

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, 2020.
- (b) The rules in this Section shall expire on April 1, 2021.

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.