructions on Form U-5 (Uniform Termination Notice for Securities Industry Registration) and filed upon Form U-5 with IARD.

*History Note: Authority G.S. 78C-16(b); 78C-19(e); 78C-20; 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.*

18 NCAC 06A .1711 TRANSFER/INVESTMENT ADVISER REPRESENTATIVE'S REGISTRATION

History Note: Authority G.S. 78C-16(a); 78C-16(b); 78C-17(a); 78C-17(b); 78C-20: 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;
Expired Eff. January 1, 2017 pursuant to G.S. 150B-21.3A.

18 NCAC 06A .1712 CHANGE OF NAME OF INVESTMENT ADVISER (REPEALED)

History Note: Authority G.S. 78C-17(c); 78C-18(d); 78C-30(a)(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. October 1, 1997;
Amended Eff. August 1, 1998;
Temporary Repeal Eff. January 14, 2002;
Repealed Eff. April 1, 2003.

18 NCAC 06A .1713 INVEST ADVISER MERGER/CONSOLIDATION/ACQUISITION/SUCCESSION

(a) When there is a merger, consolidation, acquisition, succession, or other similar fundamental change in the ownership of a registered investment adviser, the acquiring or successor entity shall file an initial or amended Form ADV, if the acquiring or successor entity intends to engage in business as an investment adviser in this state. Regardless of whether it intends to engage in business as an investment adviser in this state, the acquiring or successor entity shall file the following with the Administrator not later than 30 days after the fundamental change:

- (1) if the corporate existence of the acquired registered investment adviser is extinguished upon the effective date of the acquisition, a Form ADV-W, filed by the acquiring or successor entity in the name of the acquired entity, for the purpose of terminating the registration of the acquired entity;
- (2) a copy of the corporate or transactional document by which the merger, acquisition, or other fundamental change was effected; and
- (3) if the acquisition was effected by means of a transaction in which the corporate structure of the acquired entity was affected, a copy of a certificate of merger or certificate of dissolution or similar certificate, issued by the custodian of corporate records of the state pursuant to whose laws the transaction was effected.

In addition, if the corporate structure of the acquired entity was not extinguished in the course of the acquisition, the acquired entity shall file an amended Form ADV not later than 30 days following the effective date of the acquisition.

(b) Investment advisers shall effect mass transfers of investment adviser representatives by filing with the IARD a Form U-4 for each investment adviser representative to be transferred from the acquired entity to the acquiring or successor entity and a Form U-5 for each investment adviser representative not to be transferred.

(c) When there is a merger, consolidation, acquisition, succession, or other similar fundamental change in the ownership of an investment adviser covered under federal law, and the acquiring or successor entity will be an investment adviser covered under federal law, the entities involved shall file appropriate notice filings with the IARD.

(d) When there is a merger, consolidation, acquisition, succession, or other similar fundamental change in the ownership of an investment adviser covered under federal law, and the acquiring or successor entity will be an investment adviser that is registered or required to be registered under the Act, such merger, consolidation, acquisition, succession, or other similar fundamental change shall be governed by the provisions of Paragraphs (a)-(b) of this Rule.

History Note: Authority G.S. 78C-16(b); 78C-17(a)(c); 78C-18(b)(c)(d); 78C-20; 78C-30(a)(b);
Eff. February 1, 1989;
Temporary Rule Eff. January 2, 1989, for a period of 180 days to expire on June 30, 1989;
Amended Eff. September 1, 1995;
Temporary Amendment Eff. October 1, 1997;
Amended Eff. August 1, 1998;
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.

18 NCAC 06A .1714 REGISTRATION OF PARTNERS/EXECUTIVE OFFICERS/DIRECTORS (REPEALED)

*History Note: Authority G.S. 78C-16(a)(b); 78C-17(a); 78C-18(b)(d); 78C-19(a); 78C-30(a)(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. October 1, 1997;
Amended Eff. August 1, 1998;
Temporary Repeal Eff. January 14, 2002;
Repealed Eff. April 1, 2003.*

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.

18 NCAC 06A .1716 TRANSITION SCHEDULE FOR CONVERSION TO IARD

History Note: Authority G.S. 78C-20; 78C-30;
Temporary Adoption Eff. January 14, 2002;
Eff. April 1, 2003;
Expired Eff. January 1, 2017 pursuant to G.S. 150B-21.3A.

18 NCAC 06A .1717 CASH PAYMENTS FOR CLIENT SOLICITATIONS

(a) It shall be unlawful for any investment adviser required to be registered pursuant to G.S. 78C-16 to pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless:

- (1) The investment adviser is registered under the North Carolina Investment Advisers Act;
- (2) The solicitor is not a person:
 - (A) subject to a Securities and Exchange Commission ("the Commission") order issued under Section 203(f) of the Investment Advisers Act of 1940 ("the 1940 Act"), or subject to an order of the Administrator issued under G.S. 78C-19 or G.S. 78A-39; or
 - (B) convicted within the previous 10 years of any felony or misdemeanor involving conduct described in Section 203(e)(2)(A)-(D) of the 1940 Act or described in G.S. 78C-19(a)(2)c.; or
 - (C) who has been found by the Commission to have engaged, or has been convicted of engaging, in any of the conduct specified in Paragraphs (1), (5) or (6) of Section 203(e) of the 1940 Act, or who has been found by the North Carolina Securities Division (the "Division") to have engaged in or acted as accessory after the fact to, or has been convicted of engaging in or acting as accessory after the fact to, a violation of any provision of the North Carolina Investment Advisers Act, the North Carolina Securities Act, or the Commodities Act (Chapters 78A, 78C, and 78D of the North Carolina General Statutes); or
 - (D) who is subject to an order, judgment or decree described in Section 203(e)(4) of the 1940 Act or in G.S. 78C-19(a)(2)d.;
- (3) Such cash fee is paid pursuant to a written agreement to which the adviser is a party; and
- (4) Such cash fee is paid to a solicitor:
 - (A) With respect to solicitation activities for the provision of impersonal advisory services only; or
 - (B) Who is:
 - (i) a partner, officer, director or employee of such investment adviser, or
 - (ii) a partner, officer, director or employee of a person which controls, is controlled by, or is under common control with such investment adviser; provided that the status of such solicitor as a partner, officer, director or employee of such investment adviser or other person, and any affiliation between the investment adviser and such other person, is disclosed to the client at the time of the solicitation or referral; or
 - (C) Other than a solicitor specified in Part (a)(2)(A) or (B) of this Rule, if all of the following conditions are met:

- (i) The written agreement required by Paragraph (c) of this Rule;
 - (I) describes the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received therefore;
 - (II) contains an undertaking by the solicitor to perform his duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the Act and the rules thereunder; and
 - (III) requires that the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, provide the client with a current copy of the investment adviser's written disclosure statement required by Rule .1707 of this Section ("Investment Adviser Brochure Rule") and a separate written disclosure document described in Paragraph (b) of this Rule;
- (ii) The investment adviser receives from the client, prior to, or at the time of, entering into any written investment advisory contract with such client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement and the solicitor's written disclosure document. The investment adviser shall retain a copy of each such acknowledgment and solicitor disclosure document as part of the records required to be kept under Subparagraph (a)(15) of Rule .1706 of this Section; and
- (iii) The investment adviser makes a bona fide effort to ascertain whether the solicitor has complied with the agreement, and has a reasonable basis for believing that the solicitor has so complied.

(b) The separate written disclosure document required to be furnished by the solicitor to the client pursuant to this Section shall contain the following information:

- (1) The name of the solicitor;
- (2) The name of the investment adviser;
- (3) The nature of the relationship, including any affiliation, between the solicitor and the investment adviser;
- (4) A statement that the solicitor will be compensated for his solicitation services by the investment adviser;
- (5) The terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and
- (6) The amount, if any, for the cost of obtaining his account the client will be charged in addition to the advisory fee, and the differential, if any, among clients with respect to the amount or level of advisory fees charged by the investment adviser, if such differential is attributable to the existence of any arrangement pursuant to which the investment adviser has agreed to compensate the solicitor for soliciting clients for, or referring clients to, the investment adviser.

(c) The investment adviser shall retain a copy of each written agreement required by this Rule as part of the records required to be kept under Subparagraph (a)(10) of Rule .1706 of this Section.

(d) Nothing in this Rule shall be deemed to relieve any person of any fiduciary or other obligation to which such person may be subject under any law.

(e) For purposes of this Rule:

- (1) "Solicitor" means any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.
- (2) "Client" includes any prospective client.
- (3) "Impersonal advisory services" means investment advisory services provided solely by means of:
 - (A) written materials or oral statements which do not purport to meet the objectives or needs of the specific client;
 - (B) statistical information containing no expressions of opinions as to the investment merits of particular securities; or
 - (C) any combination of the foregoing services.

*History Note: Authority G.S. 78C-16(b)(2); 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.*

SECTION .1800 - MISCELLANEOUS PROVISIONS - INVESTMENT ADVISERS

18 NCAC 06A .1801 DISHONEST OR UNETHICAL PRACTICES

(a) An investment adviser or an investment adviser covered under federal law is a fiduciary and has a duty to act primarily for the benefit of its clients. The provisions of this Section apply to investment advisers covered under federal law only to the extent that the conduct alleged is fraudulent or deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). While the extent and nature of his duty varies according to the nature of the relationship between an investment adviser and its clients and the circumstances of each case, an investment adviser or an investment adviser covered under federal law shall not engage in unethical business practices, including the following:

- (1) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment adviser after reasonable examination of such of the client's financial records as may be provided to the investment adviser;
- (2) Placing an order to purchase or sell a security for the account of a client without authority to do so;
- (3) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client;
- (4) Exercising any discretionary authority in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority. Discretionary power does not include a power relating solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both;
- (5) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account;
- (6) Borrowing money or securities from a client unless the client is a dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of lending funds or securities;
- (7) Lending money to a client unless the investment adviser is a financial institution engaged in the business of lending funds or a dealer, or unless the client is an affiliate of the investment adviser;
- (8) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading;
- (9) Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact. (This prohibition does not apply to a situation in which the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.);
- (10) Charging a client an advisory fee that is unreasonable in the light of the type of services to be provided, the experience and expertise of the adviser, the sophistication and bargaining power of the client, and whether the adviser has disclosed that lower fees for comparable services may be available from other sources;
- (11) Failing to disclose to a client in writing before entering into or renewing an advisory agreement with that client any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:
 - (A) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and
 - (B) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees;
- (12) Guaranteeing a client that a specific result will be achieved (gain or no loss) as a result of the advice which will be rendered;
- (13) Publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940;
- (14) Disclosing the identity, affairs or investments of any client to any third party unless required by law to do so, or unless consented to by the client;
- (15) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds

when the adviser's action is subject to and does not comply with the safekeeping requirements of Rule 206(4)-2 under the Investment Advisers Act of 1940, unless the investment adviser is exempt from such requirements by virtue of Rule 206(4)-2(b);

- (16) Entering into, extending or renewing any investment advisory contract, other than a contract for impersonal advisory services, unless such contract is in writing and discloses, in substance: the services to be provided; the term of the contract; the advisory fee or the formula for computing the fee; the amount or the manner of calculation of the amount of the prepaid fee to be returned in the event of contract termination or non-performance; whether the contract grants discretionary authority to the adviser; and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract;
- (17) Failing to disclose to any client or prospective client all material facts with respect to:
 - (A) A financial condition of the adviser that is reasonably likely to impair the ability of the adviser to meet contractual commitments to clients, if the adviser has discretionary authority (express or implied) or custody over such client's funds or securities, or requires prepayment of advisory fees of more than five hundred dollars (\$500.00) from such client, six months or more in advance; or
 - (B) A legal or disciplinary event that is material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients; and
- (18) Utilizing an agent or subagent who satisfies the definition of an investment adviser representative as set forth in G.S. 78C-2(3), where such agent or subagent is not registered as an investment adviser representative pursuant to G.S. 78C-16;
- (19) Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of Section 204A of the Investment Advisers Act of 1940;
- (20) Entering into, extending, or renewing any advisory contract contrary to the provisions of Section 205 of the Investment Advisers Act of 1940;
- (21) Indicating in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of this Act or of the Investment Advisers Act of 1940, or any other practice that would violate Section 215 of the Investment Advisers Act of 1940;
- (22) Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contravention of Section 206(4) of the Investment Advisers Act of 1940;
- (23) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of this Act or any rule or regulation thereunder.

The conduct set forth in Rule .1801(a) is not exclusive. It also includes employing any device, scheme, or artifice to defraud or engaging in any act, practice or course of business which operates or would operate as a fraud or deceit. The federal statutory and regulatory provisions referenced herein shall apply both to investment advisers and to investment advisers covered under federal law, to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

(b) There shall be a rebuttable presumption that the following legal or disciplinary events involving the adviser or a management person of the adviser (any of the foregoing being referred to hereafter as "person") that were not resolved in the person's favor or subsequently reversed, suspended, or vacated are material within the meaning of Subparagraph (a)(17)(B) of this Rule for a period of 10 years from the time of the event:

- (1) A criminal or civil action in a court of competent jurisdiction in which the person:
 - (A) was convicted, pleaded guilty or nolo contendere ("no contest") to a felony or misdemeanor, or is the named subject of a pending criminal proceeding (any of the foregoing referred to hereafter as "action"), and such action involved: an investment-related business, fraud, false statements, or omissions; wrongful taking of property; or bribery, forgery, counterfeiting, or extortion;
 - (B) was found to have been involved in a violation of an investment-related statute or regulation;
 - (C) was the subject of any order, judgment, or decree permanently or temporarily enjoining the person from, or otherwise limiting the person from, engaging in any investment-related activity;
- (2) Administrative proceedings before the Administrator, Securities and Exchange Commission, any other federal regulatory agency or any other state agency (any of the foregoing being referred to hereafter as "agency") in which the person:
 - (A) was found to have caused an investment-related business to lose its authorization to do business;
 - (B) was found to have been involved in a violation of an investment-related statute or regulation and was the subject of an order by the agency denying, suspending, or revoking the authorization of

- the person to act in, or barring or suspending the person's association with, an investment-related business or otherwise significantly limiting the person's investment-related activities; or
- (C) was found to have engaged in an act or a course of conduct which resulted in the issuance by the agency of an order to cease and desist the violation of the provisions of any investment-related statute or rule; or
- (3) Self-Regulatory Organization (SRO) proceedings in which the person:
- (A) was found to have caused an investment-related business to lose its authorization to do business; or
- (B) was found to have been involved in a violation of the SRO's rules and was the subject of an order by the SRO barring or suspending the person from membership or from association with other members, or expelling the person from membership; fining the person more than two thousand five hundred dollars (\$2,500.00); or otherwise significantly limiting the person's investment-related activities.
- (c) The information required to be disclosed by Subparagraph (a)(17) shall be disclosed to clients promptly, and to prospective clients not less than 48 hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within five business days after entering into the contract.
- (d) For purposes of this Rule:
- (1) "Management person" means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an investment adviser which is not a natural person or to determine the general investment advice given to clients;
- (2) "Found" means determined or ascertained by adjudication or consent in a final SRO proceeding, administrative proceeding, or court action;
- (3) "Investment-related" means pertaining to securities, commodities, banking, insurance, or real estate [including, but not limited to, acting as or being associated with a dealer, investment company, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.), or fiduciary];
- (4) "Involved" means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act; and
- (5) "Self-Regulatory Organization" or "SRO" means any national securities or commodities exchange, registered association, or registered clearing agency.
- (e) For purposes of calculating the ten-year period during which events are presumed to be material under Paragraph (b), the date of a reportable event shall be the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed.
- (f) Compliance with this Rule shall not relieve any investment adviser from the obligations of any other disclosure requirement under the Act, the rules thereunder, or under any other federal or state law.

*History Note: Authority G.S. 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;
 Amended Eff. September 1, 1995;
 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.*

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.*

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.*

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.

18 NCAC 06A .1805 PERFORMANCE-BASED COMPENSATION EXEMPTION

(a) For purposes of this Rule:

- (1) "Affiliate" shall have the same definition as in Section 2(a)(3) of the federal Investment Company Act of 1940;
- (2) "Client's independent agent" means any person who agrees to act as an investment advisory client's agent in connection with an advisory contract, but does not include:
 - (A) The investment adviser relying on this Rule;
 - (B) An affiliated person of the investment adviser or an affiliated person of an affiliated person of the investment adviser including an investment adviser representative;
 - (C) An interested person of the investment adviser;
 - (D) A person who receives, directly or indirectly, any compensation in connection with the advisory contract from the investment adviser, an affiliated person of the investment adviser, an affiliated person of an affiliated person of the investment adviser or an interested person of the investment adviser; or
 - (E) A person with any material relationship between himself (or an affiliated person of that person) and the investment adviser (or an affiliated person of the investment adviser) that exists, or has existed at any time during the past two years;
- (3) "Company" means a corporation, partnership, association, joint stock company, trust, or any organized group of persons, whether incorporated or not; or any receiver, trustee in a case under Title 11 of the United States Code, or similar official or any liquidating agent for any of the foregoing, in his capacity as such. "Company" shall not include:
 - (A) A company required to be registered under the federal Investment Company Act of 1940 but which is not so registered;
 - (B) A private investment company (for purposes of this Subparagraph (B), a private investment company is a company which would be defined as an investment company under Section 3(a) of the federal Investment Company Act of 1940 but for the exception from that definition provided by Section 3(c)(1) of that act);
 - (C) An investment company registered under the federal Investment Company Act of 1940; or
 - (D) A business development company as defined in Section 202(a)(22) of the federal Investment Company Advisers Act of 1940, unless each of the equity owners of any such company, other than the investment adviser entering into the contract, is a natural person or company within the meaning of Subparagraph (a)(3) of this Rule;
- (4) "Interested person" means:
 - (A) Any parent, spouse, child, or brother or sister of any natural person who is an affiliated person of the investment adviser;
 - (B) Any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the investment adviser or by a controlling person of the investment adviser if that beneficial or legal interest exceeds:
 - (i) one tenth of one percent of any class of outstanding securities of the investment adviser or a controlling person of the investment adviser; or
 - (ii) five percent of the total assets of the person seeking to act as the client's independent agent; or
 - (C) Any person or partner or employee of any person who, at any time since the beginning of the last two years, has acted as legal counsel for the investment adviser.

(b) Notwithstanding Section 78C-8(c)(1) of the Act, an investment adviser may enter into, extend or renew an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, of the client if the conditions in Subparagraphs (c) through (h) of this Rule are met.

(c) The client entering into the contract must be:

- (1) A natural person or a company who, immediately after entering into the advisory contract has at least five hundred thousand dollars (\$500,000.00) under the management of the investment adviser; or

- (2) A person who the investment adviser and its investment adviser representatives reasonably believe, immediately before entering into the contract, is a natural person or a company whose net worth, at the time the contract is entered into, exceeds one million dollars (\$1,000,000.00).

For purposes of this Rule, the term "net worth" shall have the same meaning as that provided by Rule .1313(b)(2). The net worth of a natural person may include assets held jointly with that person's spouse.

(d) The compensation paid to the investment adviser with respect to the performance of any securities over a given period must be based on a formula with the following characteristics:

- (1) In the case of securities for which market quotations are readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, (Definition of "Current Net Asset Value" for Use in Computing Periodically the Current Price of Redeemable Security), 17 C.F.R. 270.2a-4(a)(1), the formula must include the realized capital losses and unrealized capital depreciation of the securities over the period;
- (2) In the case of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, 17 C.F.R. 270.2a-4(a)(1), the formula must include:
 - (A) the realized capital losses of securities over the period; and
 - (B) if the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and
- (3) The formula must provide that any compensation paid to the investment adviser under this Rule is based on the gains less the losses (computed in accordance with Subparagraphs (1) and (2) of this Paragraph) in the client's account for a period of not less than one year.

(e) Before entering into the advisory contract and in addition to the requirements of Form ADV, the investment adviser must disclose in writing to the client or the client's independent agent all material information concerning the proposed advisory arrangement, including the following:

- (1) That the fee arrangement may create an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;
- (2) Where relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;
- (3) The periods which will be used to measure investment performance throughout the contract and their significance in the computation of the fee;
- (4) The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser believes that the index is appropriate; and
- (5) Where the investment adviser's compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, 17 C.F.R. 270.2a-4(a)(1), how the securities will be valued and the extent to which the valuation will be independently determined.

(f) The investment adviser (and any investment adviser representative) who enters into the contract must reasonably believe, immediately before entering into the contract, that the contract represents an arm's length arrangement between the parties and that the client (or in the case of a client which is a company as defined in Subparagraph (a)(3) of this Rule, the person representing the company), alone or together with the client's independent agent, understands the proposed method of compensation and its risks. The representative of a company may be a partner, director, officer or an employee of the company or the trustee, where the company is a trust, or any other person designated by the company or trustee, but must satisfy the definition of client's independent agent set forth in Subparagraph (a)(2) of this Rule.

(g) Any person entering into or performing an investment advisory contract under this Rule is not relieved of any obligations under Section 78C-8(a) or any other applicable provision of the Act or any rule or order thereunder.

(h) Nothing in this Rule shall relieve a client's independent agent from any obligation to the client under applicable law.

*History Note: Authority G.S. 78C-8(b); 78C-8(c)(i); 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.*

18 NCAC 06A .1806 TRANSACTIONS DEEMED NOT TO BE ASSIGNMENTS

For purposes of Section 78C-8(c)(2) of the Act, a transaction which does not result in a change of actual control or management of an investment adviser or investment adviser covered under federal law is not an assignment.

*History Note: Authority G.S. 78C-8(c)(2); 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.*

18 NCAC 06A .1807 REQUEST FOR INTERPRETATIVE OPINIONS

- (a) Requests for interpretative opinions shall be directed to the administrator and shall contain the following:
- (1) Specific facts surrounding the proposed transaction in letter form with the identity of the persons involved;
 - (2) The statutory and/or rule citation upon which the request is based;
 - (3) Statement of the applicant's requested interpretation supported by appropriate reasoning or justification and applicable case law or administrative opinions or decisions;
 - (4) Any other relevant information or exhibits that the applicant desires the administrator to consider; and
 - (5) A fee in the amount of one hundred fifty dollars (\$150.00).
- (b) An interpretative opinion shall not be considered an absolute exemption or exception from a definition. The burden of proving an exemption or exception from a definition shall remain upon the person claiming it should the necessity of proof arise.
- (c) The administrator may, in his discretion, honor or deny requests for interpretative opinions.

*History Note: Authority G.S. 78C-30(a); 78C-31(e);
Temporary Rule Eff. January 2, 1989, for a period of 180 days to expire on June 30, 1989;
Eff. February 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.*

18 NCAC 06A .1808 SUPERVISION OF INVESTMENT ADVISER REPRESENTATIVES

- (a) An investment adviser shall be responsible for the acts, practices, and conduct of its investment adviser representatives in connection with advisory services until such time as the investment adviser representatives have been properly terminated as provided by Rule .1710.
- (b) Every investment adviser shall exercise diligent supervision over the advisory activities of all of its investment adviser representatives.
- (c) Every investment adviser representative employed by an investment adviser shall be subject to the supervision of a supervisor designated by such investment adviser. The supervisor may be the investment adviser in the case of a sole proprietor, or a partner, officer, office manager or any qualified investment adviser representative in the case of entities other than sole proprietorships.
- (d) As part of its responsibility under this Rule, every investment adviser shall establish, maintain and enforce written procedures, a copy of which shall be kept in each business office, which shall set forth the procedures adopted by the investment adviser, which shall include but not be limited to the following duties imposed by this Rule:
- (1) The review and written approval by a designated supervisor of the opening of each new client account;
 - (2) The frequent examination of all client accounts to detect and prevent irregularities or abuses;
 - (3) The prompt review and written approval by a designated supervisor of all advisory transactions by investment adviser representatives and of all correspondence pertaining to the solicitation or execution of all advisory transactions by investment adviser representatives;
 - (4) The prompt review and written approval of the handling of all client complaints.
- (e) Every investment adviser who has designated more than one supervisor pursuant to Paragraph (c) of this Rule shall designate from among its partners, officers, or other qualified investment adviser representatives, a person or group of persons who shall:
- (1) Supervise and periodically review the activities of the supervisors designated pursuant to Paragraph (c) of this Rule; and
 - (2) Periodically inspect each business office under his/her supervision to insure that the written procedures are being enforced.
- (f) The provisions of Paragraph (a) of this Rule shall be applicable to an investment adviser who is also a dealer within the meaning of N.C. Gen. Stat. Section 78A-2(2) with respect to the acts, practices, and conduct of its salesmen [as that term is defined by N.C. Gen. Stat. Section 78A-2(9)] until such time as such salesmen are terminated pursuant to the provisions of

N.C. Gen. Stat. Section 78A-36(b) and 18 NCAC 6 .1408. Every such investment adviser shall exercise diligent supervision over the activities of its salesmen within the scope of their employment.

History Note: Authority G.S. 78C-19(a)(j); 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;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1809 PUBLIC INFORMATION (REPEALED)

History Note: Filed as a Temporary Rule Eff. January 2, 1989, for a period of 180 days to expire on June 30, 1989;
Authority G.S. 78C-27(a); 78C-30(a); 78C-30(g); 78C-31(c); 132-1; 132-1.1;
Eff. February 1, 1989;
Repealed Eff. August 1, 1998.

18 NCAC 06A .1810 FORM OF CONSENT TO SERVICE OF PROCESS

If the filing of a consent to service of process is required by statute or rule, the consent shall name the Secretary of State as service agent and shall be filed using the Uniform Consent to Service of Process (Form U-2) and if applicable, the Uniform Form of Corporate Resolution (Form U-2A). Both Form U-2 and Form U-2A shall be properly signed and acknowledged before a notary.

History Note: Authority G.S. 78C-30(a); 78C-30(b); 78C-46(b);
Temporary Rule Eff. January 2, 1989, for a period of 180 days to expire on June 30, 1989;
Eff. February 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06A .1811 FORMS (REPEALED)

History Note: Filed as a Temporary Rule Eff. January 2, 1989, for a period of 180 days to expire on June 30, 1989;
Authority G.S. 78C-30(a); 78C-30(b);
Eff. February 1, 1989;
Amended Eff. September 1, 1990;
Temporary Amendment Eff. October 1, 1997;
Repealed Eff. August 1, 1998.

SECTION .1900 - REGISTRATION OF ATHLETE AGENTS

- 18 NCAC 06A .1901 APPLICATION FOR REGISTRATION OF ATHLETE AGENTS**
- 18 NCAC 06A .1902 EXPIRATION OF REGISTRATION**
- 18 NCAC 06A .1903 RENEWAL OF REGISTRATION**
- 18 NCAC 06A .1904 APPROVAL OF AGENT CONTRACTS**
- 18 NCAC 06A .1905 NOTICE TO CLIENT**
- 18 NCAC 06A .1906 FORMS**

History Note: Authority G.S. 78C-46(b); 78C-72; 78C-81;
Eff. March 1, 1991;
Amended Eff. September 1, 1995;
Repealed Eff. September 1, 2008.

SECTION .2000 – INVEST NC EXEMPTION (CROWDFUNDING)

18 NCAC 06A .2001 PURPOSE

The purpose of the rules in this Section is to promote the overall economic health of North Carolina by:

- (1) facilitating responsible and competitive intrastate capital formation by North Carolina companies through increased availability of financial resources to businesses that might not otherwise have access to capital;

- (2) facilitating opportunities for residents of North Carolina to invest in local businesses;
- (3) facilitating small intrastate capital securities offerings that use the Internet; and
- (4) protecting the investing public.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2002 SCOPE

- (a) The Secretary of State establishes and enforces the rules in this Section pursuant to the authority delegated by:
 - (1) the North Carolina PACES Act, S.L. 2016-103, the Invest NC Exemption under G.S. 78A; and
 - (2) G.S. 78A-45(a).
- (b) The rules in this Section shall not be construed to relieve any person from the provisions of G.S. 78A-8.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2003 DEFINITIONS

Except as otherwise provided, the following definitions apply to G.S. 78A-17.1 and this Section:

- (1) The definitions in:
 - (a) G.S. 78A-2;
 - (b) Rule .1104 of this Subchapter; and
 - (c) 18 NCAC 06B .0102.
- (2) "Bank" means:
 - (a) a banking institution organized under the laws of the United States;
 - (b) a member bank of the Federal Reserve System;
 - (c) any other banking institution, whether incorporated or not:
 - (i) doing business under laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency pursuant to the first section of Public Law 87-722 (12 U.S.C. 92a);
 - (ii) which is supervised and examined by a state or federal agency having supervision over banks; and
 - (iii) which is not operated for the purpose of evading the North Carolina Securities Act.
- (3) "Blank check company" means a development stage company that has no specific business plan or that has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies.
- (4) "Blind pool" means a company that sells securities without specifying how invested money will be spent.
- (5) "Commodity pool" means an investment trust, syndicate, or similar form of enterprise operated for the purpose of trading commodity futures, option contracts, or other securities.
- (6) "Dealer", "Registered dealer" or "registered dealer or salesman" means a dealer or salesman registered in North Carolina pursuant to G.S. 78A-36.
- (7) "Depository institution" means a bank, savings institution, trust company or credit union that is:
 - (a) organized or chartered under the laws of a State or of the United States;
 - (b) authorized to receive deposits; and
 - (c) supervised and examined by an official or agency of a State or the United States if its deposits or share accounts are insured by the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Share Insurance Fund (NCUSIF) or a successor authorized by federal law.
- (8) "Document" or "documents" means originals, copies, and attachments to, correspondence, memoranda, notes, drafts, records, agreements, meeting agendas, reports, legal or financial instruments, e-mail, instant messages, records of social media postings, and any mode of representing words, letters, and numbers. It includes all forms and formats, including writing, print, typing, drawing, audio, and other recording, electronically, magnetically or mechanically stored, tape-recording, computerized, photographed, digital, or stored as voice mail, website, archived information, and backups of information.
- (9) "Escrow account" means an account that holds investor funds pursuant to an escrow agreement.

- (10) "Escrow agent" means a person that administers an escrow account by means of an escrow agreement in connection with the Exemption. The following persons may act as an escrow agent:
- (a) a bank or depository institution;
 - (b) a registered dealer; or
 - (c) a lawyer.
- (11) The "Exemption" means the exemption allowed by G.S. 78A-17(20) in connection with an offering of a security made by an issuer in reliance on a federal intrastate offering exemption in compliance with the Securities Act of 1933.
- (12) "Holding company" means an entity whose principal purpose is owning stock in, or supervising the management of, other companies.
- (13) "Internet Web site" means a North Carolina Intrastate Funding Portal except as used in G.S. 78A-17.1(c).
- (14) "Lawyer" means a licensed lawyer who is an active member of the North Carolina State Bar in good standing and who has at least one law office physically located in North Carolina.
- (15) "Legal identity" means:
- (a) the legal name of an entity on file with the business registry in its state of formation;
 - (b) a name assumed by a foreign entity pursuant to G.S. 55-15-03(a)(1), G.S. 55A-15-03(a)(1), or G.S. 57D-7-03(a)(1); and
 - (c) any assumed names filed by the entity in North Carolina pursuant to G.S. 66-71.4.
- (16) "Minimum offering amount" means an amount of funds equal to or below the target offering amount that is set by the issuer and that shall not be less than 20 percent of the target offering amount.
- (17) "North Carolina Intrastate Funding Portal" or "funding portal" means any person that:
- (a) is not a registered dealer or salesman pursuant to G.S. 78A-36; and
 - (b) is in the business of acting as an intermediary in transactions involving the offer or sale of securities for or on behalf of an issuer pursuant to the Exemption.
- (18) "Platform" means a program or application accessible via the Internet or other similar electronic communication medium where information is provided and where prospective investors, investors, and issuers publicly communicate with each other online.
- (19) "Registered with the Secretary of State" means:
- (a) a domestic entity that is formed under North Carolina law and is in "current/active status" with the Department; or
 - (b) a foreign entity that:
 - (i) has obtained a Certificate of Authority to transact business in North Carolina from the Department; and
 - (ii) is "current/active" with the Department and in good standing in its state of formation.
- (20) "Target date" means the date set by the issuer by which it expects to reach the minimum offering amount. The target date shall not exceed 12 months from the date of the Administrator's notice of compliance required by Rule .2015 of this Section.
- (21) "Target offering amount" is the total amount of funds that the issuer intends to raise by offering the securities to investors. The target offering amount for a single offering shall not exceed two million dollars (\$2,000,000).

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2004 EXEMPTION LIMITATIONS

- (a) An issuer shall set a target offering amount, a target date, and a minimum offering amount for the securities offering.
- (b) An issuer conducting a securities offering shall:
 - (1) set a target offering amount of no more than two million dollars (\$2,000,000) in any 12 consecutive months if its disclosure document includes audited or reviewed financial statements for its most recently completed full fiscal year or the immediately preceding 12 months;
 - (2) set a target offering amount of no more than one million dollars (\$1,000,000) in any 12 consecutive months if its disclosure document does not include audited or reviewed financial statements;
 - (3) set a minimum offering amount that shall be no less than 20 percent of the target offering amount set by the issuer and disclosed in the disclosure document; and

- (4) set a target date for the securities offering that shall be no later than 12 months from the date of the Administrator's notice of compliance pursuant to Rule .2015(1) of this Section.
- (c) An issuer shall not accept more than five thousand dollars (\$5,000) in any 12-month period from any single investor who is not accredited. An accredited investor is defined by 17 CFR 230.501, which is incorporated by reference. Copies of 17 CFR 230.501 are available at no cost by sending an email request to secdiv@sosnc.gov or online at <http://www.sosnc.gov/sec/statutes.aspx>.
- (d) The securities offering shall expire 12 months from the date of the Administrator's notice of compliance pursuant to Rule .2015(1) of this Section.
- (e) The securities offering shall not be exempt under G.S. 78A-17.1 unless the issuer has received the Administrator's notice of compliance pursuant to Rule .2015(1) of this Section.
- (f) The offering or sale of a security that may be qualified for the Exemption but has not received the Administrator's notice of compliance pursuant to Rule .2015(1) of this Section shall be presumed to violate the Securities Act.
- (g) An issuer shall not offer a security relying on the Exemption until it receives the Administrator's notice of compliance pursuant to Rule .2015(1) of this Section.
- (h) An issuer shall not be eligible to rely on the Exemption if it is a holding company, blind pool, commodity pool, a blank check company, peer-to-peer, or similar online marketplace lender, real estate investment trust (REIT), a company issuing viatical settlement contracts, or a company issuing asset-backed securities as defined in 17 CFR 229.1101(c), which is incorporated by reference including subsequent amendments and editions. Copies of 17 CFR 229.1101(c) are available at no cost by sending an email request to secdiv@sosnc.gov or online at <http://www.sosnc.gov/sec/statutes.aspx>.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2005 COUNTING SALES

Sales by the issuer to its controlling persons, its funding portal, or its registered dealer shall not be included in the calculations of the minimum offering amount or the target offering amount. For purposes of this Rule and Rule .2061, "controlling persons" shall have the meaning set out in G.S. 78A-17.1(d).

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2006 RESERVED FOR FUTURE CODIFICATION

18 NCAC 06A .2007 ISSUER FILING REQUIREMENTS

(a) An issuer shall file the following with the Administrator at least 10 business days before it intends to offer securities pursuant to the Exemption:

- (1) a Notice of Intrastate Claim of Exemption Form ("Form NCE") that complies with Rules .2008 and .2009 of this Section;
- (2) a disclosure document pursuant to the requirements of Rules .2010 through .2012 of this Section;
- (3) the escrow agreement that the issuer proposes to use in connection with the Exemption consistent with the rules in this Section, and any contracts with the escrow agent relating to its administration of the escrow account; and
- (4) the nonrefundable fee required by G.S. 78A-17.1(g).

(b) If any information on the Form NCE becomes inaccurate or misleading, an issuer shall amend its Form NCE by filing with the Administrator within 10 business days an amended Form NCE.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2008 NOTICE OF INTRASTATE CLAIM OF EXEMPTION FORM REQUIREMENTS

An issuer shall file with the Administrator an original, legible Form NCE and required attachments. The Form NCE shall include the following:

- (1) the issuer's attestation:
 - (a) to the issuer's name or legal identity, and contact information;
 - (b) to the issuer's registration with the Secretary of State;

- (c) as to the specific federal intrastate offering exemption relied upon;
 - (d) as to the minimum offering amount, the target offering amount, and target date in accordance with Rule .2004 of this Section;
 - (e) as to the issuer's commitment that it shall not accept more than five thousand dollars (\$5,000) from any single investor in any 12-month period, unless the issuer reasonably believes that the purchaser is an accredited investor;
 - (f) that the issuer does not fit within the exclusions in G.S. 78A-17.1(a)(6);
 - (g) that the issuer is not a company listed or described in Rule .2004(h) of this Section;
 - (h) as to the absence of disqualification pursuant to G.S. 78A-17.1(e) for the issuer or any person affiliated with the issuer or the securities offering;
 - (i) that the issuer shall comply with Rules .2013 and .2063 of this Section regarding misrepresentations and omissions of material facts in its disclosures to prospective investors and investors; and
 - (j) that the issuer consents to personal jurisdiction of the Administrator over the issuer and consents to service of process as authorized by G.S. 78A-63;
- (2) a copy of any agreement entered into between the issuer and its funding portal or registered dealer or salesman;
 - (3) the names and titles of persons engaged in the offer or sale of the issuer's securities; and
 - (4) the names and titles of persons who will serve as the investor contact person(s) for the issuer.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2009 SIGNING FORM NCE

The issuer shall sign the Form NCE. The Form NCE shall be legibly signed:

- (1) by a person authorized to sign pursuant to G.S. 55-1-20 for a domestic or foreign corporation;
- (2) by a person authorized to sign pursuant to G.S. 55A-1-20 for a domestic or foreign nonprofit corporation;
- (3) by all the issuer's managers for a limited liability company; or
- (4) by all persons managing the affairs of, or performing similar functions for, an issuer that is not a corporation or a limited liability company.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2010 CONTENT OF DISCLOSURE DOCUMENT

An issuer shall prepare and sign a disclosure document with all facts material to a reasonable investor's decision as to whether to invest in the issuer's securities offering. In addition, the disclosure document shall include:

- (1) information required by G.S. 78A-17.1(a)(5)b. and G.S. 78A-17.1(a)(13);
- (2) the name, the street address of the issuer's business, and the mailing address, if different, of the issuer's business;
- (3) the type of the issuer's business entity, as recognized under North Carolina law. Note: Examples of types of business entities are limited partnerships, corporations, and limited liability companies (LLCs);
- (4) a description of the issuer's business;
- (5) a description of the history of the issuer's business that includes its three most recent years;
- (6) a description of the financial condition of the issuer:
 - (a) for an issuer with an operating history, the description shall include: liquidity, capital resources, historical results of operations, and whether historical results and cash flows are representative of what investors should expect in the future; or
 - (b) for an issuer with no operating history, the description shall include planned financial milestones, and operational, liquidity, and other challenges;
- (7) a description of how the issuer plans to use the funds raised by the securities offering:
 - (a) if the minimum offering amount is reached;
 - (b) if the target offering amount is reached; and
 - (c) to pay fees to the escrow agent, registered dealer, or funding portal, including how and when the fees will be paid;

- (8) any information necessary to make the material facts disclosed not misleading;
- (9) the statements required by Rule .2011 of this Section and, by 17 CFR 230.147(f)(3), or 230.147A(f)(3) which are incorporated by reference including subsequent amendments and editions;
- (10) a statement that investors shall direct all payments to the escrow agent to be deposited into the escrow account until at least the minimum offering amount has been reached;
- (11) a statement that an investor may cancel an investment for any reason before the minimum offering amount has been reached;
- (12) a description of the cancellation procedure that the investors shall follow in order to cancel the investment;
- (13) a description of how and when the funds raised by the securities offering will:
 - (a) be returned to an investor if the investor cancels the investment before the minimum offering amount is reached;
 - (b) be returned to the investors if the minimum offering amount is not reached by the target date; and
 - (c) be released to the issuer if the minimum offering amount is reached by the target date or if the issuer chooses to leave the funds in the escrow account for any period of time after the minimum offering amount is reached;
- (14) a copy of the signed escrow agreement; and
- (15) its financial statements, if the issuer has undergone an audit or review in the previous 12 months.

Copies of 17 CFR 230.147(f)(3) and 230.147A(f)(3) are available at no cost by sending an email request to secdiv@sosnc.gov or online at <http://www.sosnc.gov/sec/statutes.aspx>.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2011 REQUIRED STATEMENTS TO INCLUDE IN ISSUER DISCLOSURE DOCUMENT

- (a) An issuer shall include the legend required by G.S. 78A-17.1(a)(7) in its disclosure document as specified by this Rule.
- (b) The text of the legend shall be separated into these paragraphs:
 - (1) "In making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved. These securities have not been recommended by any federal or state securities commission or regulatory authority. Furthermore, the foregoing authorities have not confirmed the accuracy or determined the adequacy of this document. Any representation to the contrary is a criminal offense."
 - (2) "These securities are subject to restrictions on transferability and resale and may not be transferred or resold except as permitted under the Securities Act of 1933, as amended, and the applicable state securities laws, pursuant to registration or exemption therefrom. Investors should be aware that they will be required to bear the financial risks of this investment for an indefinite period of time."

The numbers on the paragraphs above do not have to be included when the text of the legend is presented.

- (c) The issuer shall present the legend conspicuously and in a readable form. For purposes of this Rule, "conspicuously and in a readable form" means:
 - (1) in a bold font that is at least 10 point in size; and
 - (2) uses at least one additional method of the issuer's choice to set the legend apart and emphasize it in comparison to other cover page information. NOTE: Examples of other ways of setting the legend apart include a different color font, white space around the legend, increased line spacing, or bordering the legend.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2012 CIRCUMSTANCES WHEN ADDITIONAL DISCLOSURE DOCUMENT CONTENT REQUIRED

- (a) If the issuer has chosen a target offering amount that exceeds one million dollars (\$1,000,000) and is no more than two million dollars (\$2,000,000), the issuer shall include in its disclosure document a copy of its financial statements for its most recently completed full fiscal year (or the immediately preceding 12 months).
- (b) The financial statements shall:
 - (1) have been audited or reviewed and prepared in accordance with generally accepted accounting principles ("GAAP"); and

- (2) include:
 - (A) balance sheets;
 - (B) comprehensive statement of consolidated income;
 - (C) statements of cash flows;
 - (D) statements of changes in stockholders' equity; and
 - (E) notes to the financial statements.

(c) If the financial statements required by Paragraph (a) of this Rule are more than four months old, then the issuer shall also provide interim financial statements for the preceding four or more months. The interim financial statements are not subject to Paragraph (b)(1) of this Rule.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2013 ISSUER TO CEASE OFFERING AND AMEND THE DISCLOSURE DOCUMENT

- (a) The issuer shall immediately cease the offer or sale of the securities and amend the disclosure document if:
 - (1) there is any material change in the securities or securities offering;
 - (2) the disclosure document becomes incomplete in any material respect; or
 - (3) the disclosure document contains any statement that is, in the light of the circumstances under which it is made, false or misleading with respect to any material fact.
- (b) The issuer shall not resume the sale or offer for sale until the issuer has:
 - (1) prepared and provided the amended disclosure document to the Administrator and the investors; and
 - (2) received the Administrator's notice of compliance pursuant to Rule .2015 of this Section; and
 - (3) provided all investors with:
 - (A) the opportunity to cancel their investments if the minimum offering amount has not been reached; or
 - (B) rescission offers that may be consistent with G.S. 78A-56(g).

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2014 FACTORS CONSIDERED WHEN REVIEWING THE CLAIM OF EXEMPTION

- (a) When determining whether the securities offering complies with the conditions of the Exemption, the Administrator may consider the following factors and any reported material changes:
 - (1) whether all filings required by Rule .2007 of this Section have been made;
 - (2) the contents of the Form NCE;
 - (3) the contents of the disclosure document;
 - (4) the contents of the escrow agreement and whether the Administrator has approved it pursuant to Rules .2020 and .2021 of this Section;
 - (5) the contents of any contracts related to the execution of the securities offering transactions;
 - (6) the funding portal, if any, selected by the issuer;
 - (7) whether the proposed securities offering complies with other requirements of G.S.78A-17.1 and this Section;
 - (8) whether the securities offering would tend to work a fraud on the investing public;
 - (9) whether regulatory agencies oversee the activities of the entities that are parties to the transactions related to the securities offering;
 - (10) whether the issuer is a prohibited business pursuant to G.S. 78A-17.1 and the rules in this Chapter; and
 - (11) any other factors the Administrator deems relevant.
- (b) The Administrator may consider information not included in the Form NCE and other documents pursuant to Rule .2007 of this Section, and may ask the issuer for additional relevant information.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2015 ADMINISTRATOR'S NOTICE OF COMPLIANCE

After review of the relevant information, the Administrator may issue a notice of compliance:

- (1) with the filing requirements of Rule .2007 of this Section; or
- (2) with Rule .2013(b)(1) of this Section with regard to any material changes.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2016 DENIAL OR REVOCATION OF THE EXEMPTION

The Administrator may by order, deny or revoke the Exemption pursuant to G.S. 78A-18(a) if:

- (1) the issuer fails to comply with the Exemption requirements after receiving a notice of deficiency;
- (2) the issuer fails to furnish requested information or evidence of compliance to the Administrator;
- (3) the issuer fails to keep or produce records pursuant to Rule .2060(d) of this Section;
- (4) the securities offering does not comply with the conditions set by G.S. 78A-17.1 and the rules of this Chapter;
- (5) the securities offering is part of a plan or scheme to avoid registration;
- (6) the structure of the securities offering is so complex as to be misleading to the investing public; or
- (7) the issuer has engaged or is about to engage in any act or practice that is a violation of the Securities Act or rules of this Chapter.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2017 ESCROW ACCOUNT

- (a) An issuer shall be responsible for the establishment and maintenance of an escrow account for investor fund deposits.
- (b) The escrow account shall:
 - (1) be administered by an escrow agent;
 - (2) be a segregated account for each securities offering; and
 - (3) be FDIC or NCUSIF insured.
- (c) If the escrow agent is a lawyer, the escrow account shall also:
 - (1) be a fiduciary account maintained at a bank in North Carolina and operated according to the North Carolina Rules of Professional Conduct, 27 NCAC 02 Rule 1.15, which is incorporated by reference, including subsequent amendments and editions; and
 - (2) be designated as an IOLTA account, as defined in 27 NCAC 01D .1316, which is incorporated by reference, including subsequent amendments and editions.

Copies of the rules incorporated by reference in Paragraph (c) of this Rule are available at no cost by sending an email request to secdiv@sosnc.gov or online at <http://reports.oah.state.nc.us/ncac.asp>.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2018 ISSUER TO PROVIDE INFORMATION TO THE ESCROW AGENT

An issuer shall provide accurate and timely information to the escrow agent in order to establish and maintain the escrow account and escrow agreement, including the minimum offering amount and the target date set by the issuer in accordance with G.S. 78A-17.1(a)(5)c.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2019 TERMS OF ESCROW AGREEMENT

The escrow agreement shall include:

- (1) the identity of the escrow agent including the name, address where notices may be directed, telephone number, website of the agent, and the name of the person responsible for responding to inquiries about the escrow account;
- (2) the identity of the bank or depository institution where the escrow account will be maintained, including its name, address, telephone number, website, and the name of the person responsible for responding to inquiries about the escrow account;

- (3) the account number of the escrow account;
- (4) a statement confirming that the escrow account is FDIC or NCUSIF insured;
- (5) a description of the services to be provided by the escrow agent;
- (6) the fees charged for the services provided by the escrow agent;
- (7) a requirement that the escrow agent shall authorize the release of the securities offering proceeds to the issuer only if:
 - (a) the aggregate funds deposited into the escrow account from all investors is equal to or greater than the minimum offering amount; and
 - (b) the minimum offering amount has been deposited into the escrow account by the target date stated in the disclosure document;
- (8) a requirement that the escrow agent authorize the return of funds to investors as required by G.S. 78A-17.1 and Rules .2054 and .2055 of this Section;
- (9) a description of how the issuer shall notify the escrow agent of the investor's cancellation of the investment in order to request that the invested funds be returned to the investor;
- (10) a requirement that the escrow agent shall administer the escrow account in compliance with G.S. 78A-17.1 and Rules .2023 through .2028 of this Section;
- (11) a description of how any interest accrued in the escrow account will be administered;
- (12) a description of how an escrow agent will address a dispute between the issuer and the investor;
- (13) a description disclosing how any lawyer acting as an escrow agent will handle a conflict of interest, if applicable;
- (14) a requirement that the escrow agent be responsible for prudent processing, safeguarding, and accounting for the funds and information entrusted to it by investors and the issuer; and
- (15) how the funds will be safeguarded if the escrow agent, funding portal, or any other party to the agreement ceases doing business in North Carolina.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2020 REVIEW OF THE ESCROW AGREEMENT

(a) The Administrator may consider the following factors when reviewing an issuer's escrow agreement to determine whether to approve it:

- (1) the contents of the escrow agreement;
- (2) the contents of any contracts with the escrow agent or escrow administering parties relating to the administration of the escrow account;
- (3) the escrow agent's:
 - (A) physical location;
 - (B) experience as an escrow agent, in the administration of escrow accounts, or provision of escrow services;
 - (C) financial solvency;
 - (D) disciplinary history; and
 - (E) technology to be utilized;
- (4) other parties to the escrow agreement and their:
 - (A) physical locations;
 - (B) financial stability;
 - (C) disciplinary history; and
 - (D) technology to be utilized;
- (5) regulatory agencies, if any, that oversee the activities of the entities that are parties to the escrow agreement; and
- (6) any other factors that the Administrator deems relevant.

(b) When reviewing the agreement, the Administrator may consider information not included in the escrow agreement and may ask the escrow agent for additional relevant information.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2021 ADMINISTRATOR'S REJECTION OF ESCROW AGREEMENT

The Administrator may reject the issuer's escrow agreement if the Administrator determines that:

- (1) the escrow agreement does not comply with the rules of this Section;
- (2) one or more of the factors listed in Rule .2020 of this Section make the escrow agreement unnecessarily risky for the issuer or the investor;
- (3) the escrow agent is unsuitable to manage the escrow account; or
- (4) the escrow agreement includes terms that could cause the issuer to lose its exemption.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2022 ADMINISTRATOR NOTICE OF APPROVAL OR REJECTION OF ESCROW AGREEMENT

The Administrator shall not issue a notice of compliance pursuant to Rule .2015(1) of this Section unless the escrow agreement has been approved by the Administrator.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2023 ESCROW AGENT DUTIES, RESPONSIBILITIES, AND STANDARDS OF CONDUCT

An escrow agent and all persons associated with it shall:

- (1) observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business;
- (2) give particular attention to any conflicts of interest that may arise or exist;
- (3) preserve and maintain all documents related to its status and service as an escrow agent for six years after the filing of the Form NCE and make such documents available to the Administrator upon request; and
- (4) provide notice to the Administrator of any material changes to the escrow agreement.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2024 NOTICE TO ADMINISTRATOR MINIMUM OFFERING AMOUNT REACHED, FUNDS RELEASED FROM THE ESCROW ACCOUNT, AND TERMINATION OF ESCROW AGREEMENT

(a) An escrow agent shall file a written notice to the Administrator within 10 days:

- (1) after reaching the minimum offering amount; and
- (2) after the termination of the escrow agreement.

(b) An issuer shall file a written notice to the Administrator within 10 days:

- (1) after reaching the minimum offering amount;
- (2) after the initial release of funds from the escrow account; and
- (3) after the termination of the escrow agreement.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2025 CONTENT OF NOTICE OF RELEASE OF FUNDS FROM ESCROW ACCOUNT

The notice provided pursuant to Rule .2024 of this Section shall include the following:

- (1) the aggregate amount of securities sold during the offering, expressed as:
 - (a) numbers of units of securities sold; and
 - (b) dollars raised by the sale of securities;
- (2) the identity and residence of each investor;
- (3) the date on which the funds were released to the issuer or returned to investors; and
- (4) the date of the termination of the escrow agreement, if already terminated.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2026 REGISTERED DEALER ACTING AS AN ESCROW AGENT

A registered dealer that acts as an escrow agent for the issuer's securities offering shall:

- (1) be registered with the SEC and the State of North Carolina to offer and sell the intrastate securities offering;
- (2) deposit and hold the investor funds in an escrow account pursuant to an escrow agreement;
- (3) comply with Rules .2024 and .2025 of this Section, 17 CFR 240.15c2-4, and 17 CFR 240.10b-9, which are incorporated by reference including subsequent amendments and editions.

Copies of the regulations incorporated by reference in Item (3) of this Rule may be obtained at no cost by sending an email to secdiv@sosnc.gov, or online at: <http://www.sosnc.gov/sec/statutes.aspx>.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2027 ESCROW AGENT REQUIREMENTS

Pursuant to the escrow agreement consistent with Rules .2017 through .2028 of this Section, an escrow agent for the issuer's securities offering, including a lawyer, shall:

- (1) collect at least the following information from the issuer or investors:
 - (a) name of the investors;
 - (b) residence of the investors;
 - (c) the aggregate amount of securities sold during the offering, expressed as:
 - (i) numbers of units of securities sold; and
 - (ii) dollars raised by the sale of securities; and
- (2) make such documents available to the Administrator upon request.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2028 TREATMENT OF INFORMATION

Information that is received or transmitted directly or indirectly from a bank or depository institution to the Administrator pursuant to G.S. 78A-17.1(a)(10) shall be designated as confidential and trade secrets while in the possession of the Administrator.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2029 RESERVED FOR FUTURE CODIFICATION

18 NCAC 06A .2030 FUNDING PORTAL REGISTRATION

- (a) A funding portal shall apply for registration as a North Carolina Intrastate Funding Portal by filing with the Administrator a Form North Carolina Intrastate Funding Portal (Form NCFP) at least 10 business days before it intends to post an offering on behalf of any issuer relying on the Exemption.
- (b) A funding portal shall not post a securities offering before its registration has been declared effective by the Administrator.
- (c) A funding portal's registration expires on December 31 of each year, unless renewed within 30 days of expiration by filing a newly executed Form NCFP.
- (d) A funding portal that undergoes a merger, an acquisition, or any other ownership change shall file a Form NCFP on behalf of the surviving or new entity before the effective date of the change.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2031 CONTENTS OF FORM NCFP

The Form NCFP shall include:

- (1) all information that the funding portal is required to provide under G.S. 78A-17.1(a)(9)c, including:

- (a) the funding portal's legal identity;
- (b) the funding portal's physical location;
- (c) the name and address of the funding portal's registered agent;
- (d) the identity of the individual responsible for filing updates to the funding portal's Form NCFP;
- (e) the identity of its officers, directors, or any persons occupying a similar status or performing a similar function; and
- (f) the funding portal's website address (URL);
- (2) the funding portal's attestations required under Rule .2032 of this Section;
- (3) a description of how the funding portal will safeguard the investment funds in the escrow account if its registration expires or it no longer intends to do business in North Carolina;
- (4) the identity of the escrow agent that the funding portal intends to use to hold investor funds;
- (5) a sample escrow agreement that is compliant with Rule .2019 of this Section; and
- (6) all contracts between the funding portal and its service providers, banks, or depository institutions governing the administration of investor funds.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2032 REQUIRED FUNDING PORTAL ATTESTATIONS

A funding portal shall attest in the Form NCFP that it:

- (1) is registered with the Secretary of State and has North Carolina as its principal place of business;
- (2) is being used to offer and sell securities under G.S. 78A-17.1;
- (3) will not engage in the prohibited activities set out in G.S. 78A-17.1(a)(11);
- (4) is not subject to disqualification pursuant to G.S. 78A-17.1(e);
- (5) does not have any officers, directors, or any person occupying a similar status or performing a similar function that are subject to disqualification pursuant to G.S. 78A-17.1(e);
- (6) will not buy or sell personally identifiable information of any prospective investor or investor;
- (7) agrees to comply with Rules .2037, .2039, and .2061 of this Section;
- (8) agrees to comply with Rule .2038 of this Section regarding denying access to those it reasonably believes are subject to disqualification or potential for fraud or investor harm;
- (9) shall not handle or take custody of the funds of the issuer or investors;
- (10) shall safeguard prospective investor and investor personal identifying information and immediately notify the Administrator in writing of any compromise of confidentiality; and
- (11) consents to personal jurisdiction of the Administrator and consents to service of process by the Administrator.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2033 REVIEW OF THE FUNDING PORTAL REGISTRATION

(a) When determining whether a registration is effective, the Administrator may consider:

- (1) the contents of Form NCFP and any amendments;
- (2) the contents of any contracts provided with the Form NCFP;
- (3) the escrow agent that the funding portal intends to use;
- (4) the funding portal's:
 - (A) physical location;
 - (B) experience as a funding portal;
 - (C) financial solvency;
 - (D) disciplinary history; and
 - (E) technology to be utilized;
- (5) other parties to the contracts with the funding portal that facilitate its ability to act as a funding portal and their:
 - (A) physical locations;
 - (B) financial stability;
 - (C) disciplinary history; and

- (D) technology to be utilized;
 - (6) regulatory agencies, if any, that oversee the activities of the entities that are involved with the funding portal; and
 - (7) any other factors the Administrator deems relevant.
- (b) When reviewing an application for registration of the funding portal, the Administrator may consider information not included in the Form NCFP and may ask the funding portal for additional relevant information.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2034 ADMINISTRATOR DENIAL OR REVOCATION OF FUNDING PORTAL REGISTRATION

The Administrator may deny or revoke registration of a funding portal if the Administrator determines that:

- (1) the funding portal has not complied with the rules in this Section;
- (2) the funding portal has not instituted procedures to ensure the necessary due diligence occurs;
- (3) the funding portal has not instituted procedures to protect investors;
- (4) the funding portal has prematurely posted an offering before receiving notice of effective registration from the Administrator;
- (5) the factors in Rule .2033 of this Section individually or considered as a whole make the funding portal unnecessarily risky for the issuer or the investor; or
- (6) one of the grounds for action in G.S.78A-39 applies to the funding portal.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2035 ADMINISTRATOR NOTICE OF EFFECTIVE FUNDING PORTAL REGISTRATION

After the Administrator considers the Form NCFP and the factors in Rules .2033 and .2034, the Administrator shall either provide the funding portal with written notice of effectiveness or denial of the registration.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2036 FUNDING PORTAL NOTICE TO ADMINISTRATOR OF CHANGES

(a) Within 30 days of any changes to information on the Form NCFP, a funding portal shall file an amended Form NCFP with the Administrator. A funding portal shall comply with Rule .2030(d) if there is a change in its ownership.

(b) A funding portal shall provide notice to the Administrator within five business days of a change in the issuer(s) using the funding portal by one of the following:

- (1) providing the identity of additional issuers on its Form NCFP;
- (2) amending its Form NCFP to add or remove issuers; or
- (3) providing a separate written statement identifying each issuer using the funding portal.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2037 FUNDING PORTAL FINANCIAL INTEREST IN ISSUER

A funding portal shall not have a financial interest in an issuer that is offering or selling securities on its platform unless:

- (1) the funding portal receives the financial interest as compensation for the services provided to or for the benefit of the issuer;
- (2) the services are provided in connection with the issuer's offer or sale of securities in the intrastate offering;
- (3) the financial interest consists of securities of the same class and having the same terms, conditions, and rights as the securities being offered or sold in the intrastate offering through the funding portal's platform;
- (4) the issuer's disclosure document includes the funding portal's financial interest in the issuer; and
- (5) the financial interest shall not be included in either the calculations of the minimum offering amount or the target offering amount.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2038 FUNDING PORTAL DENIAL OF ACCESS

(a) A funding portal shall exercise due diligence in determining whether an issuer's securities offering presents the potential for fraud or other investor protection concerns.

(b) A funding portal shall deny access to its platform to an issuer or entity if it determines that there is a reasonable basis for believing that any of the following are subject to disqualification pursuant to G.S. 78A-17.1(e):

- (1) the issuer;
- (2) any of the issuer's officers, directors, or persons occupying a similar status or performing a similar function; or
- (3) holders of 10 percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2039 FUNDING PORTAL STANDARDS OF CONDUCT

(a) A funding portal and all persons associated with it shall:

- (1) observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business; and
- (2) give particular attention to any conflicts of interest that may arise or exist.

(b) A funding portal and all persons associated with it who do not comply with the rules in this Section may be considered by the Administrator to be engaging in acts in violation of this Rule.

(c) Violations of this Rule may be grounds for denial, censure, suspension, or revocation of a funding portal's registration or other action authorized by G.S. 78A-39.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2040 RESERVED FOR FUTURE CODIFICATION

18 NCAC 06A .2041 LIMITATIONS ON GENERAL SOLICITATION AND ADVERTISING

An issuer relying on the Exemption and persons acting on behalf of the issuer may not engage in general solicitation or advertising, except as permitted by Rules .2043 and .2044 of this Section.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2042 MEDIA COVERAGE OF A SECURITIES OFFERING USING THE EXEMPTION

Media coverage of a securities offering that has been prepared, authorized, approved, paid for, or provided other consideration for, by or on behalf of the issuer shall be deemed general solicitation or advertising.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2043 MANDATORY CONTENT REQUIREMENT IN PERMITTED ADVERTISING NOTICE

An advertising notice may advertise the issuer's securities offering only if the notice:

- (1) directs prospective investors to the platform (or website, if any) where the disclosure document is posted. NOTE: For example, an active hyperlink to the disclosure document would be a way of directing prospective investors to the platform (or website, if any);
- (2) includes a disclaimer that sales under the Exemption are restricted to North Carolina residents. NOTE: For example, the words "NC residents only" is a way of wording the disclaimer; and
- (3) includes no more information than that permitted by Rule .2044 of this Section.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2044 OTHER REQUIREMENTS FOR PERMITTED ADVERTISING NOTICES

In addition to the content required by Rule .2043 of this Section, an advertising notice may include one or more of the following statements:

- (1) a statement that the issuer is conducting the securities offering pursuant to the Exemption;
- (2) the name of the escrow agent to which all investor funds shall be directed;
- (3) the terms of the securities offering. For purposes of this Rule and Rules .2011 and .2045 of this Section, "terms of the offering" means:
 - (a) the amount of securities offered;
 - (b) the nature of the securities;
 - (c) the price of the securities; and
 - (d) the closing date of the offering period; and
- (4) factual information about the issuer that is limited to:
 - (a) the legal identity and business location of the issuer;
 - (b) the name of the issuer;
 - (c) the address, phone number, and website of the issuer;
 - (d) the email address of a representative of the issuer; and
 - (e) a brief description of the business of the issuer.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2045 ESTABLISHING A PLATFORM

- (a) A single public platform shall be established for every securities offering that shall:
- (1) provide a communication channel that facilitates the public sharing of information related to terms of the offering through a communication channel, leveraging the "wisdom of the crowd";
 - (2) identify the issuer of the securities under discussion on each communication channel;
 - (3) comply with Rules .2043 and .2044 of this Section when advertising the securities offering; and
 - (4) provide the prospective investor or the investor with the issuer's disclosure document(s).
- (b) A platform may include the issuer's quarterly reports.
- (c) The platform shall include a progress indicator for each issuer's securities offering at a location visible to the prospective investors and investors. NOTE: Examples of progress indicators are pie charts and words indicating milestones achieved or percentage of target amount reached.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2046 INDIVIDUALS NOT SUBJECT TO DEALER REGISTRATION

Officers, employees, associated independent contractors, and other persons of an issuer involved in the sale of the issuer's securities shall not be subject to registration as a dealer or salesman if they comply with the safe harbor requirements set out in 17 CFR 240.3a4-1, which is incorporated by reference, including subsequent amendments and editions. A copy of 17 CFR 240.3a4-1 is available on request at no cost by sending an email request to secdiv@sosnc.gov or online at <http://www.sosnc.gov/sec/statutes.aspx>.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2047 RETENTION OF PLATFORM COMMUNICATIONS

All communications through a communication channel on a platform shall be preserved for a period of six years after the filing of the Form NCE.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2048 ADMINISTRATION OF PLATFORM COMMUNICATION CHANNELS

(a) An issuer, funding portal or registered dealer administering a platform shall:

- (1) establish and enforce guidelines for communication using the communication channels; and
- (2) remove abusive or potentially fraudulent communications.

(b) A funding portal shall only participate in the communication channels on its platform consistent with Rule .2049 of this Section.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2049 ADDITIONAL COMMUNICATION CHANNEL REQUIREMENTS

An issuer and persons acting on behalf of the issuer may communicate with prospective investors and investors about the terms of the securities offering if:

- (1) effected through communication channels provided by the issuer, funding portal, or registered dealer on their platforms;
- (2) the issuer identifies itself as the issuer in all communications; and
- (3) persons acting on behalf of the issuer identify their names, titles, and affiliation with the issuer in all communications.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2050 RESERVED FOR FUTURE CODIFICATION

18 NCAC 06A .2051 PROVIDING DOCUMENTS TO PROSPECTIVE INVESTORS AND INVESTORS

The issuer shall provide a prospective investor or investor with the disclosure document that it filed with the Administrator at the time it makes an offer or sale of a security.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2052 MANNER OF PROVIDING DISCLOSURE AND OTHER DOCUMENTS TO A PROSPECTIVE INVESTOR OR AN INVESTOR

(a) An individual or entity providing a disclosure document, notice, or other information to a prospective investor or investor pursuant to G.S. 78A-17.1 or this Section may provide it in paper or electronic format, unless otherwise provided in this Subchapter.

(b) Any information or communication affecting a prospective investor's or investor's rights, except a rescission offer, may only be provided in electronic format if the prospective investor or investor is:

- (1) informed in advance that notices will be provided electronically; and
- (2) provided the opportunity and means to opt out of receipt of electronic notices.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2053 ISSUER SHALL REQUIRE INVESTOR ACTIONS

(a) Before selling a security to an investor, an issuer relying on the Exemption shall require the investor to provide the issuer with:

- (1) a signed, dated document identifying the investor and containing the certifications required by G.S. 78A-17.1(a)(8);
- (2) a written, signed, and dated certification of:
 - (A) the investor's North Carolina residency; and
 - (B) if applicable, accredited investor status.

If the investor is an entity, its residence shall be the principal place of business where the officers, partners, or managers of the entity primarily direct, control, and coordinate the business activities; and

- (3) evidence supporting the certification(s) made pursuant to Part (a)(2)(A) of this Rule.
- (b) The certifications required by this Rule may be combined in a single document.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2054 INVESTOR CANCELLATION OF INVESTMENT COMMITMENT

- (a) Before an issuer has raised the minimum offering amount an investor may:
 - (1) cancel the commitment to invest in the securities offering; and
 - (2) request that the investor's funds be returned to the investor.
- (b) Within three business days of receipt of notice from an investor, the issuer shall notify the escrow agent to ensure that the funds are returned to the investor.
- (c) The escrow agent shall release the funds from the escrow account to the investor no later than 10 days from the escrow agent's receipt of the notice.
- (d) The issuer, investor, and escrow agent shall follow the procedures set out in the disclosure document and escrow agreement when complying with this Rule.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2055 RELEASE OF FUNDS IN ESCROW ACCOUNT

- (a) An escrow agent shall only release funds in the escrow account:
 - (1) to the issuer if the minimum offering amount has been reached by the target date and the funds have been deposited in the escrow account; or
 - (2) to an investor if:
 - (A) the minimum offering amount has not been reached by the target date;
 - (B) the issuer notifies the escrow agent pursuant to Rule .2054 of this Section with respect to an investor's cancellation of the investment; or
 - (C) the issuer terminates the offering for any reason prior to the minimum offering amount being reached by the target date.
- (b) An escrow agent shall return investor funds in full and shall not reduce the funds returned by the amount of any fees, commissions, or expenses.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2056 ISSUER NOTICE TO INVESTORS MINIMUM OFFERING AMOUNT REACHED

The issuer shall provide a written notification to all investors of the date when the minimum offering amount has been reached. The notification shall be provided within 10 days of the date when the minimum offering amount has been reached.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2057 QUARTERLY REPORTS

- (a) The issuer shall provide quarterly reports to the investors and file the reports with the Administrator until no securities issued in the securities offering are outstanding.
- (b) The issuer's first quarterly report shall be due 45 days after the end of the fiscal quarter in which the minimum offering amount is reached.
- (c) In addition to the information required by G.S. 78A-17.1(c), a quarterly report shall include the status of the securities offering, indicating the progress of the securities offering toward the target offering amount.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2058 CONCLUSION OF THE OFFERING

The issuer shall file a report with the Administrator within 10 days of the conclusion of the securities offering. The report shall include:

- (1) the number of investors;
- (2) the aggregate amount of securities sold during the offering, expressed as:
 - (a) number of units of securities sold; and
 - (b) dollars raised by the sale of securities;
- (3) the date on which the funds were released to the issuer or returned to the investors; and
- (4) the date on which the securities offering was concluded.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2059 RESERVED FOR FUTURE CODIFICATION

18 NCAC 06A .2060 ISSUER RECORDKEEPING REQUIREMENTS

- (a) With regard to documents related to the Exemption, an issuer shall retain:
 - (1) copies of documents that it makes;
 - (2) copies of documents that it receives; and
 - (3) documents of any persons acting on its behalf. The issuer shall not be required, pursuant to this Rule, to obtain and retain documents from escrow agents, funding portals, and registered dealers other than those documents it receives in the ordinary course of business related to the securities offering pursuant to the Exemption.
- (b) An issuer shall make and preserve copies of all communications in any medium used, published, or distributed that are related to the securities offering. For purposes of this Rule, "communications" include social media posts and other electronic distributions relating to the securities offering.
- (c) The documents referred to in Paragraphs (a) and (b) of this Rule shall be retained by the issuer for a period of at least six years after the date of initial filing of the Form NCE with the Administrator.
- (d) An issuer shall produce documents to the Administrator upon request or demand. An issuer shall keep the documents in a location and manner that will permit access, inspection, and review in North Carolina by the Administrator.
- (e) Failure to keep or produce documents pursuant to Paragraph (d) of this Rule may form the basis for an order denying or revoking the Exemption pursuant to G.S. 78A-18.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2061 FUNDING PORTAL RECORDKEEPING REQUIREMENTS

- (a) The funding portal shall make and preserve the following:
 - (1) all documents related to an investor who purchases or attempts to purchase securities through the funding portal;
 - (2) all documents related to:
 - (A) issuers who offer and sell or attempt to offer and sell securities through the funding portal; and
 - (B) the controlling persons of such issuers related to the securities offering;
 - (3) documents of all communications that occur on or through its platform;
 - (4) all documents related to persons that use communication channels provided by a funding portal to promote an issuer's securities or communicate with prospective investors;
 - (5) all documents to demonstrate compliance with the requirements set out in the Rules in this Section;
 - (6) all notices provided by such funding portal to issuers and investors generally through the funding portal's platform or otherwise;
 - (7) all written agreements entered into relating to its business in connection with offerings listed on the funding portal or offerings by issuers rejected by the portal;
 - (8) all daily, monthly, and quarterly summaries of transactions effected through the funding portal;
 - (9) a log reflecting the progress toward meeting the target offering amount of each issuer who offers or sells securities through the funding portal; and
 - (10) a copy of all documents relating to the escrow account or any account maintained on behalf of an issuer.

(b) The funding portal shall keep the documents required by Paragraph (a) of this Rule for a period of six years from the date of creation of the document.

(c) The funding portal shall keep the documents in a location and manner that will permit access, inspection, and review in North Carolina by the Administrator. The documents shall be subject to inspection by representatives of the Administrator upon reasonable examination from time to time, as the Administrator deems necessary or appropriate in the public interest or for the protection of investors.

(d) Failure to make, keep, or produce documents upon request may subject the funding portal to administrative action pursuant to G.S. 78A-39.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2062 REQUIREMENT FOR RETENTION OF ORIGINAL OR EQUIVALENT

With the exception of a registered dealer, a person subject to G.S. 78A-17.1 and the rules in this Section shall:

- (1) ensure that filed electronic documents include all meta-data or other information related to the properties or history of the document; and
- (2) retain the information:
 - (a) in the original form in which the information was created; or
 - (b) in any other format that accurately captures and retains the original information.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2063 PROTECTION OF INVESTORS AGAINST FRAUD AND OTHER MISCONDUCT

An issuer relying on the Exemption shall not directly or indirectly engage in any activity that violates G.S. 78A-8 with regard to the issuer's offer or sale of securities.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2064 INTEGRATION

- (a) An issuer shall not use more than one exemption under G.S. 78A and this Section at the same time.
- (b) The Administrator shall coordinate the interpretation of other securities integration issues in a manner consistent with current principles in federal securities laws.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2065 REQUEST FOR WAIVER

(a) The Administrator may waive any rule in this Section other than Rule .2004(h) upon evaluation of a written request for a waiver and the factors set out in Rule .2066 of this Section.

(b) A written request for a waiver shall include:

- (1) the identity of the person or entity filing the request ("the requestor");
- (2) contact information for the requestor;
- (3) the specific rule(s) for which a waiver is requested;
- (4) the reason(s) a waiver is being requested;
- (5) the applicability of the factors set out in Rule .2066 of this Section;
- (6) any other information the requestor thinks would help the Administrator make a decision on the waiver request; and
- (7) any other information addressing the factors the Administrator may consider in evaluating the waiver request pursuant to Rule .1504 of this Subchapter and Rule .2066 of this Section.

(c) The Administrator may consider a request for waiver as a request for an interpretative opinion or no action letter, which would require a fee pursuant to G.S. 78A-50(e) and Rule .1504 of this Subchapter.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);

Eff. April 1, 2017.

18 NCAC 06A .2066 FACTORS ADMINISTRATOR MAY CONSIDER WITH REGARD TO WAIVER REQUESTS

The Administrator may consider the following factors when considering whether to grant a waiver request:

- (1) the benefits to the particular investors and to the general investing public of compliance with the rule for which waiver is requested;
- (2) the nature and severity of the actual or potential harm to the public, prospective investors, investors, the funding platform (if the requestor is the issuer), or other members of the regulated community;
- (3) the necessity for a waiver as explained in the waiver request;
- (4) the harm if the waiver is not granted;
- (5) the business history, qualifications, and disciplinary history of the person or persons effecting the securities transactions;
- (6) history of prior sanctions imposed on the requester by the Department, the SEC, or FINRA;
- (7) the requester's record for timeliness, completeness, and accuracy of filings with the Department;
- (8) previous requests from the requester for waivers by the Administrator;
- (9) evidence in mitigation and aggravation, including the requestor's expertise in securities law and practice;
- (10) the need for full and adequate disclosure of information relevant to investment decisions;
- (11) impact of the granting of the waiver on consistency of enforcement by the Administrator; and
- (12) any other factors that are relevant to the protection of the investing public.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2067 ADMINISTRATOR NOTICE OF APPROVAL OR DENIAL OF A WAIVER

The Administrator shall notify the requestor in writing of:

- (1) its decision to consider the request for a waiver; or
- (2) of its approval or denial of the request for waiver.

The Administrator shall send the notice to the address stated in the waiver request.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2068 SIGNATURES

Unless otherwise specified in G.S. 78A-17.1 or this Section, a form or document filed with the Administrator shall be signed by an officer of the entity authorized to sign for the entity. The officer's title or indication of the officer's authority to sign the document shall be entered in the designated space for that information.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2069 ELECTRONIC SIGNATURE

(a) Signers of documents electronically submitted to the Administrator in connection with a filing may use any form of electronic signature permissible according to G.S. 66-312(9) except that it shall not be a sound.

(b) By electronically submitting a document or form to the Administrator in connection with a filing, the person who signs the document or form submitted affirms the authenticity of the signature on that document or form.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2070 SIGNATURE VERIFIES INFORMATION IS TRUE

A signature on a document submitted to the Administrator in connection with a filing shall be the signer's verification that the signer:

- (1) has read the form or document; and
- (2) knows that all information entered on the form or document is true.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2071 FILING WITH THE ADMINISTRATOR

(a) A document may be filed with the Administrator:

- (1) electronically;
- (2) by hand delivery or by courier to the Secretary of State; or
- (3) by mail delivered to the Secretary of State.

(b) A document that is filed electronically and received after 5 p.m. Eastern Standard Time shall be deemed received on the next business day.

(c) A form for which a fee is required shall be filed together with the fee.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2072 RESERVED FOR FUTURE CODIFICATION

18 NCAC 06A .2073 FILING ELECTRONICALLY

(a) A form or document may be submitted electronically in connection with a filing by:

- (1) completing a fillable form on the Department's website at <http://sosnc.gov/Sec/>, when such a form becomes available on the website, and making any required payment of fees accepted through the website;
- (2) uploading a completed form or document to the Department's website at <http://sosnc.gov/Sec/>, and making any required payment of fees accepted through the website; or
- (3) sending an email with a copy of the form or document to secdiv@sosnc.gov unless payment of a fee is required.

(b) An electronically submitted form or document shall not be deemed received by the Administrator unless the filer receives an electronic confirmation of receipt of the submission from the Administrator.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2074 AMENDING A DOCUMENT FILED WITH THE ADMINISTRATOR

A filing or other document may be amended by submitting to the Administrator:

- (1) a copy of the amended document with the amendments marked to show changes; and
- (2) a copy of an amended document without the changes marked.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2075 ABANDONMENT OR WITHDRAWAL OF FILING

(a) An issuer, escrow agent, funding portal, or registered dealer shall be deemed to have abandoned the filing if it fails to respond to a request for additional information from the Administrator more than 30 days after the date specified by the Administrator.

(b) An issuer, escrow agent, funding portal, or registered dealer may withdraw a filing by submitting to the Administrator a signed, dated, written request to withdraw the filing.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.

18 NCAC 06A .2076 CALCULATION OF TIME

Unless a different time period is stated in this Section, time periods shall be calculated according to the provisions of G.S. 1A-1, Rule 6.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);

Eff. April 1, 2017.

SECTION .2100 – RULES FOR LOCAL PUBLIC OFFERINGS (LPO)

18 NCAC 06A .2101 PURPOSE

The purpose of the rules in this Section is to promote the overall economic health of North Carolina by:

- (1) facilitating responsible and competitive intrastate capital formation by North Carolina companies through increased availability of financial resources to businesses that might not otherwise have access to capital;
- (2) facilitating opportunities for North Carolinians to invest in local businesses;
- (3) facilitating the use of general solicitation and advertising in small local public issuer offerings that are conducted in a controlled and documented manner;
- (4) facilitating small intrastate capital securities offerings that may use the Internet; and
- (5) protecting the investing public.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017 to expire on April 1, 2021.

18 NCAC 06A .2102 SCOPE

- (a) The rules in this Section shall apply to the offer and sale of securities by issuers conducting Local Public Offerings (LPOs).
- (b) The rules in Section .2000 of this Subchapter shall apply to securities offerings conducted pursuant to this Section unless inconsistent.
- (c) The rules in this Section shall not be construed to relieve any person from the provisions of G.S. 78A-8.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017 to expire on April 1, 2021.

18 NCAC 06A .2103 DEFINITIONS

Except as otherwise provided, the following definitions apply to G.S. 78A-17.1 and this Section:

- (1) "Local Public Offering" or "LPO" means a securities offering that:
 - (a) is conducted by an issuer relying on the Exemption;
 - (b) is not using either a North Carolina Intrastate Funding Portal or registered dealer;
 - (c) is in compliance with the rules in Section .2000 of this Subchapter and this Section;
 - (d) sets a target offering amount of no more than two hundred fifty thousand dollars (\$250,000);
 - (e) shall not exceed 12 consecutive months; and
 - (f) is sold only to North Carolina residents.
- (2) "LPO security" means an equity, debt, or a revenue sharing security.
- (3) "Offer" means any attempt to sell an LPO security in advance of, or in connection with, an LPO. An offer may be oral or written. An offer includes attempts to condition the public mind or arouse public interest generally in the issuer's LPO securities by publication of any information and statements, and publicity efforts, including any advertising materials. NOTE: Examples of ways in which an offer may be made are conversations, advertising, social media posts, presentations, emails, brochures, circulars, or similar communications.
"Offer" is further defined in G.S.78A-2(8)b. and is a term of art in securities law. It is recommended that questions about the meaning of "offer" be directed to attorneys with expertise in securities laws.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017 to expire on April 1, 2021.

18 NCAC 06A .2104 LPO LIMITATIONS

- (a) An issuer conducting an LPO shall set a target offering amount that is not greater than two hundred fifty thousand dollars (\$250,000).
- (b) An issuer conducting an LPO shall set a minimum offering amount that shall be no less than 25 percent of the target offering amount set by the issuer.

(c) An issuer may conduct more than one LPO provided that the aggregate amount raised shall not exceed two hundred fifty thousand dollars (\$250,000) in the 12 months from the date of the Administrator's notice of compliance pursuant to Rule .2015 of this Subchapter.

(d) An issuer shall not be eligible to file a securities offering pursuant to Section .2000 of this Subchapter until six-months after the conclusion of its prior LPO.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017 to expire on April 1, 2021.

18 NCAC 06A .2105 MANDATORY CONFERENCE

(a) An issuer offering or selling LPO securities shall contact the Securities Division to arrange and attend a conference with staff of the Division before advertising, offering, or selling securities. The contact may be made by either calling the Division or emailing the Division at secdiv@sosnc.gov.

(b) The issuer and the staff shall discuss the criteria for claiming the Exemption and how the issuer plans to ensure that it is eligible, and remains eligible, to claim the Exemption.

(c) The notice of compliance shall not be issued by the Administrator pursuant to Rule .2015(1) of this Subchapter until the conference required in Paragraph (a) of this Rule has occurred.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017 to expire on April 1, 2021.

18 NCAC 06A .2106 FILING REQUIREMENTS FOR LPO

(a) An issuer of an LPO shall comply with Rule .2007 of this Subchapter.

(b) In lieu of the Form NCE required by Rule .2007 of this Subchapter, the issuer shall file a Form NC Claim of Exemption – LPO (Form NCE-LPO).

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017 to expire on April 1, 2021.

18 NCAC 06A .2107 CONTENTS OF FORM NCE-LPO

(a) A Form NCE-LPO shall include:

- (1) all information required pursuant to Rule .2008 of this Subchapter;
- (2) all websites to be used by the issuer in connection with the LPO;
- (3) all social media accounts to be used by the issuer in connection with the LPO; and
- (4) an attestation that the issuer is not one of the prohibited entities in Rule .2004(h) of this Subchapter or Rule .2117 of this Section.

(b) If any information on the Form NCE-LPO becomes inaccurate or misleading, an issuer shall amend its Form NCE-LPO by filing with the Administrator within 10 business days an amended Form NCE-LPO.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017 to expire on April 1, 2021.

18 NCAC 06A .2108 ADDITIONAL LEGEND REQUIREMENT FOR DISCLOSURE DOCUMENT

On the cover of its disclosure document, an issuer of an LPO shall include the following paragraph in the legend required by Rule .2011(b) of this Subchapter: "If you invest in this offering, you are investing in a type of high-risk, speculative business venture. You may lose all of your investment, so you need to consider whether you can afford the loss of your entire investment."

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017 to expire on April 1, 2021.

18 NCAC 06A .2109 ESCROW PROVISIONS

The issuer shall comply with the escrow provisions of Rules .2017 through .2028 of this Subchapter.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);

Eff. April 1, 2017 to expire on April 1, 2021.

18 NCAC 06A .2110 OPTIONAL USE OF INTERNET BY AN ISSUER OF AN LPO

(a) An issuer conducting an LPO may use the Internet to offer and sell its LPO securities but is not required to create a platform. "Platform" means a program or application accessible via the Internet or other similar electronic communication medium where information is provided and where prospective investors, investors, and issuers publicly communicate with each other online.

(b) An issuer that chooses to use the Internet to offer an LPO shall make and maintain records of the communications that are related to the LPO in accordance with Rule .2116 of this Section.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);
Eff. April 1, 2017 to expire on April 1, 2021.*

18 NCAC 06A .2111 GENERAL SOLICITATION AND ADVERTISING FILING REQUIREMENTS

(a) An issuer may use general solicitation or advertising in connection with an LPO if the issuer complies with Rules .2112 through .2114 of this Section. An issuer of an LPO shall be responsible for the accuracy and reliability of its general solicitations and advertising.

(b) An issuer shall file its general solicitation or advertising materials with the Administrator in compliance with Rule .2113 of this Section.

(c) At the time of creation and dissemination, an issuer shall preserve all communications, social media posts, and other electronic distributions relating to the LPO.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);
Eff. April 1, 2017 to expire on April 1, 2021.*

18 NCAC 06A .2112 GENERAL SOLICITATION AND ADVERTISING FOR WHICH FILING IS REQUIRED

(a) No later than 10 business days before use, publication, or distribution, the issuer shall file with the Administrator copies of any advertisement, pamphlet, circular, form letter, pitch book, sales literature, sales script, or other advertising communication addressed or intended for distribution to prospective investors relating to the LPO.

(b) No later than 10 business days before any public meeting or gathering promoted through general solicitation or advertising, for the purpose of discussing or presenting information regarding an LPO, the issuer shall provide notice to the Administrator. The notice shall be provided by either calling the Division or emailing the Division at secdiv@sosnc.gov.

(c) Media coverage of an LPO that has been prepared, authorized, approved, paid for, or provided other consideration for, by or on behalf of the issuer shall be deemed general solicitation or advertising and shall be filed in advance with the Administrator pursuant to Rule .2111 of this Section.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);
Eff. April 1, 2017 to expire on April 1, 2021.*

18 NCAC 06A .2113 GENERAL SOLICITATION AND ADVERTISING FOR WHICH FILING IS NOT REQUIRED

General solicitation or advertising that complies with Rules .2043 and .2044 of this Subchapter that is conducted with or without a website may be used with regard to an LPO without filing it with the Administrator.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);
Eff. April 1, 2017 to expire on April 1, 2021.*

18 NCAC 06A .2114 UNACCEPTABLE GENERAL SOLICITATION AND ADVERTISING

An issuer conducting an LPO shall not use, publish, or distribute any general solicitation or advertising that would violate Rules .1308(d) of this Subchapter or 18 NCAC 06B .0201.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);
Eff. April 1, 2017 to expire on April 1, 2021.*

18 NCAC 06A .2115 ADMINISTRATOR ADVISORY REVIEW OF GENERAL SOLICITATION AND ADVERTISING MATERIALS

- (a) The Administrator may object to general solicitation or advertising materials relating to an LPO. The Administrator may consider the factors in 18 NCAC 06A .1308(d) when considering the materials.
- (b) The Administrator may either take no action with regard to the general solicitation or advertising materials or may notify the issuer within 10 business days that it has objections to the materials.
- (c) If the issuer receives notice of objections from the Administrator, the issuer shall not use the general solicitation or advertising materials unless it resolves the Administrator's objections.
- (d) An issuer may use general solicitation or advertising materials if it has not received an objection from the Administrator within 10 business days.
- (e) The issuer shall not directly or indirectly claim that the Administrator has approved the materials.
- (f) The Administrator's objections to, or lack of action with regard to, general solicitation and advertising materials shall not relieve the issuer of an LPO of its responsibility for the accuracy and reliability of its general solicitations and advertising.
- (g) Advertising conducted in violation of G.S. 78A-8, Rule .1308(d) of this Subchapter or 18 NCAC 06B .0201 is prohibited.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017 to expire on April 1, 2021.

18 NCAC 06A .2116 RECORDKEEPING REQUIREMENTS

- (a) An issuer of an LPO shall comply with the recordkeeping requirements in Rules .2060 and .2062 of this Subchapter.
- (b) An issuer of an LPO shall make and maintain copies of all general solicitation materials and advertising for six years after the initial filing of the Form NCE-LPO, regardless of the medium in which the materials were used, published, or distributed.
- (c) At the time of creation and dissemination, an issuer shall preserve all communications, social media posts, and other electronic distributions relating to the LPO.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017 to expire on April 1, 2021.

18 NCAC 06A .2117 PROHIBITED LPO ISSUER BUSINESSES

In addition to the types of companies prohibited by Rule .2004(h) of this Subchapter, an LPO shall not be conducted by an issuer that:

- (1) is issuing fractional undivided interests in oil or gas rights, or a similar interest in other mineral rights;
- (2) is a company engaging primarily in petroleum, gas, or hydraulic fracturing exploration, production, mining, or other extractive industries;
- (3) is an equipment leasing program;
- (4) is engaged in peer-to-peer lending, social lending, online marketplace lending, or in the marketplace lending industry;
- (5) engages as a substantial part of its business in the purchase, sale, or development, or purchasing, selling, or holding for investment of commercial paper, notes, other indebtedness, financial instruments, securities, or real property, or otherwise make investments; or
- (6) is a real estate investment trust ("REIT").

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017 to expire on April 1, 2021.

18 NCAC 06A .2118 ADMINISTRATOR MAY CONSIDER CERTAIN OTHER BUSINESS STRUCTURES

- (a) Issuers with complex business structures not listed in Rule .2113 of this Subchapter that plan to conduct an LPO shall request review by the Administrator. NOTE: For example, an issuer seeking to conduct an LPO for a real estate program may have a complex business and request review by the Administrator.
- (b) An issuer seeking review by the Administrator pursuant to Paragraph (a) of this Rule shall:
 - (1) submit a request for review in writing at least 30 business days before the filing of the Form NCE-LPO for the LPO; and
 - (2) submit information and documents that show that the issuer can provide adequate disclosure to investors concerning the issuer, the securities offered, and the offering itself.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);
Eff. April 1, 2017 to expire on April 1, 2021.

18 NCAC 06A .2119 REVIEW OF THE ISSUER BUSINESS STRUCTURE

- (a) The Administrator may consider the following to determine whether the LPO's proposed business is suitable for an LPO:
- (1) the complexity of the business, the LPO, or the issuer;
 - (2) whether the simplified disclosures required by G.S. 78A-17.1, Section .2000 of this Subchapter and the rules in this Section can adequately be made in light of the complexity of the business; and
 - (3) suitability of the investment for investors.
- (b) The Administrator shall notify the issuer in writing regarding the decision as to whether an LPO will be allowed.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);
Eff. April 1, 2017 to expire on April 1, 2021.

18 NCAC 06A .2120 SUNSET PROVISION

- (a) The Administrator shall not accept any new Form NCE-LPO or other filing related to a new LPO after April 1, 2025.
- (b) The rules in this Section shall expire on April 1, 2026.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d);
Eff. April 1, 2017;
Temporary Amendment Eff. July 1, 2020;
Amended Eff. February 1, 2021.