

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.