

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.*