

**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 which is a partnership, the date and place of incorporation and the names of the directors and executive officers of such corporation(s);
      - (III) the anticipated aggregate dollar amount of the offering;
      - (IV) the anticipated required minimum investment, if any, by each purchaser of the securities to be offered;
      - (V) a brief description of the issuer's business and the anticipated use of the proceeds of the offering; and
      - (VI) a list of the states in which the securities are proposed to be sold;

- (iv) containing an undertaking to furnish to the administrator, upon written request, evidence of compliance with Subparagraphs (1), (2), and (3) of this Paragraph (b);
  - (v) in the case of a direct participation program security, containing an undertaking to furnish to the administrator, upon written request, a copy of any written document or materials used or proposed to be used in connection with the offer and sale of the securities; and
  - (vi) in the case of a viatical settlement contract, the filing shall include a copy of all written documents or materials, including advertising, used or proposed to be used in connection with the offer and sale of the securities.
- (B) 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 other similar officer; and accompanied by a properly executed Corporate Resolution (Form U-2A), if applicable;
- (C) A non-refundable filing fee as established by G.S. 78A-17(9), payable to the North Carolina Secretary of State.
- (5) In the case of offers of viatical settlement contracts, the persons offering the security shall deliver to the offeree written materials complying with G.S. 78A-13. Additionally, any materials used in the offering of the security shall comply with G.S. 78A-14 and shall provide each offeree written notice of his or her rights under G.S. 78A-56 and under Rule .1501 of this Chapter.
- (6) Except in the case of the offer or sale of a viatical settlement contract, compliance with the provisions of Subparagraph (4) of this Paragraph (b) shall not be required if the security is offered to:
- (A) not more than five individuals who reside in this State, excluding individuals described in Subparagraph (6)(B) of this Paragraph (b); and
  - (B) individuals who will be actively engaged, on a regular basis, in the management of the issuer's business.
- (c) Neither the issuer nor any person acting on the issuer's behalf shall offer, offer to sell, offer for sale or sell the securities claimed to be exempt under G.S. 78A-17(9) by any means or any form of general solicitation or general advertising.

*History Note: Authority G.S. 78A-13; 78A-17(9); 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. October 1, 1988;  
 Temporary Amendment Eff. October 1, 1997;  
 Amended Eff. August 1, 1998;  
 Temporary Amendment Eff. November 1, 2002; April 1, 2002;  
 Amended Eff. May 1, 2005; August 1, 2004; April 1, 2003;  
 Pursuant to G.S. 150B21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.*