

# North Carolina Investment Adviser *Zooming Into Compliance*

*Nov 2024 Edition*

## Workshop

*PRESENTED BY:*

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**NORTH CAROLINA DEPARTMENT OF THE SECRETARY OF STATE –**

**SECURITIES DIVISION**

**[WWW.SOSNC.GOV](http://WWW.SOSNC.GOV)**



# ***NC Dept of the Secretary of State***

**The Hon. Elaine F. Marshall, *Secretary of State and Securities Administrator***

**Sherrell Forbes, *Securities Division Director and Deputy Securities Administrator***



[www.sosnc.gov](http://www.sosnc.gov)

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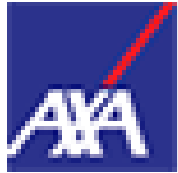
\*CFE = Certified Fraud Examiner

# Getting Our Emails

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- *Constant Contact*
- [https://knowledgebase.constantcontact.com/email-digital-marketing/articles/KnowledgeBase/5873-adding-email-addresses-to-a-safe-sender-list?lang=en\\_US](https://knowledgebase.constantcontact.com/email-digital-marketing/articles/KnowledgeBase/5873-adding-email-addresses-to-a-safe-sender-list?lang=en_US)



# Your Presenter



**AXA ADVISORS**



**THE UNIVERSITY**  
*of* **NORTH CAROLINA**  
*at* **CHAPEL HILL**

# ***Disclaimer***

- This webinar is presented as an educational experience. ***This is not legal advice!***
- North Carolina registered investment advisers are subject to all relevant laws, regulations, rules and orders whether or not they are included in this presentation.
- The views expressed are those of the presenter.
- Presenter believes all information is truthful and accurate; however, mistakes can occur.

# ***Workshop Goals***

- Help you to establish best practices
- Topics from our Exam Program
- Updates on the regulatory landscape
- Q&A via chat (John)
- [www.sosnc.gov](http://www.sosnc.gov) *IA Resources*

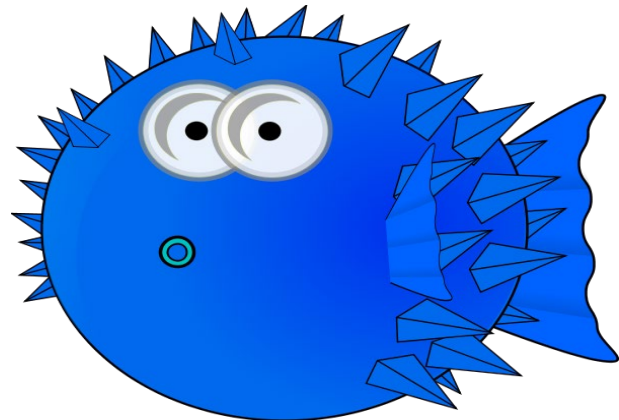
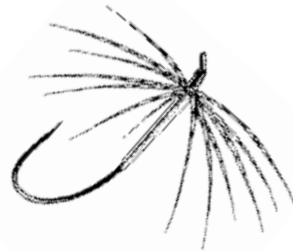


# Resources

- Most slides contain citations or references
- Rules and statutes may be paraphrased, abbreviated or incomplete
  - NCAC = NC Administrative Code
  - NCGS = NC General Statutes §

[https://www.sosnc.gov/home/administrative\\_rules](https://www.sosnc.gov/home/administrative_rules)

<https://www.ncleg.net/gascripts/Statutes/StatutesTOC.pl?Chapter=0078C>





# ***Workshop Topics***

Organized around ***fiduciary duty and the client relationship:***

- Duty of care/due diligence
- Duty of loyalty/disclosures
- Contracts, Discretion, Custody
- Fees & Advertising
- Practice management/Trends
- Professional conduct



# ***NC Dept of the Secretary of State***

- **Securities Division**
- **Business Registration Division**
- Notary
- Lobbying
- Charities
- Trademarks
- Land Records
- Authentications



[www.sosnc.gov](http://www.sosnc.gov)

# ***General Overview of the Division***

The Securities Division registers and regulates the following:

- IAs with regulatory assets under management of \$100 million or less  
*approximately 400 in North Carolina*
- Investment adviser representatives
- Broker-dealers and securities salesmen



*[NC Investment Advisers Act, NC Securities Act, NC Commodities Act, NC PACES Act]*

# ***General Overview of the Division (con't)***

## Other areas

- Securities-related investigations
- Securities product registration
- Investor education

➤ ***Goal of the Division is to protect consumers and support legitimate businesses of North Carolina.***



[NC Investment Advisers Act, NC Securities Act, NC Commodities Act, NC PACES Act]

# ***Division Examination Program***

**All Workshop content derived from *actual* books and records examinations!**

NCGS\* § 78C-18(e) states IA records *“are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the Administrator.”*



[\*North Carolina General Statutes]

# *Meet IA Ray*

**Durham Unlimited Management, Inc.**

*DUM is RIA and Ray is the Investment Adviser Rep*





# ***SOS Vocabulary***

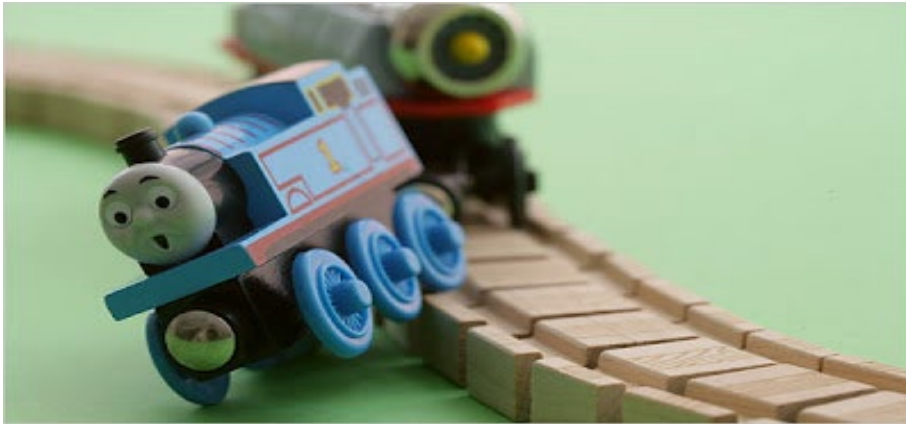
- Registrant
- IA
- Deficiencies
- Form filings
- RAUM/regulatory assets under management
- Examinations/exams/audits

**VOCABULARY**  
**Words Are Important!**

*[NCGS § 78C-2 Definitions]*

# “Compliance”

- *A set of effective controls for operations*
  - Latin “com”: *with/together/in association*
- **Resources** for your compliance include SOS, NASAA, SEC and IARD





# ***North American Securities Administrators Association***



- Organized in 1919
- NASAA is a voluntary association whose membership consists of 67 state, provincial, and territorial securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico
- Oldest international organization devoted to investor protection



# ***NASAA as a Resource***

- Consumer publications
- Resources for continuing education
- Forms and instructions

[www.nasaa.org](http://www.nasaa.org)



# *SEC as a Resource*

- Division of Investment Management
- Investor Alerts
- Division of Examinations (*Risk Alerts*)
- Forms and instructions

[www.sec.gov](http://www.sec.gov)



# *IARD*

- “Investment Adviser Registration Depository”
- Used to facilitate registration, regulatory review, and public disclosure information of investment adviser firms
- Developed and operated by FINRA
- Sponsored by the SEC and NASAA
- Help Desk: **(240) 386-4848**



# ***FINRA does not regulate IAs!***

## **NC Investment Advisers Act**

- *Less than \$100 million in RAUM*



## **Investment Advisers Act of 1940**

- **\$100 million or more in RAUM**



# *Sources for Statistics*

## **NC Investment Advisers Act**

- IARD filings for NC

*as of 10/23/24*



## **All state-registered RIAs**

- NASAA 2024 IA Section Rpt

*as of 12/31/23*

## **Investment Advisers Act of 1940**

- SEC IM Data 5/15/24

<https://www.sec.gov/data-research/investment-management-data>



# *State vs. SEC Statistics*

## **NC Investment Advisers Act**

- About 400
- \$9 billion *as of 10/23/24*



## **All state-registered RIAs**

- 16,897 *trending down from 2022*
- \$361 billion *as of 12/31/23*

## **Investment Advisers Act of 1940**

- 15k *trending up from 2022*
- \$128 trillion in 2023



# “Typical” NC vs. NASAA (1 of 2)

## NC Investment Advisers Act

- 0-2 employees = 90%
  - \$26 million average\*
  - Asset management 89%
- (\*mean \$17 million)*



## NASAA Jurisdictions

- 0-2 employees = 82%
- \$13 million average
- Asset management 84%





# ***“Typical” NC vs. NASAA*** (2 of 2)

## **NC Investment Advisers Act**

- B/D rep = 7%
- Insurance agent = 35%



- Prep taxes = 16.5%

*trending up*

## **NASAA Jurisdictions**

- B/D rep = 23%
- Insurance agent = 41%



# ***NC RIA Population Overview***

- 73% offer financial planning
- <20% may be financial planners *only*
  
- 43% registered since 2020
- 30% registered 2022-2024 YTD

*[ADV filings as of 10/23/24 and 10/31/24]*



# ***Top 3 Exam Deficiencies***

1. Registration/Filings
2. Contracts
3. Books and records

*The top three account for more than **67%** of all deficiencies cited in 2024*

*[Securities Division Internal Exam Team Reports, Oct 2024]*

# ***“Compliance Consultant”***



# *Form Filings Review*

➤ Form ADV Part 1



➤ Form ADV Part 2A: Firm Brochure

➤ Form ADV Part 2B: Brochure Supplement

***Update annually***



*[18 NCAC 06A.1702, .1703, .1707 and .1715]*

# *Form Filings Review (con't)*

## ➤ Form U-4

- Disclosures for OBA
- Judgments/Liens/Bankruptcies
- Criminal charges
- Disciplinary actions
- **Update regularly**



## ➤ Form U-5

*[18 NCAC 06A.1702, .1703, .1707 and .1715]*



# ***Form Filings Review*** *(con't)*

- Form ADV Part 2A: Appendix 1 Wrap Fee Brochure
  - If the IA sponsors a wrap fee program
  - **3%** of NC advisers, trending down

*[18 NCAC 06A.1702, .1703, .1707 and .1715]  
[ADV filings as of 10/23/24]*



# ***Misleading Filings***

*“It is unlawful to make, in any document filed with the Administrator, any statement which is at the time false or misleading in any material respect.”*

- **Your responsibility to instruct, monitor and proofread!**



*[NCGS § 78C-9]*



# *The Advisory Relationship*

- A ***fiduciary duty*** to act in the best interest of the client, placing the client's interest ahead of your own.
- This is a ***fundamental*** and ***legal*** obligation based on trust and confidence.
- **Principles-based** approach
- **Broad-brush** approach



[18 NCAC 06A.1801 (a)]

# *Two Basic FIDUCIARY Duties*

## Duty of Care

- *Provide advice in the best interest of the client*
- *Seek best execution of a client's transactions*
- *Provide advice & monitoring over the course of the relationship*

*[18 NCAC 06A.1801 and SEC release IA-5248]*

# *Two Basic FIDUCIARY Duties*

## Duty of Loyalty

- *Eliminate conflicts of interest or*
- *Make full and fair disclosure of conflicts of interest*
- *Client must provide informed consent to the conflict*

*[18 NCAC 06A.1801 and SEC release IA-5248]*

# ***Your Advisory Business***

***If it's not written down***



***It didn't happen***



# *Duty of Care*

**Have a reasonable basis for investment advice and fees charged**

- Financial situation; level of sophistication; investment experience; financial goals:

*Investment Policy Statement*

[18 NCAC 06A.1801 (a)(1), (8), (10), (22)]



# *Investment Policy Statement*

Investment objective

Liquidity/Income needs

Time horizon

Risk tolerance

Asset allocation

Constraints/preferences

Inflation rate

Diversification

Investment strategy

Portfolio or plan review

Performance measurement

Interest rate

***\*Consider adding client signature and date***

*Wm Ye 5*      7/17/24



# ***Suitability of Investments***

- 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...

*[18 NCAC 06A.1801 (a)(1)]*



# ***Suitability of Investments*** *(continued)*

- ...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...

[18 NCAC 06A.1801 (a)(1)]





# ***Suitability of Investments*** *(continued)*

- ...after reasonable examination of such of the client's financial records as may be provided to the investment adviser.

*[18 NCAC 06A.1801 (a)(1)]*



# *Duty of Care: Updates*

## Updating the investment profile

- Events have occurred rendering inaccurate or incomplete the *Investment Profile* upon which the adviser bases its advice
- Events can be personal (retirement, divorce)
- Events can be current

[18 NCAC 06A.1801 (a)(1), (8), (10), (22)]



# *Duty of Care: Providing advice*

- *Bailey v. State of NC*
- Five years of service as of 8/12/89, then NC retirement **exempt** from state income taxes
- Also affects Federal retirees

[www.ncdor.gov](http://www.ncdor.gov)



[348 N.C. 130]

[*Davis v. Michigan Dept of Treasury*, 489 U.S. 803]

# ***Duty of Care: Best Execution***

## ***➤ Class A shares with 12b-1 fees?***

Are there less expensive institutional shares of the same mutual fund available?

## ***➤ Commission-free trades for RIA clients***

\$35 vs. \$12.95 vs. \$5.95 vs. free

<https://www.finra.org/rules-guidance/guidance/targeted-examination-letters/zero-commissions> February 2020

# ***Duty of Care: Recommendations***

**Have a reasonable belief the advice is in the best interest of the client**

- Options/futures/derivatives
- Leveraged or inverse ETFs
- Due diligence on the investment

*[18 NCAC 06A.1801 (a)(1), (8), (10), (22)]*



# ***Duty of Care: Due Diligence***

- Record your **specific actions** when “reviewing” financial plans or outside assets
- Always **document** your actions and any research: use notebook, Word, CRM. *Ex:* make notes during phone conference w/managers
- Include printouts/PDFs
- Align “Risk Tolerance” and IPS



*[18 NCAC 06A.1801 (a)(1) and (10) and SEC Risk Alert, Vol IV, Issue 1, 1/28/14]*

# ***Duty of Loyalty***

- Act in best interest of the client
- Avoid using client's assets to benefit adviser
- Avoid conflicts of interest when possible
- Disclose conflicts that occur
- **Recognize that some conflicts cannot be mitigated by disclosure**



*[18 NCAC 06A.1801 (a)(11), (22), (23)]*

# ***Duty of Loyalty: Disclosures***

- Full and fair disclosure of all material facts
  - *Material = facts a reasonable investor must know in order to make an informed decision*
- Clear and detailed enough for the client to give informed consent
- Legal and disciplinary actions
- Judgments/liens



*[18 NCAC 06A.1801 (a)(11), (22), (23) and .1707]*



# ***Duty of Loyalty: Conflicts of Interest***

## **Significant conflicts of interest**

- **Affiliates** *(12% have affiliated insurance agencies)*
- **Other business activities**
- **Compensation and incentives**
- **Valuation of illiquid positions**
- **Pooled Investment Vehicle** *(3%)*

*[NCGS § 78C-8(a) and 18 NCAC 06A.1801 (a)(11), (22), (23)]*



# ***Duty of Loyalty: Conflicts of Interest***

- Using the IA firm to steer clients to insurance products
- Compensation > 2%
- Excessive fee for what the client receives as a financial plan

<https://www.sec.gov/litigation/complaints/2019/comp-pr2019-274.pdf>

*[18 NCAC 06A.1801 (a)(11), (22), (23)]*



# ***Duty of Loyalty: Full & Fair Disclosure***

## **Avoid self-serving explanations of disclosure history**

- “May” have a conflict when in fact the conflict is real
- Partial truths, exaggerations, misleading impressions
- Not adhere to governing documents
- Not following client instructions
- Not making disclosures at all

*[18 NCAC 06A.1801 (a)(11), (22), (23)]*



# ***Make Complete Disclosures***

- *“Clients are under no obligation to purchase insurance products from the adviser.”*
- *Insurance services offered through XYZ Agency. Investment advisory services offered through XYZ Asset Management, LLC.*
- *Durham Unlimited Management, LLC, doing business as Asset Selection Services.*

# ***Anti-Fraud Provisions***

Unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities

- (1) to employ any device, scheme or artifice to defraud the other person; or
- (2) to engage in any act, practice or course of business which operates as a fraud or deceit upon the other person.

*[North Carolina General Statute § 78C-8(a)]*



# **NC Rules**

## 18 NCAC 06A.1801 (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.*

## 18 NCAC 06A.1801 (a):

*The conduct set forth in this Rule 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 as a fraud or deceit.*

# ***NC Rules & ADV Instructions***

## Instructions for Form ADV Part 2:

*“Registrant is under a continuing obligation to disclose conflicts of interest even if the information is not specifically required by ADV Part 2.”*

18 NCAC 06A.1707 (g): *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 prospects not specifically required by this Rule.*

# ***Duty to Explain Non-Disclosure!***

## 18 NCAC 06A.1706 (a)(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 representative and presumed to be material, if the event involved the investment adviser or any of its representatives or supervised persons and is not disclosed to clients and prospects on Form ADV Part 2.*

*The memorandum must explain why the adviser determined that the presumption of materiality is overcome and must discuss the factors described in those items.*



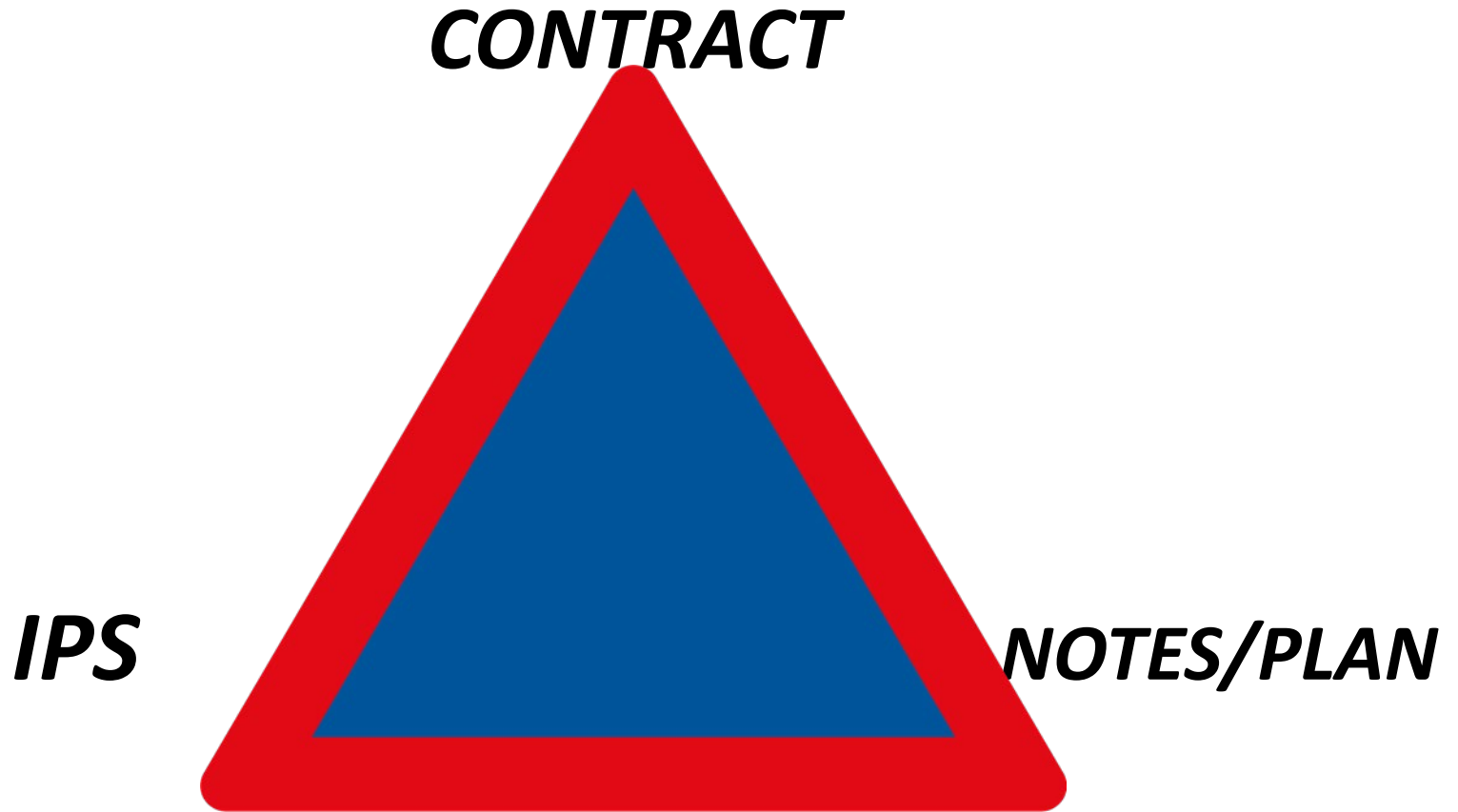
# FIDUCIARY STATE OF MIND

## *Fiduciary relationship changes over time*

- Act honestly with utmost good faith
- Treat clients fairly putting their interests first
- Reflected in your form filings, advertising, client documents

*[18 NCAC 06A.1801 (a)(11), (22), (23)]*

# ***The Client Relationship***



# *Investment Advisory Contract*

**Required elements:** (including for financial planning)

1. Services provided;
2. Term of the contract;
3. Fee or fee formula;
4. Refund of any pre-paid fee;
5. Non-assignment clause;
6. Whether the contract grants discretionary authority;
7. Right to terminate w/in five days;

*[18 NCAC 06A.1801 (a)(16) and .1707 (b)(2)(B), NCGS § 78C-38 and § 66-311]*



# *Investment Advisory Contract*

*Suggested elements:* (including for financial planning)

1. Delivery acknowledgments for ADV 2A and 2B
2. Delivery acknowledgment for Privacy Notice
3. Client's Consent for Electronic Delivery
4. Matches description in Form ADV Part 2

*[18 NCAC 06A.1801 (a)(16) and .1707 (b)(2)(B), NCGS § 78C-38 and § 66-311]*



# Investment Advisory Contract

**Problematic elements:** (including for financial planning)

1. Mandatory arbitration clause not permitted;
2. **Be careful** with indemnification or hedge clauses;
3. Improper refund (MUST return unearned fee!)
4. Inadvertent custody
5. Keep all pages of the contract, not just execution pages!

***Is this contract consistent with your fiduciary duty?***

[18 NCAC 06A.1801 (a), (a)(16), NCGS § 78C-38 and § 66-311]



# ***Contracts Protect Everyone!***

1. Improper contracts may require re-execution *or* amendment
2. More than one investment advisory agreement (AUM, fp, plan sponsor)?
3. Change in business?
4. Change in custodian?
5. Change in fee calculation or frequency?

***Outdated contracts may require new contracts***

*[18 NCAC 06A.1801 (a), (a)(16) and NCGS § 78C-38 and § 66-311]*



# ***Discretion***

*Means you have the authority to decide which securities to purchase and sell for the client without the client's immediate prior consent.*

**84%** of NC RIAs have discretion



*[17 CFR Parts 275 and 279: Form ADV Instructions and Glossary]  
[ADV filings as of 10/23/24]*

# **Discretion** *(continued)*

*Your firm also has discretionary authority if it has the authority to decide which investment advisers to retain on behalf of the client.*

**Almost 20%** of NC RIAs may have discretion under this definition



*[[17 CFR Parts 275 and 279:  
Form ADV Instructions and Glossary]  
[ADV filings as of 10/23/24]*



# ***Financial Requirements for Discretion***

- Maintain **\$10,000** net worth at all times *or*
- Maintain a \$35,000 investment adviser bond
  
- If bond lapses, must inform Securities Division immediately and make necessary arrangements



*[18 NCAC 06A.1704 (a) and .1705]*

# ***Financial Reporting Requirements for Advisers with Discretion***

- File an attested balance sheet within 90 days of the end of the fiscal year prepared in accordance with GAAP
- Include a copy of the current bond

[secdiv@sosnc.gov](mailto:secdiv@sosnc.gov)

If FYE is 12/31, due by 3/31

*[18 NCAC 06A.1708(b) and (c)]*



# ***Non-Discretionary Advisers***

**YOU** need to keep accurate records of client conversations regarding transactions.



*[18 NCAC 06A.1801]*

# ***Non-Discretionary?***

- Your client signs a non-discretionary advisory contract
- Custodian paperwork grants you LPOA



*[18 NCAC 06A.1801]*

# ***Custody Definition*** (1 of 2)

*“Custody” means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them in connection with advisory services it provides.*

- **Only 8%** of NC RIAs



*[SEC Rule 206(4)-2, SEC Release IA-2176 and amendments]*

*[ADV filings as of 10/23/24]*

# ***Custody Definition*** (2 of 2)

*“Custody” also includes a “related person” of the adviser with this authority. (Directly or indirectly controlling the adviser, and any person under common control with the adviser.)*



*[SEC Rule 206(4)-2, SEC Release IA-2176 and amendments]*

# ***Custody Examples***

- Trustee on client account
- General partner/managing member of PIV
- Physical possession of funds or securities
- General power of attorney
- Executor for a client's estate

***Carefully read controlling legal documents***

*[SEC Rule 206(4)-2, SEC Release IA-2176 and amendments]*



# ***Financial Requirements for Custody***

- Maintain **\$35,000** net worth at all times *OR*
- Maintain a \$35,000 investment adviser bond



*[18 NCAC 06A.1802, .1704 (a) and .1705]*



# ***Surprise* Audit Requirement for Advisers with Custody**

- At least once every calendar year
- Without prior notice
- Independent CPA verifies all client funds and securities by actual examination
- File Form ADV-E on IARD within 30 days of CPA examination

[18 NCAC 06A.1802(a)(6)]



# ***Financial Reporting Requirements for Advisers with Custody***

- File an audited balance sheet within 90 days of the end of the fiscal year and examined in accordance with GAAP

[secdiv@sosnc.gov](mailto:secdiv@sosnc.gov)

If FYE is 12/31, due by 3/31

*[18 NCAC 06A.1708(a) and (c)]*



# *Inadvertent Custody*

- Advisory contract says adviser can withdraw *fees* only
- But custodian agreement grants the adviser ability to “withdraw for any reason.”



# ***Inadvertent Custody: SLOA***

## ***Standing Letter of Authorization***

- Due to authority granted in agreement between custodian/client

- *IM Guidance, No. 2017-01, February 2017*

<https://www.sec.gov/investment/im-guidance-2017-01.pdf>

- No Action letter from SEC 2/21/17:

<https://www.sec.gov/divisions/investment/noaction/2017/investment-adviser-association-022117-206-4.htm>

*SEC Updated FAQs (Question II.11 and 12):*

[https://www.sec.gov/divisions/investment/custody\\_faq\\_030510.htm](https://www.sec.gov/divisions/investment/custody_faq_030510.htm)

# 7 Safekeeping Requirements for SLOA

1. *Written instruction from client to qualified custodian.*
2. ***Written authorization from client to adviser*** (specified or time to time).
3. *Custodian performs verification of instruction (e.g., signature review).*
4. *Client has ability to terminate or change instruction.*



5. ***Adviser has no authority or ability to designate or change the identity of the third party, the address or any other third-party information.***
6. ***Adviser maintains records showing that the third-party is not related to the adviser or located at the same address.***



7. *Qualified custodian sends written confirmation to client initially and reconfirms annually.*



# ***SLOA in NC***

- *Do NOT need to meet other custody requirements if IA is meeting the seven safekeeping requirements*



# ***Custody on Form ADV Part 1***

*Item 9 Custody A. (1) Do you have custody of any advisory clients':*

*(a) cash or bank accounts?*

*(b) securities?*

- **NO** for direct fee deduction
- **YES** for SLOA
- Use ADV Part 1B for explanation

*[SEC Rule 206(4)-2, SEC Release IA-2176 and amendments]*

*[No Action Letter 2/21/17]*

# ***Inadvertent Custody: Checks***

- Receipt of check or securities if not returned to sender within 3 business days
- *(Not custody if you are forwarding FBO checks or checks payable to custodian within 3 business days and can document your actions)*



*[SEC Rule 206(4)-2, SEC Release IA-2176 and amendments]*



# ***Inadvertent Custody: Prepaid Fees***

- Prepayment of advisory fees six months or more in advance and in excess of \$500
  - *Advisers billing semi-annually/annually in advance*
  - *Financial planners deliver plan w/in 6 months*



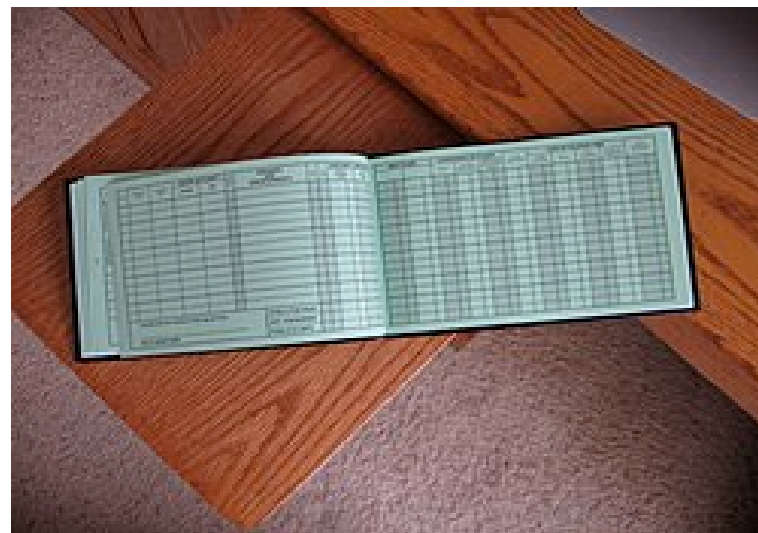
*[18 NCAC 06A.1708 (a)]*

# ***Check Log/Delivery Log***

- If you receive checks from clients and forward them to the custodian, keep a check log
- Check in/Check out/Dates/Delivery confirmation
- May need similar documentation for financial planning

***Do not hold checks for more than three days.***

***Deliver plan w/in 6 months if collecting more than \$500.***



*[SEC Rule 206(4)-2 Custody, 18 NCAC 06A.1708(a)]*

# ***Miscellaneous Recordkeeping***

- Archive texts
- Specific types of software not required (e.g., CRM or performance reporting)
- Retain all records for 2 years on-site, 5 years total

*[18 NCAC 06A.1706]*

# ***Financial Statements***

- Must be current (no less than Q)
- Must segregate income of RIA
- Prepared in accordance w/GAAP\*

*\*Rules exclude some items permitted by GAAP*

# ***Paper or Electronic Records***

- 1) Organized & available
- 2) Proper signatures



## ***File naming convention worksheet***

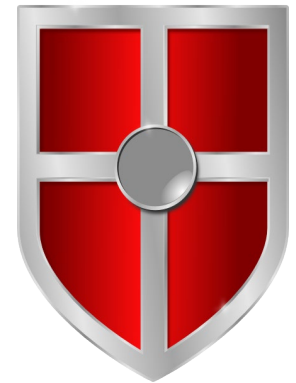
*[18 NCAC 06A.1706]*

NC Uniform Electronic Transactions Act §66-311

# Cybersecurity

## Stay updated on available resources

- *Avoid public wi-fi.*
- *Keep hardware and software updated.*
- *Use anti-virus and anti-malware.*
- *Use strong passwords and two-factor identification.*
- *Check links before you click. Look for misspellings!*
- ***Never act on email instructions alone!!***



[18 NCAC 06A.1801, [www.sosnc.gov](http://www.sosnc.gov) and [www.nasaa.org](http://www.nasaa.org) Resources for Inv Advisers]

# ***Business Email Compromise***

## **\$55 billion scam**

- Use secondary channels to verify requests
- Initiate a new email
- **Verify, verify, verify**



***Confirm client disbursements via phone!!***

Report cybercrime to the FBI field office and the Internet Crime Complaint Center at [www.IC3.gov](http://www.IC3.gov)

*[FBI I-091124-PSA 9/11/24 and 18 NCAC 06A.1801]*

# FIDUCIARY SUMMARY

- Know your client
- Know your practice
- Write it down





# *Let's Get Creative!*

- Interesting investments
- Interesting fees



# *There's always something old!*

**Promissory Note:** NO: .....

Under in terms of the Bills of Exchange Act 34 of 1944 as amended up to Bills of Exchange Amendment Act 56 of 1980; AND Settlement in terms of High Court Rule 45B(2)

This Promissory NOTE was issued at:

\_\_\_\_\_

\_\_\_\_\_ (Place)

Date: \_\_\_\_\_

**AMOUNT:** \_\_\_\_\_ (in numbers)

**AMOUNT:** \_\_\_\_\_

\_\_\_\_\_ (written)

**This certifies that**

I, \_\_\_\_\_, ID Number: \_\_\_\_\_

Hereby promise to pay \_\_\_\_\_ [HOLDER] the full amount specified on this NOTE, for value received.

**Terms & Conditions**

The payment will be made in monthly instalments of R 500 (five hundred rand) per month, on the 7<sup>th</sup> (seventh) day of every consecutive month until the obligation has been fulfilled. The payment can be obtained by the HOLDER at \_\_\_\_\_. I hereby give permission to the HOLDER and/or the HOLDER-IN DUE COURSE of this Promissory Note, to use this NOTE in any way necessary as a negotiable instrument to be financially traded on; whereas such trade shall terminate the obligation herein.

\_\_\_\_\_

Date

\_\_\_\_\_

Signature

*There's always something new!*





# ***Beyond Plain Vanilla Investing***

- More disclosure
- More due diligence
- More P&P
- Avoid misleading claims
- Check Risk Alerts



<https://www.nasaa.org/wp-content/uploads/2019/07/Opportunity-Zones-NASAA-SEC-Staff-Statement.pdf>

<https://www.sec.gov/files/esg-risk-alert.pdf>

<https://www.sec.gov/investor/alerts/etfs.pdf>

<https://www.sec.gov/newsroom/press-releases/2023-88>

# ***Due Diligence & Leveraged ETFs***

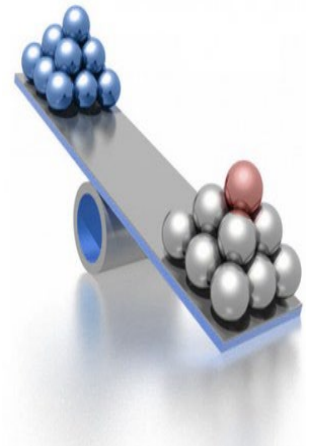
## ***Understand the products you are selling***

- 1) FINRA Regulatory Notice 09-31 and 22-08
- 2) FINRA Smart Beta (9/23/15)
- 3) SEC on Complex Exchange-Traded Products (10/04/21)
- 4) Single-stock leveraged ETFs (July 2022)
- 5) Inv Bulletin: Leveraged and Inverse ETFs (8/29/23)

<https://www.sec.gov/news/public-statement/gensler-statement-complex-exchange-traded-products-100421>

<https://www.sec.gov/news/statement/crenshaw-single-stock-etfs-20220711>

<https://www.sec.gov/investor/pubs/leveragedetfs-alert>



# ***Cryptocurrency Resources***

## **SEC FinHub**

<https://www.sec.gov/finhub>

## ***Howey Coins Travel Network***

<https://www.howeycoins.com>

## **SEC Securities Topics**

<https://www.sec.gov/securities-topics>

### ***Enforcement Actions in NC***

[https://www.sosnc.gov/divisions/securities/admin\\_action](https://www.sosnc.gov/divisions/securities/admin_action)

- *Adozia*
- *Bitconnect*
- *Power Mining Pool*
- Listed by year
- People, firms
- Products



# ***Compensation Arrangements***

## Compensation Arrangements

E. You are compensated for your investment advisory services by (check all that apply):

- (1) A percentage of assets under your management
- (2) Hourly charges
- (3) Subscription fees (for a newsletter or periodical)
- (4) Fixed fees (other than subscription fees)
- (5) Commissions
- (6) *Performance-based fees*
- (7) Other (specify): \_\_\_\_\_

# *Types of Fees: NC vs. NASAA*

## **NC Investment Advisers Act**

- Asset mgt: 89%
- Fixed fees: 58.5%
- Hourly fees: 52%
- Other: 8%



## ***NASAA IA Section Report 2024***

- Asset mgt: 84%
- Fixed: 51%
- Hourly: 51%
- Other: 14%





# *Advisory Fees in NC*

- **Asset management fees** range from less than 1% to 2%
- Are charged on *managed* assets
- **Financial planners** often charge hourly or by project
- Many advisers include financial planning in AUM fee
- Adviser must tell clients if s/he negotiates fees
- Disclose fees in both contract and ADV Part 2A

[18 NCAC 06A.1801 (a)(10)]



# *Performance-Based Fees in NC*

- **Significant compliance elements**
- Adviser must base compensation on the formula computed for a period of **not less than one year**
- Requires specific contract language
- Requires specific disclosures to clients
- About **6%** of NC RIAs vs. 8.8% NASAA

*[18 NCAC 06A.1805 Performance-Based Compensation Exemption]  
ADV filings as of 10/23/24*



# ***Fees for “Assets under Advisement”***

## Example: **Advising on 401(k) held away**

- These are undefined terms requiring adequate recordkeeping
- Must be able to document review of the account
- Actions consistent with fiduciary?
- **Best practice to charge hourly**

*[18 NCAC 06A.1801 (a)(10)]*

# ***Cash Equivalents Held Long-Term***

## Best practices include

- Documentation signed by client
- What exactly is your on-going analysis?
- Consider suspending the fee
- Actions consistent with fiduciary?
- Should this \$ be elsewhere?

*[18 NCAC 06A.1801 (a)(10)]*



# ***Excessive Fees***

Advisers may not charge an advisory fee that is unreasonable in light of the following:

- type of services provided
- the experience and expertise of the adviser
- the sophistication and bargaining power of the client
- whether the adviser has disclosed that lower fees for comparable services may be available from other sources

*[18 NCAC 06A.1801 (a)(10)]*



# ***Problematic Fees***

- Fees for “access to a planner”
- Minimum fees for smaller accounts that exceed 3%
- Fees to manage a product on which the adviser earned a commission
- Advisory fees charged w/out any due diligence

***What exactly are you doing to earn this fee?***

***Consistent with your fiduciary duty?***



*[18 NCAC 06A.1801 (a)(10)]*

# ***Problematic Billing***

- Charge fees as described & calculate correctly
- If you prorate **w/d**, you must prorate **additions**
- Check fee calculations periodically
- Disclose non-standard quarters
- Billing failures may result in a Letter of Caution or **administrative action**



*[18 NCAC 06A.1801 (a)(8) and .1706 Record-Keeping]*

# ***SEC Marketing Rule (1 of 2)***

- SEC first promulgated the Advertising Rule in 1961
- New Marketing Rule effective 5/04/21, compliance began **11/04/22**
- ***Combines Rule 206(4)-1 and 206(4)-3***
- *Significant changes for performance advertising*
- *Redefines solicitation practices*
- *SEC has withdrawn many No-Action letters*



<https://www.sec.gov/rules/final/2020/ia-5653.pdf>

<https://www.sec.gov/investment/investment-management-no-action-letters/im-modified-rescinded-staff-statements>



# ***SEC Marketing Rule (2 of 2)***

- **Applies to NC-registered advisers:** 18 NCAC 06A.1801 (a)(13)
- Does not replace prohibitions against ads tainted by fraud, puffery and bias.
- *“Facts and circumstances”*
- *“Fair and balanced”*
- Marketing Rule FAQs



<https://www.sec.gov/investment/marketing-faq>

<https://www.kitces.com/wp-content/uploads/2021/02/Key-Components-Of-The-New-SEC-Advertising-Rule.pdf>

# ***What is Advertising?***

- Publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940.

[18 NCAC 06A.1801 (a)(13)]

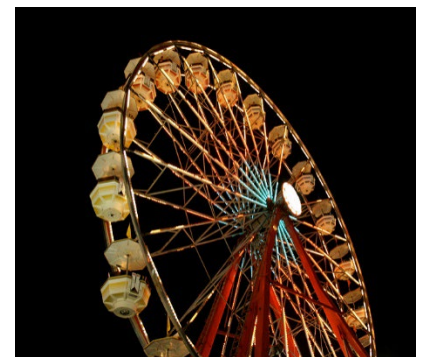


# ***New Definition of Advertising***

**1.** Any direct or indirect communication made to more than one person that offers the adviser's services with regard to securities to prospective clients or offers new services to existing clients.

- *Excludes ADV*
- *Excludes extemporaneous, live, oral communications*
- *Includes prepared remarks, slides, written materials*
- *Includes investors in a private fund*
- *Includes social media*

*[Rule 206(4)-1 of the IAA of 1940 and IA-5653]*

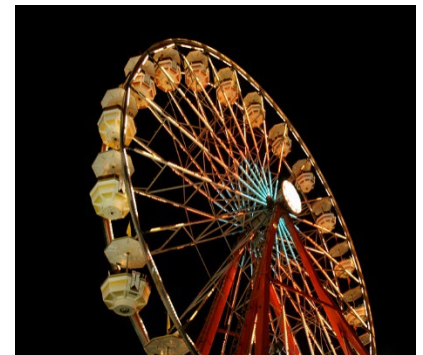


# ***New Definition of Advertising***

**2.** Any endorsement or testimonial for which an adviser provides direct or indirect compensation.

- *Endorsement = person other than a current client*
- *Testimonial = statements by current clients about the experience*
- *Solicitor replaced by “promoter”*

*[Rule 206(4)-1 of the IAA of 1940 and IA-5653]*



# *Testimonials*

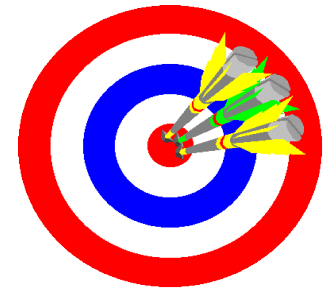
- Require five disclosures *within the testimonial* about the source, compensation and conflicts of interest
- Written agreement between the adviser and the compensated person
- Includes cash and non-cash compensation

*[Rule 206(4)-1 of the IAA of 1940]*



# ***Prohibited Advertising***

1. Any untrue statement of a material fact or material omissions.
2. Any material statement of fact the adviser cannot substantiate.
3. Info that would cause an untrue or misleading implication or inference concerning a material fact.
4. **Discussing potential benefits without fair and balanced treatment of material risks or limitations.**
5. **Reference to specific investment advice in a manner that is not fair and balanced.**
6. Performance results or present performance in a manner that is not fair and balanced.
7. Any content that is materially misleading.



*[Rule 206(4)-1 of the IAA of 1940 and IA-5653]*

# ***SEC Risk Alert 4/17/24***

## Initial compliance observations re: Marketing Rule:

- P&P too general, not tailored for IA's adverts
- Inadequate recordkeeping to support claims made
- Presenting information that is incomplete, misleading and/or not fair or balanced



<https://www.sec.gov/compliance/risk-alerts/risk-alert-041724>

<https://www.sec.gov/rules/final/2020/ia-5653.pdf>

# ***False or Misleading Advertising***

- Misrepresenting the qualifications of the adviser or any employee, or
- Misrepresenting the nature of advisory services offered or fees charged, or
- Omitting a material fact regarding qualifications, services or fees to make them not misleading.

*[18 NCAC 06A.1801 (a)(8)]*  
*SEC Risk Alert 4/17/24*





# ***“Misleading” Examples***

- “Free of conflicts”
- “Network of professionals” vs. sole person
- Recommended the same strategy to all
- Implying everyone in the office holds the designation or certification *How to Use the CFP Marks*

<https://www.cfp.net/career-and-growth/market-yourself/how-to-use-the-cfp-marks>

[18 NCAC 06A.1801 (a)(8)]  
SEC Risk Alert 4/17/24



# ***“Misleading” Examples (2 of 2)***

- Using designation conferred by former employer
  - No explanation of minimum qualifications for designation
  - False, fabricated and/or purchased designations
- <https://www.finra.org/investors/professional-designations>

## **DO NOT USE**

Certified Retirement Financial Advisor (CRFA)

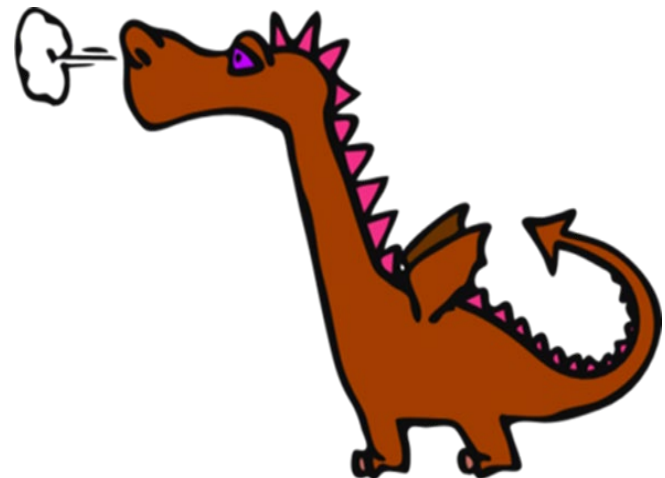
*[SEC Risk Alert Volume VI, Issue 6, 9/14/17]*

*[Rule 206(4)-1 of the IAA of 1940 and 18 NCAC 06A.1801(a)(8)]*



# “Misleading” Examples (3 of 3)

- Exaggerated and unwarranted statements
- **Contain generalizations, promissory language, hyperbole**
- Claims inconsistent with ADV and U-4
- Presenting performance or advice in a manner that is not fair and balanced
- Statements that cannot be proven with objective evidence:  
*Premier, unique, unprecedented, foremost, revolutionary, expert, proven results, peace of mind*



[Rule 206(4)-1 and 18 NCAC 06A.1801(a)(8)]  
SEC Risk Alert 4/17/24

# *Missing or Improper Attribution*

- **Missing “As Seen On” links\***
- Stale or absent citations
- Misrepresentations of risk/return
- Providing a report prepared by someone else without disclosing that fact
- Missing disclosures

*SEC Risk Alert 4/17/24  
17 SEC 058  
[18 NCAC 06A.1801 (a)(8), (9) and (13)]*



# ***Like/Share/Endorse on 3<sup>rd</sup> Party Site***

- Do not “adopt or entangle” yourself by selectively deleting negative reviews or altering their content
- Do not reorder reviews
- Yelp/Google



*[SEC Rule 206(4)-1 and IA-5653*

*SEC Risk Alert Volume VI, Issue 6, 9/14/17]*

# ***BEST ADVISER SEVEN YRS IN A ROW!!!***

Durham Unlimited Management, Inc., was voted “Best Adviser in the Triangle” seven years in a row.



# ***Using 3<sup>rd</sup> Party Rankings/Awards***

- Ranking provided by unrelated person who ranks in the ordinary course of its business.
- Adviser must perform due diligence to avoid a predetermined result from the survey.
- “Clear and prominent” disclosures *within the four corners of the advertisement*:
  1. Date of ranking/Period of time on which it was based;
  2. Identity of third-party that created the rating;
  3. That compensation has been provided to the adviser when obtaining or using the third-party rating.

[SEC Rule 206(4)-1 and <https://www.sec.gov/investment/marketing-faq>

# ***Errors Using 3<sup>rd</sup> Party Rankings***

- Failed to disclose material facts
- Submitted false info in application for award
- Referenced stale rankings
- Failed to disclose relevant selection criteria, including the fact that advisers paid a fee to participate in the survey

*SEC Risk Alert 4/17/24*

*SEC Investor Alert 11/08/22: IA Advertisements*

*SEC Risk Alert Volume VI, Issue 6, 9/14/17*





# ***Blogs/Free Lunch Seminars***

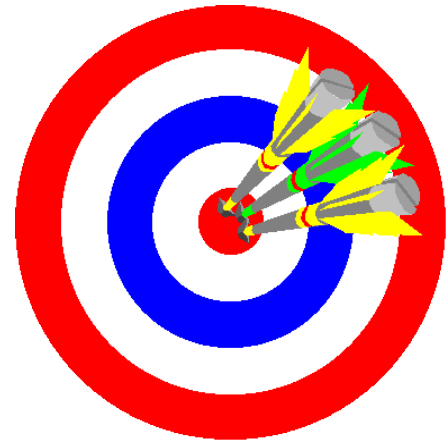
- Poor supervision of content & materials
- Attractive inducements/misleading statements
- Unsuitable investments
- Fraud

*[Protecting Senior Investors: Rept of Examinations  
of Securities Firms Providing “Free Lunch” Seminars,  
SEC/NASAA/FINRA, September 2007]*



# ***Providing Guarantees***

- Guaranteeing a client that a specific result will be achieved (gain or no loss) as a result of the advice rendered.



*[18 NCAC 06A.1801 (a)(12)]*

# *Performance Reports to Clients*

- Use appropriate benchmarks
- Report all accounts (no cherry picking!)
- *“YTD return does **not** account for when DUM invested or at what price.” Huh?*
- Keep supporting documentation

*[Rule 206(4)-1 of the IAA of 1940 and 18 NCAC 06A .1801 and .1706]*

# ***Most Common NC Advertising Deficiencies***

- Exaggerations
- Misrepresentations
- Guarantees
- Puffery



# ***Solicitor? Promoter? Sub- or Co-Adviser?***

- Agreement between your firm and theirs
- Client knows where their \$ goes (disclosures)
- Client must have a contract with your firm
- Even if your client signs a contract with them
- Client must grant discretion
- Registration as IAR possible
- *Consult private counsel as needed*

*[NCGS § 78C-2 (3)d Definitions, § 78C-16 (b2) Registration, SEC Rule 206(4)-1]*

# *Written Policies and Procedures*



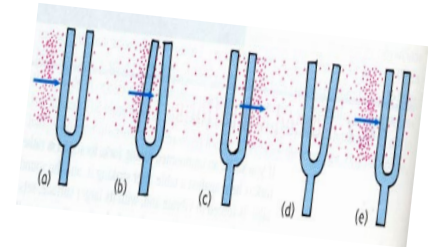


# ***Written P&P Are Required!***

Establish, maintain and enforce written procedures which must include but are not limited to:

- 1) Review of new accounts
- 2) Frequent examination of accounts to detect and prevent irregularities and abuses
- 3) Prompt review of transactions and correspondence pertaining to solicitation or execution of transactions
- 4) Prompt review in handling all client complaints

*[18 NCAC 06A.1808 (d)]*



# ***Don't have "DUM" Procedures***

## **DUM billing procedure:**

I send an invoice every month to clients. I keep a copy of it.

## **Better procedure describes each step:**

*On the first day of the new Q run the Balances report from Schwab...Calc fee in Excel...Check client accts for cash...Create a new invoice folder on the PC...Upload fees to Schwab...Send invoice to clients via email*

*[18 NCAC 06A.1808 (d), Sample TOC and Compliance Grid]*



# ***Written Procedures***

- What is the policy or procedure?
- Who does it?
- When and How often is it done?
- How is it documented?
- Explain each step of what you do!



*[18 NCAC 06A.1808 (d), Sample TOC, Compliance Grid]*

# ***NASAA Model Rule for IA Written P&P***

- Policies and Procedures *NAASA adopted 11/24/20*
- Business Continuity and Succession Plan
- Privacy
- Cybersecurity
- Compliance Grid
- Sample TOC



*[18 NCAC 06A.1808 (d), Sample TOC, NASAA Model Rule w/Compliance Grid]*

# ***Trade Errors***

Keep a separate Trade Error file.

- Can also keep copy in client file.
- Write a brief Memo contemporaneously with the error.



*[18 NCAC 06A.1706(a)(3) and (12)]*

# ***Supervision of IA Representatives***

Registrant shall be responsible for the acts, practices and conduct of its IA representatives:

- Designate a supervisor
- Exercise diligent supervision over the advisory activity of IA representatives
- Periodically inspect each office to insure written procedures are being enforced (agenda)

*[18 NCAC 06A.1808]*



# ***Your IA Rep's Website***

- The website of your IA rep is **YOURS**
- Proper and accurate disclosures
- Review for statements of fact, not opinion
- Backup digital advertising
- Report websites and LinkedIn on ADV 1

*[18 NCAC 06A.1808]*

# ***Outside Business Activities***

- Concerns re: selling away
- “Pre-Approval Form”
- Need P&P for supervision
- Report OBA on Form U-4
- Monitor diligently



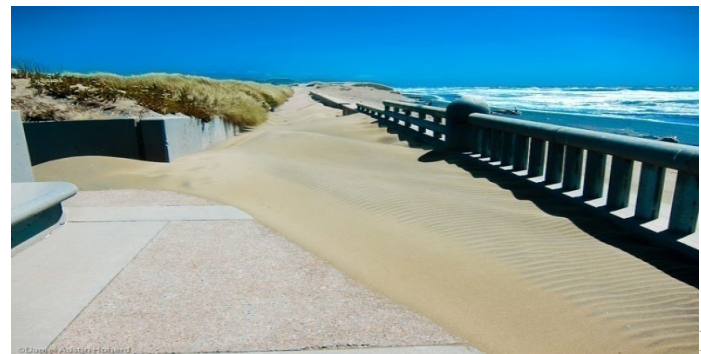
*[18 NCAC 06A.1703 and .1808]*

# *Supervision of Non-Registered Employees*

Non-registered employees **cannot**:

- Make recommendations or render advice regarding securities
- Accept trading instructions directly from a client, even if the trade is unsolicited
- **Circumvent the custodian's controls by executing trades under the ID of a registered person**

*[NCGS § 78C-16 Registration]*



# ***Business Continuity: Disaster***

- Utility outages
- Natural disasters
- Loss of personnel



*[18 NCAC 06A.1801 (a) and .1808]*



# ***Business Continuity: Succession***

Retirement *or* wind down the business in the event of death, disability or incapacity

- Can clients manage their own affairs?
- Illiquid, volatile, hedged positions?
- Do I need a buy/sell agreement?
- ***As a courtesy, inform the Division***



*[18 NCAC 06A.1713 Merger, Consolidation, Acquisition, Succession]*

# ***Common Deficiencies Re: Written Policies and Procedures***

- Non-existent
- Not written
- Incomplete
- Not current
- Not specific to actual business
- Not followed
- Not enforced



# ***Update on Regulatory Developments***

- SEC *Marketing Rule* Guidance
- SEC “Regulation Best Interest”
- SEC *proposed* changes to *Custody Rule*
- DOL *Fiduciary Rule*
- **IAR Continuing Education**  
***(NC has NOT adopted IAR CE)***

# ***SEC “Regulation Best Interest”***

- Adopted 6/05/19 for *broker-dealer* firms and ***SEC-registered*** IAs
- Effective **6/30/20**

***ADV Part 3***

***NOT* required**

***in NC***



*Challenged Sept 2019, upheld 6/26/20 by 2<sup>nd</sup> Circuit Court of Appeals*

# *History of SEC Custody Rule*

- 2003: First release
- 2009: Current release
- 2017: Interpretation that SLOA is custody
- Feb 2023: Proposed changes to amend 206(4)-2 and add “*Safeguarding Rule*” 223-1
- 10/30/23: Second comment period ended for *Safeguarding Advisory Client Assets*
- 11/01/23: Lawmakers ask Fed Reserve, FDIC and OCC to review for “unintended outcomes.”



# ***SEC Proposed Changes to the Custody Rule***

- **IA-6240**
- Qualified custodian/Would include ALL assets
  - Expands custody to include discretion
  - Changes surprise exam (financial audit) req
  - Will affect Form ADV disclosures

***This guidance is in flux, and the Division will notify you as needed***

<https://www.sec.gov/news/pressreleases> and IA-6240

[https://www.sec.gov/divisions/investment/custody\\_faq\\_030510](https://www.sec.gov/divisions/investment/custody_faq_030510)

# *Road to the Dept of Labor Fiduciary Rule*

- **2010:** Dodd-Frank Act
- **2016:** DOL issue its own fiduciary rule
- **2018:** DOL rule vacated by US Fifth Circuit Court of Appeals
- (2019: SEC Reg BI)
- **2020:** DOL adopts Rule 3.0
- **2023:** Rule 3.0 struck down
- **2023:** DOL proposes new rule
- **7/26/24:** Court stayed the entirety of the fiduciary rule package indefinitely



# ***US Department of Labor***

***The DOL fiduciary rule has been stayed  
and will not be enforced by the NC  
Securities Division***

- *This Rule falls under to the Dept of Labor*  
[www.dol.gov](http://www.dol.gov)
- **Consider retaining an ERISA attorney**

<https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/new-fiduciary-advice-exemption.pdf> April 2021



# ***How Model Rules Work***

1. NASAA proposes a rule.
2. NASAA receives feedback from jurisdictions, industry and the general public.
3. NASAA membership adopts the Model Rule.
4. Individual states decide whether to adopt it or not.
5. NC has adopted the NASAA Model Rule on Senior Designations.
6. NC often uses NASAA Model Rules as “best practice” guidelines.



# ***CE for IA Reps (“IAR CE”) (1 of 5)***

***Unlike most financial services professionals, investment adviser representatives did not have a continuing education requirement.***

- NASAA proposed a model rule in 2021
- Adopted by 22 jurisdictions
- Not adopted by NC



<https://www.nasaa.org/industry-resources/investment-advisers/investment-adviser-representative-continuing-education/>

# ***CE for IA Reps (“IAR CE”) (2 of 5)***

**12 credits** total of NASAA-approved content

- 6 credits in *Products and Practices*
- 6 credits in *Ethics and Professional Responsibility*

*Applies to **all IAs registered** in the adopting state, not just the ones who live there!*



<https://www.nasaa.org/industry-resources/investment-advisers/investment-adviser-representative-continuing-education/>

# ***CE for IA Reps (“IAR CE”) (3 of 5)***

- CE year is a calendar year (Jan-Dec)
- No carry-over credit
- Other professional CE may apply

***Applies even if you drop the registration in the adopting state.***

[IARCE@nasaa.org](mailto:IARCE@nasaa.org)



<https://www.nasaa.org/industry-resources/investment-advisers/investment-adviser-representative-continuing-education/>

# ***CE for IA Reps (“IAR CE”) (4 of 5)***

**Adopted for 1/01/25**

**New Jersey, Nebraska, RI, US Virgin Islands**

**Adopted for 1/01/23**

**South Carolina**

**Monitor the NASAA CE site**

**<https://www.nasaa.org/industry-resources/investment-advisers/investment-adviser-representative-continuing-education/>**

# ***CE for IA Reps (“IAR CE”) (5 of 5)***

## ***Take action as needed:***

- a) If you are (or were) registered in a CE state, take CE
- b) Monitor the NASAA site to see if you will need to take CE in 2025
- c) Sign up for a FinPro account as needed

***Failure to comply with CE does not affect your NC registration.***

<https://www.finra.org/registration-exams-ce/finpro>



# ***Exam Validity Extension Program***

***NC does not participate in EVEP!***

8/30/23 NASAA launched for B/D representatives

10/31/23 NASAA launched for IARs

# *Annual Renewal*

- Registration terminates 12/31 unless renewed
- Deadline at IARD is **always mid-December**  
*(12/09/24)*



*[NCGS § 78C-16 (c) and 17 Registration and <https://www.iard.com/renewal-program> ]*



# ***Annual Renewal*** *(continued)*

- No longer a “registered” investment adviser
- All IA representatives also terminate 12/31
- Must re-register with a lapse
- Creates possibility of unregistered activity



*[NCGS § 78C-16 (c) and 17 Registration]*

# Annual Renewal Includes **ADV!**

## Form ADV Part 1 and 2 via IARD

- An application for renewal is not considered filed for purposes of 78C-17 until the required fee and all submissions have been received by the Administrator.



[18 NCAC 06A.1702 (e)]



# ***Annual Reporting: Balance Sheet***

For advisers with discretion (attested) or custody (audited) due w/in 90 days of fiscal year end

[secdiv@sosnc.gov](mailto:secdiv@sosnc.gov)



*[18 NCAC 06A.1708]*



# What is a balance sheet?

What Does a Company Balance Sheet Tell You?

A balance sheet shows what a company owns and owes and how much shareholders have invested.

## THE BALANCE SHEET FORMULA



Assets

*cash, inventory, property*

=



Liabilities

*rent, wages, utilities,  
taxes, loans*

+



Shareholders'  
Equity

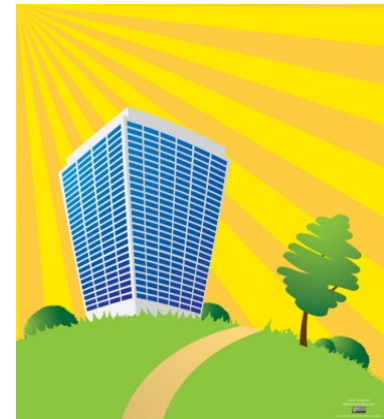
*retained earnings*

# *Mid-Dec and Mid-March*



# *Withdrawal Process*

- Withdrawal of Registrant: **Form ADV-W**
  - Must maintain books and records for 5 years
  - Report location on ADV-W
- Do not assume that by letting a registration lapse for FTR that the Registrant has withdrawn
  - Division will contact you!



*[18 NCAC 06A.1710 and .1706(f)]*



# *Which Regulator?*

## NC Investment Advisers Act

- Can stay with State until RAUM are **\$110 million** *as reptd on annual ADV amendment*



## Investment Advisers Act of 1940

- Must return to State when RAUM fall to **\$90 million** *as reptd on annual ADV amendment*



# ***Withdrawal Process: NC to SEC***

- Must file within **90 days** after Registrant files its annual updating amendment disclosing regulatory AUM of \$110 million or more
- File ADV-W (partial withdrawal) to transition from NC to SEC

*[Form ADV Instructions for Part 1A, Item 2]*





# ***Withdrawal Process: SEC to NC***

- Files its annual updating amendment disclosing regulatory AUM of less than \$90 million
- File **ADV-W** to withdraw from SEC registration within **180 days** of your fiscal year end
- Remain subject to SEC and NC



*[Form ADV Instructions for Part 1A, Item 2 & SEC Rule 203A-1(b)(2)]*



# ***Examination Process***

- Examiner will call to set up an appointment
- May include an initial records request
- Conduct a standard interview
- Often request additional records
- *Secure File Share*



*[North Carolina General Statute § 78C-18]*

# ***Examination Process*** (con't)

- Once examiner completes the document review, we send a **deficiency letter** via email and/or certified mail
- Respond in writing to the deficiency letter, usually within 10 business days
- Once all deficiencies have been satisfactorily cured, Division closes exam



*[North Carolina General Statute § 78C-18]*

# ***Enforcement Referrals***

- Unregistered activity
- Fraud
- **Repeat or willful violations**
- Failure to supervise IARs
- Failing to cooperate, not responding



*[North Carolina General Statute § 78C-18]*

# ***Enforcement Actions***

- Conference at the Division
- Letter of Caution
- **Consent Order\***
- Registration suspension or revocation\*

***You have the right to be represented by an attorney***

*\* Reportable administrative action*

*[North Carolina General Statute § 78C-19]*





# FIDUCIARY SUMMARY

- Know your client
- Know your practice
- Write it down



# FINAL WORKSHOP OBSERVATION

COMPLIANT

COMPLAINT

*Complete the evaluation!*





# ***Cyber-Enabled Fraud***

- Have open conversations with your clients re: investments in crypto/digital assets.
- Educate clients
- Experienced a loss?
  - Report to Securities Division
  - Contact CPA

[www.sosnc.gov](http://www.sosnc.gov)

***For Securities Professionals***

***Investor Education Booklets***



# *Internet Crime Complaint Center*

- File a complaint
- Consumer Alerts
- Annual Report
- Elder Fraud
- Cryptocurrency Report

[www.ic3.gov](http://www.ic3.gov)

# ***Report Fraud & Scams!***

- [www.NASAA.org](http://www.NASAA.org)
- FTC: ReportFraud.ftc.gov
- CFTC: CFTC.gov/complaint
- SEC: sec.gov/tcr
- IC3: ic3.gov/Home/FileComplaint



[https://www.sosnc.gov/divisions/securities/file a complaint](https://www.sosnc.gov/divisions/securities/file_a_complaint)

# ***RIA Imposter Scams!***

- [www.investor.gov](http://www.investor.gov)
- FINRA



<https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-alerts/fraudsters-posing-brokers-or-investment-advisers-investor-alert>

<https://www.finra.org/investors/insights/be-alert-signs-imposter-investment-scams>

# ***Elder Financial Abuse***

- **NASAA Model Act (1/22/16)**

*Updates available at [www.nasaa.org/ServeOurSeniors](http://www.nasaa.org/ServeOurSeniors)*

- **Senior Safe Act (2019)**

*<https://www.sec.gov/news/press-release/2019-75>*

- **SEC Guidance**



*[NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation]*

*[SEC Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults]*

# ***Elder Financial Abuse*** (continued)

- Know your client
  - [www.nasaa.org/trusted-contact](http://www.nasaa.org/trusted-contact)
- Investor Hotline
  - 800-688-4507
- Report Elder Abuse
  - County Dept of Social Services
  - 800-662-7030 (NC DHHS)



# Is your financial firm asking you for a **TRUSTED CONTACT?**

There are a number of very important reasons to give your financial firm the name of someone you trust, and FINRA, NASAA and the SEC urge you to consider the request.



## WHAT IS IT?

A "trusted contact" is a person you authorize your financial firm to contact in limited circumstances.



## WHO SHOULD HAVE ONE?

We suggest a trusted contact for anyone who has an investment account.

## How would having a trusted contact help me?

Maybe your investment professional needs to get in touch with you but can't when:



You are traveling



There is a natural disaster



There is a concern about fraud



You are having a health issue



Your trusted contact **CANNOT** make trades in your account



Your trusted contact **CANNOT** make decisions about your account



Being a trusted contact **DOES NOT** make them a power of attorney, legal guardian, trustee or executor

A trusted contact is someone who can help your financial firm help you, if needed. Add one today!

[nasaa.org/trusted-contact](http://nasaa.org/trusted-contact)

# *Meet Olivia Kay*

**Sole prop d/b/a O. Kay Advisors**

*O. Kay Advisors is an “Assumed Name”*

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For a more organized home, make sure  
everything has a place





# ***Do You Have an Assumed Name?***

- D/B/A required if not using your firm's legal name
- Assumed business names filed before 12/01/17 **expired on 12/01/22**
- Renew at local Register of Deeds Office to keep name on the statewide registry

*[NCGS § 161-14.01]*



***What do you see or hear?***

