

**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Local Government Commission

RULE CITATION: ALL RULES

**DEADLINE FOR RECEIPT: Thursday, August 10, 2023**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Rules should be written in the active voice describing who shall do what. Please review each rule and make this change. For example, in Paragraph (a) of Rule .0712 it states, "Moneys of a Fund may be invested only in securities permitted by G.S. 159-30." Putting aside the issue that this statement is entirely unnecessary as it merely restates a statutory requirement, who is required to do what? Paragraph (a) continues, "The maximum maturity of any security purchased shall not be set by the Commission; however, no maturity shall exceed seven years." Again, who is required to do what? If this is a requirement that "the Commission shall", then it is not a Rule, as defined by G.S. 150B-2(8a), because it is a statement concerning only the internal management of the Commission.*

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke  
Commission Counsel

Date submitted to agency: August 4, 2023

**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Local Government Commission

RULE CITATION: 20 NCAC 03 .0710

**DEADLINE FOR RECEIPT: Thursday, August 10, 2023**

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Paragraph (a) is not a rule as stated because it does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the Commission.*

*In Paragraph (b), please remove “all”. “All” should be avoided if possible. Also, instead of “under this Section”, the preferred way of stating this is “Correspondence to the State Treasurer required by the Rules of this Section shall be addressed...”*

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke  
Commission Counsel

Date submitted to agency: August 4, 2023

1 20 NCAC 03 .0710 is adopted as published in 37:19 NCR, page 1951, with changes as follows:

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3 **20 NCAC 03 .0710 GENERAL INFORMATION**

4 (a) This Section sets forth the manner in which a mutual fund for local government investment shall be certified as  
5 required by G.S. 159-30(c)(8).

6 (b) All correspondence to the State Treasurer under this Section shall be addressed to: Secretary, Local Government  
7 Commission, Department of State Treasurer, 3200 Atlantic Avenue, Raleigh, North Carolina ~~27604~~27604 or emailed  
8 to SLGFD@nctreasurer.com.

9

10 *History Note: Authority G.S. 159-3(f); 159-30(c)(8);*  
11 *Eff. September 1, 2023.*

12

**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Local Government Commission

RULE CITATION: 20 NCAC 03 .0711

**DEADLINE FOR RECEIPT: Thursday, August 10, 2023**

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*“Any”, “each”, “every”, “all”, “such”, and “some” should not be used if “a”, “an”, or “the” can be used with the same meaning or if the word can be omitted. These appear on page 1, lines 9, 10, 11, 23, 33, 35, 36; page 2, lines 1, 3, 4, 5, 6.*

*“Under” should be avoided. “Pursuant to” is preferred. This appears on page 1, lines 17, 19, 28, 29, and 35. On line 35, page 1, instead of “under either”, it may be clearer to use “taken pursuant to”.*

*“Hereby” should be avoided and is generally unnecessary. See Item (3).*

*In Item (2), what exactly does “with respect to any party” mean? This is vague. Please clarify.*

*Item (6) should be clarified. Perhaps it would be clearer to state, “...and ending in 30 days or on a date specified in the resolution.”*

*Subitems (11)(a) and (b) should end with semicolon instead of commas. In (11)(c), “similar” is a vague term. What exactly is meant? Also, please add an oxford comma between “state” and “or” on line 5, page 2.*

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke  
Commission Counsel

Date submitted to agency: August 4, 2023

1 20 NCAC 03 .0711 is adopted as published in 37:19 NCR, page 1951, with changes as follows:

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3 **20 NCAC 03 .0711 DEFINITION OF TERMS**

4 The following words and phrases used in this Section are defined as follows:

- 5 (1) ~~“Active Participants” means local governments and public authorities as defined in G.S. 159-7,~~  
6 ~~school administrative units, local ABC boards, community colleges, public hospitals, and other~~  
7 ~~entities authorized by law to use forms of investment allowed by G.S. 159-30. Eligible Participants~~  
8 ~~that are currently invested in a Fund.~~
- 9 (2) “Affiliate” means, with respect to any party, any person, entity, or organization that either directly  
10 or indirectly controls, is controlled by, or is under common control with such party, including any  
11 employee, officer, or director of such party.
- 12 (3) “Broker-Dealer” means either a “broker” or a “dealer” as both are defined in the Securities Exchange  
13 Act of 1934 which is hereby incorporated by reference, including subsequent amendments and  
14 editions and is available online, at  
15 ~~<https://uscode.house.gov/browse/prelim@title15/chapter2B&edition=prelim> at no cost east, at~~  
16 ~~<https://uscode.house.gov/browse/prelim@title15/chapter2B&edition=prelim>~~
- 17 (4) “Certified Money Market Mutual Fund” means a mutual fund certified under this Section which  
18 meets the definition of “Money Market Mutual Fund” in this Rule.
- 19 (5) “Certified Mutual Fund” means a mutual fund certified under this Section which does not meet the  
20 definition of “Money Market Mutual Fund” in this Rule.
- 21 (6) “Decertification Period” means the period of time beginning on the date the Commission adopts a  
22 resolution terminating the certification of a Fund and ending either 30 calendar days thereafter or  
23 on a date specified in such resolution.
- 24 (7) “Eligible Participants” means the following North Carolina entities: local governments and public  
25 authorities as defined in G.S. 159-7, school administrative units, local ABC boards, community  
26 colleges, public hospitals, and other entities authorized by North Carolina law to use forms of  
27 investment allowed by G.S. 159-30.
- 28 (8) “Fund” means a mutual fund certified under this Section.
- 29 (9) “Manager” means the investment adviser managing a Fund certified under this Section as required  
30 by Rule ~~.0712(g).~~0712(f).
- 31 (10) “Money Market Mutual Fund” means a money market fund that complies with 17 C.F.R. § 270.2a-  
32 7 and which maintains a stable one-dollar net asset value (NAV) per share.
- 33 (11) ~~“Enforcement~~ “Reporting Event” means any of the following which either is a public record or is  
34 required by law to be reported to the Active Participants:
- 35 (a) any ~~administrative, civil, administrative,~~ or criminal enforcement action under either state  
36 or federal law against a Fund, a Manager, or any Affiliate of a Fund or Manager,

1 (b) any notice from the SEC that SEC staff intends to recommend an enforcement action  
2 against a Fund, or, with respect to services provided to the relevant Fund, against a  
3 Manager, Manager or any Affiliate of a Fund or Manager, or

4 (c) any non-routine SEC inquiry or investigation or any similar inquiry or investigation from  
5 any similar federal, state or self-regulatory body or organization against a Fund, a Manager,  
6 or any Affiliate of a Fund or Manager.

7 (12) “SEC” means the U.S. Securities and Exchange Commission.

8

9 *History Note: Authority G.S. 159-3(f); 159-30(c)(8);*

10 *Eff. September 1, 2023.*

11

## REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Local Government Commission

RULE CITATION: 20 NCAC 03 .0712

**DEADLINE FOR RECEIPT: Thursday, August 10, 2023**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*“All”, “any”, “at least”, “each”, “every”, “such”, and “some” should not be used if “a”, “an”, or “the” can be used with the same meaning or if the word can be omitted. These appear on page 1, lines 4, 7, 15, 19, 28, 37; page 2, lines 1, 2, 7.*

*“Under” should be avoided. “Pursuant to” is preferred. This appears on page 1, lines 6, 26, and 27.*

*“Applicable” should be avoided if possible and is generally unnecessary. These appear on page 1, lines 7, 28, and 37.*

*“Hereby” should be avoided and is generally unnecessary. This appears on page 1, lines 8, 11, 29, and 33.*

*As discussed above, in Paragraph (a), it states, “Moneys of a Fund may be invested only in securities permitted by G.S. 159-30.” This statement is entirely unnecessary as it merely restates a statutory requirement, who is required to do what? Paragraph (a) continues, “The maximum maturity of any security purchased shall not be set by the Commission; however, no maturity shall exceed seven years.” Again, who is required to do what? If this is a requirement that “the Commission shall”, then it is not a Rule, as defined by G.S. 150B-2(8a), because it is a statement concerning only the internal management of the Commission.*

*What is the specific statutory authority for the requirement in Paragraph (c). Also, “shall” is preferred instead of “will”.*

*In Paragraph (d), duplicative words such as “rules and regulations” should be shortened to “rules” or “regulations”. Also, what exactly is meant by the requirement of (d)(1)? Can this be clarified?*

*Rule requirements that restate requirements found elsewhere are unnecessary. This appears in Paragraphs (f) and (g). “And such investment adviser shall comply with all applicable*

Lawrence R. Duke  
Commission Counsel

Date submitted to agency: August 4, 2023

*federal and state rules, regulations, and reporting requirements.” is unnecessary, as is all of (g).*

Please retype the rule accordingly and resubmit it to our office electronically.



1 20 NCAC 03 .0712 is adopted as published in 37:19 NCR, page 1951 & 1952, with changes as follows:

2  
3 **20 NCAC 03 .0712 MINIMUM FUND STANDARDS**

4 (a) Moneys of a Fund may be invested only in securities permitted by G.S. 159-30. The maximum maturity of any  
5 security purchased shall not be set by the Commission; however, no maturity shall exceed seven years.

6 (b) A Fund shall be registered with the SEC as an investment company under the Investment Company Act of 1940  
7 and shall comply with all applicable SEC rules, regulations, and reporting requirements. The SEC requirements of 17  
8 CFR Chapter 2 are hereby incorporated by reference, including subsequent amendments and editions, and are available  
9 online, at ~~https://www.ecfr.gov/current/title-17/chapter-II~~ at no cost, at https://www.ecfr.gov/current/title-  
10 ~~17/chapter-II~~. SEC registration and compliance do not modify the requirement that a Fund comply with G.S. 159-30.

11 The Investment Company Act of 1940 is hereby incorporated by reference, including subsequent amendments and  
12 editions and is available online, at  
13 ~~https://uscode.house.gov/browse/prelim@title15/chapter2D/subchapter1&edition=prelim~~ at no cost, at  
14 ~~https://uscode.house.gov/browse/prelim@title15/chapter2D/subchapter1&edition=prelim.~~

15 (c) A Fund shall be established and operated in such a manner that any local, state, or federal income tax liability  
16 will be passed through to the Active Participants.

17 (d) A Fund shall ~~assign a benchmark that is specified in advance and is representative of the Fund's current investment~~  
18 ~~strategy and shall~~ periodically report performance in conformance with SEC rules and regulations, 17 CFR Chapter  
19 2-2, and such reports shall include at least annually the Fund's performance against any benchmarks assigned by the  
20 Fund. A Fund shall assign a benchmark that meets the following requirements:

21 (1) is unaffiliated with the Fund's Manager;

22 (2) is specified in advance; and

23 (3) is representative of the Fund's current investment strategy and parameters.

24 (e) A Fund shall calculate a daily net asset value according to US "generally accepted accounting principles" (GAAP)  
25 and allow investors to transact daily at the net asset value.

26 (f) A Fund shall be managed by an investment adviser registered with either the SEC as an investment adviser under  
27 the Investment Advisers Act of 1940, or the North Carolina Secretary of State as an investment adviser under the  
28 North Carolina Investment Advisers Act, and such investment adviser shall comply with all applicable federal and  
29 state rules, regulations, and reporting requirements. The Investment Advisers Act of 1940 is hereby incorporated by  
30 reference, including subsequent amendments and editions and is available online, at  
31 ~~https://uscode.house.gov/browse/prelim@title15/chapter2D/subchapter2&edition=prelim~~ at no cost, at  
32 ~~https://uscode.house.gov/browse/prelim@title15/chapter2D/subchapter2&edition=prelim.~~ The North Carolina  
33 Investment Advisers Act, G.S. 78C is hereby incorporated by reference, including subsequent amendments and  
34 editions and is available online, at  
35 ~~https://ncleg.gov/EnactedLegislation/Statutes/HTML/ByChapter/Chapter\_78C.html~~ at no cost, at  
36 ~~https://ncleg.gov/EnactedLegislation/Statutes/HTML/ByChapter/Chapter\_78C.html.~~

37 (g) The sale and marketing of a Fund must adhere to all applicable state and federal laws and regulations.

1 (h) A Fund shall bear one of the two highest ratings of at least one nationally recognized rating service and shall not  
2 bear a rating below one of the two highest ratings by any nationally recognized rating service which rates the Fund.

3 (i) A Fund shall disclose prominently in its prospectus, marketing materials, and communications with Eligible  
4 Participants and Active Participants that it invests only in those securities that are authorized for investment by units  
5 of local governments pursuant to G.S. 159-30(c)(8) and this Section.

6 (j) A Certified Mutual Fund shall disclose prominently in its prospectus, marketing materials, and communications  
7 with Eligible Participants and Active Participants that, in contrast to any Certified Money Market Mutual Fund, such  
8 Certified Mutual Fund does not seek to maintain a stable one-dollar net asset value (NAV) per share.

9

10 *History Note: Authority G.S. 159-3(f); 159-30(c)(8);*

11 *Eff. September 1, 2023.*

12

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14

**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Local Government Commission

RULE CITATION: 20 NCAC 03 .0713

**DEADLINE FOR RECEIPT: Thursday, August 10, 2023**

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In reviewing this Rule, the staff recommends the following changes be made:

*Again, active verbs are needed. For example, in Paragraph (a), certification is requested by whom? Who is required to do what? Please review the entire rule.*

*In Paragraph (a), what is “a method prescribed by the Secretary”? Why is this not stated in the Rule? Please clarify? Also, in Subparagraphs (a)(4) and (5), should “holdings report” and “annual report” be defined? In (6) and (7), “will” should be “shall”. In (7), please insert “in Rule .0711 of this Section” after “the definition”. In (8), “all” should not be used if “a”, “an”, or “the” can be used with the same meaning or if the word can be omitted.*

*In Paragraph (b), “shall” should be used instead of “will”. What does “may request supporting information as needed” mean? This is vague. Also, this Paragraph is not a Rule and should be removed.*

*In Paragraph (c), what does “identify” mean? Identify it where? Also, not a Rule.*

Please retype the rule accordingly and resubmit it to our office electronically.

1 20 NCAC 03 .0713 is adopted as published in 37:19 NCR, page 1952, as follows:

2  
3 **20 NCAC 03 .0713 CERTIFICATION OF A FUND**

4 (a) Certification of a Fund may be requested by submitting a proposal to the Secretary, in a method prescribed by the  
5 Secretary, containing the following information:

6       (1) the name of the Fund;

7       (2) the address of the Fund;

8       (3) the Fund prospectus;

9       (4) the most recent holdings report;

10      (5) the most recent annual report;

11      (6) an attestation that the Fund meets, and will maintain compliance with, the minimum Fund standards  
12      set forth in Rule .0712 of this Section;

13      (7) if the Fund is seeking certification as a Money Market Mutual Fund, an attestation that the Fund  
14      meets, and will maintain compliance with, the definition of Money Market Mutual Fund; and

15      (8) a list of all Broker-Dealers selling or marketing the Fund.

16 (b) The Commission will review the proposal and may request supporting information as needed to assist in its review  
17 of the proposal.

18 (c) If the Commission certifies a Fund, it shall identify the Fund as a “Certified Money Market Mutual Fund”, if the  
19 Fund is a Money Market Mutual Fund as defined in this Section; otherwise, it shall identify the Fund as a “Certified  
20 Mutual Fund”.

21 (d) Certification is effective the day after the Commission adopts a resolution certifying the Fund and is effective  
22 until termination of certification pursuant to Rule .0715 of this Section.

23  
24 *History Note: Authority G.S. 159-3(f); 159-30(c)(8);*

25 *Eff. September 1, 2023.*

**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Local Government Commission

RULE CITATION: 20 NCAC 03 .0714

**DEADLINE FOR RECEIPT: Thursday, August 10, 2023**

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In reviewing this Rule, the staff recommends the following changes be made:

*“All”, “any”, “each”, and “such” should not be used if “a”, “an”, or “the” can be used with the same meaning or if the word can be omitted. These appear on lines 4, 6, 7, 8, 11, 15, 16, 17, 20, 22, 23, 24, 25, 27, and 28.*

*“Necessary” and “applicable” should be avoided if possible. These appear on lines 11 and 28.*

*What using “in Rule .0712”, please add “of this Section”. This appears on lines 6 and 26.*

*In Paragraph (a), what does “in a method prescribed by the Secretary” mean? Where or how is this method prescribed? Please clarify or remove. Also, in Paragraph (d), “upon request from the Commission” is similarly unclear.*

*Paragraphs (b) and (e) are not rules. Notwithstanding the fact that (b) is not a rule, “an attestation at any other time” should be changed to “additional attestations”.*

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke  
Commission Counsel

Date submitted to agency: August 4, 2023

20 NCAC 03 .0714 is adopted as published in 37:19 NCR, page 1952, with changes as follows:

**20 NCAC 03 .0714            REVIEW OF FUND AND ATTESTATION**

(a) Beginning one year after the effective date of the certification of a Fund, and by December 31 each year thereafter, the Manager shall submit an attestation to the Secretary, in a method prescribed by the Secretary:

- (1) attesting that the Fund continues to meet all minimum Fund standards provided in Rule .0712;
- (2) listing all Reporting Events from the date of the prior attestation provided to the Secretary or, in the case of the first attestation of a Fund, all Reporting Events from the date of the initial submission of proposal for certification, and ~~Attesting~~attesting that no ~~other Enforcement~~Reporting Event has occurred;
- (3) attesting that the sale and marketing of the Fund adheres to all applicable state and federal laws and regulations;
- (4) if the Fund is a Certified Money Market Mutual Fund, attesting that the Fund continues to comply with the definition of Certified Money Market Mutual Fund in Rule .0711 of this Section; ~~and~~
- (5) providing a list of all Broker-Dealers selling or marketing the ~~Fund~~Fund;
- (6) providing a holdings report including all holdings from the date of the prior attestation provided to the Secretary or, in the case of the first attestation of a Fund, all holdings from the date of the holdings report provided in the initial submission of proposal for certification; and
- (7) providing the most recent Fund prospectus and annual report.

(b) The Commission may request an attestation at any other time to review and confirm compliance of the Fund with the Rules in this Section.

(c) Any changes to a Fund’s or investment adviser’s federal or state registration documents shall be reported to the Secretary within 30 days of the filing of the updated registration documents, with all changes marked and identified.

(d) The Manager shall, upon request from the Commission, provide documentation supporting any attestation with specific reference to the location within such supporting documentation which demonstrates that the minimum Fund standards of Rule .0712 have been met.

(e) The Commission shall have access to all Fund documents, shall be able to make any examinations it deems necessary to ensure compliance with the Rules in this Section, and shall have the right to copies of all Fund documents at the expense of the Manager of the Fund.

*History Note:    Authority G.S. 159-3(f); 159-30(c)(8);  
                          Eff. September 1, 2023.*

**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Local Government Commission

RULE CITATION: 20 NCAC 03 .0715

**DEADLINE FOR RECEIPT: Thursday, August 10, 2023**

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*“Any” and “all” should not be used if “a”, “an”, or “the” can be used with the same meaning or if the word can be omitted. These appear on lines 5, 7, and 16.*

*In Paragraph (b), “shall commence upon” should be simplified to “shall begin when”. “Upon” should be generally avoided. Can it be removed from Paragraph (c)?*

Please retype the rule accordingly and resubmit it to our office electronically.

1 20 NCAC 03 .0715 is adopted as published in 37:19 NCR, page 1952, with changes as follows:

2

3 **20 NCAC 03 .0715           TERMINATION OF CERTIFICATION**

4 (a) The Commission may adopt a resolution terminating the certification of a Fund due to one or more of the following:

5           (1)     A Manager or a Fund violates any of the Rules in this ~~Section~~Section and the Commission finds  
6                   that there has been a material adverse effect on the Fund or the interests of the Active Participants.

7           (2)     A Fund fails to meet any state or federal legal ~~requirement~~requirement and the Commission finds  
8                   that there has been a material adverse effect on the Fund or the interests of the Active Participants.

9           (3)     A Fund fails to submit an attestation pursuant to Rule .0714 of this Section within 30 calendar days  
10                  of the due date.

11           (4)     The Manager of a Fund requests termination of certification.

12           (5)     A Fund is dissolved or terminated.

13           (6)     A Reporting Event has occurred, and the Commission finds that there has been a material adverse  
14                   effect on the Fund or the interests of the Active Participants.

15 (b) A Decertification Period shall commence upon the Commission’s adoption of a resolution terminating certification  
16 of a Fund, during which time the Manager of the Fund shall notify all Active Participants of the termination of  
17 certification and provide instructions on withdrawing assets from the Fund.

18 (c) Termination of certification shall be effective upon the conclusion of the Decertification Period.

19

20 *History Note:*     *Authority G.S. 159-3(f); 159-30(c)(8);*  
21                        *Eff. September 1, 2023.*

22