

Burgos, Alexander N

Subject: FW: [External] RE: RRC Review - Local Govt Commission - 20 NCAC 03 - Change Requests

From: Laura Rowe <Laura.Rowe@nctreasurer.com>

Sent: Tuesday, August 15, 2023 8:07 AM

To: Duke, Lawrence <lawrence.duke@oah.nc.gov>; Aiken, Cindy <Cindy.Aiken@nctreasurer.com>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>

Subject: RE: [External] RE: RRC Review - Local Govt Commission - 20 NCAC 03 - Change Requests

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Good Morning Lawrence,

Thank you again for your review and for your recommendation to approve the rules. We'll be attending the meeting in person on Thursday so we'll see you then.

Thanks, Laura

Laura Rowe

Compliance Officer
Office of the State Treasurer
Office: (919) 814-3851

3200 Atlantic Avenue, Raleigh, NC 27604

www.NCTreasurer.com



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NORTH CAROLINA
DEPARTMENT OF STATE TREASURER



Dale R. Folwell, CPA
STATE TREASURER OF NORTH CAROLINA
DALE R. FOLWELL, CPA

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From: Duke, Lawrence <lawrence.duke@oah.nc.gov>

Sent: Monday, August 14, 2023 5:07 PM

To: Laura Rowe <Laura.Rowe@nctreasurer.com>; Cindy Aiken <Cindy.Aiken@nctreasurer.com>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>

Subject: RE: [External] RE: RRC Review - Local Govt Commission - 20 NCAC 03 - Change Requests

Laura,

I've reviewed your changes. Thank you for working with me on these rules. They appear to be ready, and I will be recommending approval.

Thank you,

Lawrence Duke

Counsel, NC Rules Review Commission

Office of Administrative Hearings

(984) 236-1938

Burgos, Alexander N

Subject: FW: [External] RE: RRC Review - Local Govt Commission - 20 NCAC 03 - Change Requests
Attachments: 12. Response to RRC Change Requests 20 NCAC 03 Mutual Fund Rules.docx; 12. 20 NCAC 03 .0710 (revised).docx; 12. 20 NCAC 03 .0711 (revised).docx; 12. 20 NCAC 03 .0712 (revised).docx; 12. 20 NCAC 03 .0713 (revised).docx; 12. 20 NCAC 03 .0714 (revised).docx; 12. 20 NCAC 03 .0715 (revised).docx; 12. 20 NCAC 03 .0701-.0709 Repealed Rules (revised).docx

From: Laura Rowe <Laura.Rowe@nctreasurer.com>
Sent: Thursday, August 10, 2023 4:07 PM
To: Duke, Lawrence <lawrence.duke@oah.nc.gov>; Aiken, Cindy <Cindy.Aiken@nctreasurer.com>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Subject: [External] RE: RRC Review - Local Govt Commission - 20 NCAC 03 - Change Requests

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Good Afternoon Lawrence,

Thank you for your review of our 20 NCAC 03 Section .0700 rules. Attached please find our responses to your Request for Changes and the revised Rules in response to the Request for Changes.

Please also note that we are seeking to have the effective date of the new rules changed to October 1, 2023. Similarly, to change the effective date of the rules being repealed, 20 NCAC 03 .0701 – .0709, to October 1, 2023. The new effective date of the repealed rules is reflected in the attached as well.

Let us know if you have any additional questions ahead of next week's meeting.

Thank you,
Laura

Laura Rowe
Compliance Officer
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www.NCTreasurer.com



NORTH CAROLINA
DEPARTMENT OF STATE TREASURER



Dale R. Folwell, CPA
STATE TREASURER OF NORTH CAROLINA
DALE R. FOLWELL, CPA

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Request for Changes Pursuant to N.C. Gen. Stat. § 150B-21.10

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

The imposition of a question implies that the rule as written is unclear or there is some ambiguity. If the request includes questions and you do not understand the question, please contact the reviewing attorney to discuss. Failure to respond may result in a staff opinion recommending objection.

Staff may suggest the agency "consider" an idea or language in this document. This is in no way a formal request that the agency adopt the idea or language but rather is offered merely for consideration which the agency may find preferable and clarifying.

In order to properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

Note the following general instructions:

1. You must submit the revised rule via email to oah.rules@oah.nc.gov. The electronic copy must be saved as the official rule name (XX NCAC XXXX).
2. For rules longer than one page, insert a page number.
3. Use line numbers; if the rule spans more than one page, have the line numbers reset at one for each page.
4. Do not use track changes. Make all changes using manual strikethroughs, underlines and highlighting.
5. You cannot change just one part of a word. For example:
 - Wrong: "~~a~~Association"
 - Right: "~~association~~ Association"
6. Treat punctuation as part of a word. For example:
 - Wrong: "day~~;~~ and"
 - Right: "~~day~~, day; and"
7. Formatting instructions and examples may be found at:
www.ncoah.com/rules/examples.html

If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: August 4, 2023

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. Reviewed all rule text and changed wording where we thought it could be changed to active voice while still providing clarity to the regulated public.

***** NOTE:*** *The effective date of all new rules is changed to October 1, 2023. Similarly, the effective date of the rules being repealed, 20 NCAC 03 .0701 – .0709 is changed to October 1, 2023. ***

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

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:

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. Paragraph (a) was deleted.

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..." Changes made and revised.

***** NOTE: The effective date of this rule is changed to October 1, 2023. *****

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

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Local Government Commission

RULE CITATION: 20 NCAC 03 .0711

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:

“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. Some of the requested wording changes were made, however, we believe leaving the wording as written is beneficial in other areas.

“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”. Revisions made.

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

In Item (2), what exactly does “with respect to any party” mean? This is vague. Please clarify. From industry practice we believe this language would be understood by the regulated public. In addition, similar wording is used in federal law, for example, the Investment Company Act of 1940.

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.” Revisions made.

Subitems (11)(a) and (b) should end with semicolon instead of commas. In (11)(c), “similar” is a vague term. What exactly is meant? We revised this section to provide clarity. Also, please add an oxford comma between “state” and “or” on line 5, page 2. This was added.

***** NOTE: The effective date of this rule is changed to October 1, 2023. *****

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 .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. Some of the requested wording changes were made, however, we believe leaving the wording as written is beneficial in other areas.

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

“Applicable” should be avoided if possible and is generally unnecessary. These appear on page 1, lines 7, 28, and 37. Retaining use of “applicable” as written because not all mutual funds that may seek Commission certification are necessarily required to register with the SEC and be subject to the rules, regulations and reporting requirements for SEC registered funds. The Commission’s rules are intended to require that Funds adhere to those specific federal requirements in order to qualify for certification with the Commission, where, without the certification, those requirements would not apply. We want to make clear that the Commission’s rules are imposing only those federal laws applicable to the subject matter of the Commission’s rules and are not imposing other federal rules that would otherwise be inapplicable to that Fund.

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

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? In using this language, we think it is helpful to restate some of the statutory language to provide clarification. We revised wording to use active voice and clarification to refer to 159-30(c). 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-

Lawrence R. Duke
Commission Counsel

Date submitted to agency: August 4, 2023

2(8a), because it is a statement concerning only the internal management of the Commission. This language was revised to use active voice.

What is the specific statutory authority for the requirement in Paragraph (c). Also, “shall” is preferred instead of “will”. The authority to establish this requirement in rule comes from 159-30(c)(8).

In Paragraph (d), duplicative words such as “rules and regulations” should be shortened to “rules” or “regulations”. This language was retained because the Code of Federal Regulations uses the term “regulations,” and the SEC uses the term “rules” when referring to the same language. Also, what exactly is meant by the requirement of (d)(1)? Can this be clarified? The idea of the language in (d)(1) is that the benchmark used by the Fund can’t be affiliated, associated, or linked to the Fund itself or its Manager because this would result in the Fund essentially comparing its performance to an unobjective standard that the Fund sets for itself.

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 federal and state rules, regulations, and reporting requirements.” is unnecessary, as is all of (g). For (f) this language is necessary because, due to an exemption under federal law, a Manager could be unregistered with the SEC and still seek to manage the funds of a local government. Due to this, the Commission seeks to require that Managers actually be registered with the SEC or with the NC Secretary of State in order to be certified to manage a Fund under these rules. For (g), the SEC does not regulate the sale and marketing of a Fund. This language specifying the need to follow the law addressed a concern the Commission had with ensuring that the Funds were marketed fairly to local governments. We believe that acknowledging this aspect of Fund administration in the rules is necessary and helpful to the stakeholders. In (g) the word “must” was changed to “shall.”

In (i) changed “government” to singular.

*** NOTE: The effective date of this rule is changed to October 1, 2023. ***

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

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Local Government Commission

RULE CITATION: 20 NCAC 03 .0713

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:

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. This language was revised to provide clarification and written in active voice.

In Paragraph (a), what is “a method prescribed by the Secretary”? Why is this not stated in the Rule? Please clarify? Revised to remove text. Also, in Subparagraphs (a)(4) and (5), should “holdings report” and “annual report” be defined? Do not believe definitions are needed, these terms are understood in the industry. In (6) and (7), “will” should be “shall”. Revisions made. In (7), please insert “in Rule .0711 of this Section” after “the definition”. Revisions made. 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. Language retained as written.

In Paragraph (b), “shall” should be used instead of “will”. Revision made. What does “may request supporting information as needed” mean? This is vague. Also, this Paragraph is not a Rule and should be removed. This text was retained because the ability of the Commission to seek additional information as part of its review does affect outside parties and is part of the process of a Fund seeking certification.

In Paragraph (c), what does “identify” mean? Identify it where? The text of the rule was revised. Also, not a Rule. This text is necessary as a Rule because the Commission was concerned that local governments would have clear information about the type of funds that were being certified by the Commission. This rule also ties to the requirements contained Rule .0712 (i) and (j). In addition, revised (c) to place the comma and period inside the quotation marks after “Fund” and added “in Rule .0711 of” after “defined.”

***** NOTE: The effective date of this rule is changed to October 1, 2023. *****

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 .0714

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”, “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. Some revisions made, other language remained as written.

“Necessary” and “applicable” should be avoided if possible. These appear on lines 11 and 28. Some revisions made, some wording retained as written.

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

In Paragraph (a), what does “in a method prescribed by the Secretary” mean? Where or how is this method prescribed? Please clarify or remove. Revisions were made. Also, in Paragraph (d), “upon request from the Commission” is similarly unclear. Revisions were made. In addition, reworded (a)(3) to put ‘federal’ and ‘state’ in consistent order with other sections of rules.

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”. Believe keeping this text in (b) is necessary and will be helpful to the regulated public. The text makes clear that the Commission can request additional attestations at any time, separate from the annual requirement in (a). Believe keeping the text in (e) is necessary and will help the regulated public because the ability of the Commission to have access to, examine, and obtain copies of documents retained by a Fund are an important part of the administration of these Rules and the review of documents does affect parties outside the Commission.

***** NOTE: The effective date of this rule is changed to October 1, 2023. *****

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 .0715

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:

“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. Lines 7 and 16 were changed, line 5 remained as written.

In Paragraph (b), “shall commence upon” should be simplified to “shall begin when”. “Upon” should be generally avoided. Retained text as written, believe “commence” reads better than “begin.” Can it be removed from Paragraph (c)? Changed ‘all’ to ‘the’ in (b). In (b) and (c) use of “upon” is retained. The term “upon” has a slightly different meaning from the term “when” and use of “upon” is preferred for use here.

***** NOTE: The effective date of this rule is changed to October 1, 2023. *****

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 .0701 – .0709 are repealed as published in the NCR pages 1950-1951 as follows:

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CHAPTER 03 - LOCAL GOVERNMENT COMMISSION

SECTION .0700 - MUTUAL FUND FOR LOCAL GOVERNMENT INVESTMENT

- 20 NCAC 03 .0701 GENERAL INFORMATION**
- 20 NCAC 03 .0702 DEFINITION OF TERMS**
- 20 NCAC 03 .0703 MINIMUM FUND STANDARDS**
- 20 NCAC 03 .0704 REQUIREMENTS FOR THE RFP**
- 20 NCAC 03 .0705 ISSUANCE OF THE RFP**
- 20 NCAC 03 .0706 CERTIFICATION AND TERMINATION OF MANAGER**
- 20 NCAC 03 .0707 TERMINATION FOR CAUSE**
- 20 NCAC 03 .0708 REVIEW OF MANAGER**
- 20 NCAC 03 .0709 DELEGATION OF AUTHORITY**

History Note: Authority G.S. 159-3(f); 159-30(c)(7); 159-30(c)(6a)
Eff. February 1, 1982;
Amended Eff. April 1, 1985; April 1, 1987; October 1, 2017;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,
2018-2018;
Repealed Eff. ~~September 1, 2023~~ October 1, 2023.

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

2

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~~Correspondence ~~to the State Treasurer~~required by the Rules ~~under~~of this Section shall be
7 addressed to: Secretary, Local Government Commission, Department of State Treasurer, 3200 Atlantic Avenue,
8 Raleigh, North Carolina ~~27604~~27604 or emailed to SLGFD@nctreasurer.com.

9

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

12

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

20 NCAC 03 .0711 DEFINITION OF TERMS

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

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

- 1 (b) ~~anya~~ 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 anyan Affiliate of a Fund or ~~Manager, Manager~~; or
4 (c) ~~anya~~ non-routine ~~SEC~~-inquiry or investigation pursuant to securities law or regulation or
5 ~~any similar inquiry or investigation from~~ by the SEC or any similar other federal, ~~state~~state,
6 or self-regulatory body or organization against a Fund, a Manager, or ~~anyan~~ Affiliate of a
7 Fund or Manager.

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

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

11 *Eff. ~~September 1, 2023~~ October 1, 2023*

12

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

20 NCAC 03 .0712 MINIMUM FUND STANDARDS

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

(b) A Fund shall be registered with the SEC as an investment company ~~under~~pursuant to the Investment Company Act of 1940 and shall comply with all applicable SEC rules, regulations, and reporting requirements. The SEC requirements of 17 CFR Chapter 2 are ~~hereby~~ incorporated by reference, including subsequent amendments and editions, and are available online, at ~~https://www.ecfr.gov/current/title-17/chapter-II~~ at no cost east, at https://www.ecfr.gov/current/title-17/chapter-II. SEC registration and compliance do not modify the requirement that a Fund comply with G.S. 159-30. The Investment Company Act of 1940 is ~~hereby~~ incorporated by reference, including subsequent amendments and editions and is available online, at ~~https://uscode.house.gov/browse/prelim@title15/chapter2D/subchapter1&edition=prelim~~ at no cost east, at https://uscode.house.gov/browse/prelim@title15/chapter2D/subchapter1&edition=prelim.

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

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

- (1) is unaffiliated with the Fund's Manager;
- (2) is specified in advance; and
- (3) is representative of the Fund's current investment strategy and parameters.

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

(f) A Fund shall be managed by an investment adviser registered with either the SEC as an investment adviser ~~under~~pursuant to the Investment Advisers Act of 1940, or the North Carolina Secretary of State as an investment adviser ~~under~~pursuant to the North Carolina Investment Advisers Act, and such investment adviser shall comply with all applicable federal and state rules, regulations, and reporting requirements. The Investment Advisers Act of 1940 is ~~hereby~~ incorporated by reference, including subsequent amendments and editions and is available online, at ~~https://uscode.house.gov/browse/prelim@title15/chapter2D/subchapter2&edition=prelim~~ at no cost east, at https://uscode.house.gov/browse/prelim@title15/chapter2D/subchapter2&edition=prelim. The North Carolina Investment Advisers Act, G.S. 78C is ~~hereby~~ incorporated by reference, including subsequent amendments and editions and is available online, at

1 https://ncleg.gov/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_78C.html at no cost, ~~est,~~ at
2 ~~https://ncleg.gov/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_78C.html.~~

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

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

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

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

13

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

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18

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

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

4 ~~(a) A prospective Manager may request Certification~~certification of a Fund~~may be requested~~ by submitting a proposal
5 to the ~~Secretary, Secretary in a method prescribed by the 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~~shall maintain compliance with, the minimum Fund
12 standards 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~~shall maintain compliance with, the definition in Rule .0711 of this Section of Money
15 Market Mutual Fund; and
- 16 (8) a list of all Broker-Dealers selling or marketing the Fund.

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

19 (c) If the Commission certifies a Fund, it shall ~~identify~~certify the Fund as a “Certified Money Market Mutual
20 ~~Fund~~,” if the Fund is a Money Market Mutual Fund as defined in Rule .0711 of~~in~~ this Section; otherwise, it
21 shall ~~identify~~certify the Fund as a “Certified Mutual ~~Fund~~.”

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

24
25 *History Note: Authority G.S. 159-3(f); 159-30(c)(8);*
26 *Eff. ~~September 1, 2023~~October 1, 2023.*
27

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, Secretary: in a method prescribed by the Secretary:~~

(1) attesting that the Fund continues to meet ~~all~~the minimum Fund standards provided in Rule ~~.0712;~~.0712 of this Section;

(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 Attestingattesting that no other Enforcement~~Reporting~~ Event has occurred;

(3) attesting that the sale and marketing of the Fund adheres to all applicable federal and 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~~the 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 additional attestation~~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 receiving a request from the Commission, provide documentation supporting ~~any~~an attestation with specific reference to the location within such supporting documentation which demonstrates that the minimum Fund standards of Rule .0712 of this Section have been met.

(e) ~~The Commission~~Manager shall provide to the Commission~~have access to all Fund documents, documents and shall allow the Commission shall be able to make any examinations if the Commission deems necessary~~required to ensure compliance with the Rules ~~in~~of this Section, and shall have the right to provide to the Commission copies of all Fund documents requested by the Commission to the Commission 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.~~ October 1, 2023.*

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 a federal or state or federal~~legal requirementand the
8 Commission finds that there has been a material adverse effect on the Fund or the interests of the
9 Active Participants.
- 10 (3) A Fund fails to submit an attestation pursuant to Rule .0714 of this Section within 30 calendar days
11 of the due date.
- 12 (4) The Manager of a Fund requests termination of certification.
- 13 (5) A Fund is dissolved or terminated.
- 14 (6) A Reporting Event has occurred, and the Commission finds that there has been a material adverse
15 effect on the Fund or the interests of the Active Participants.

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

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

20
21 *History Note:* *Authority G.S. 159-3(f); 159-30(c)(8);*
22 *Eff. ~~September 1, 2023.~~ October 1, 2023.*
23

Burgos, Alexander N

From: Duke, Lawrence
Sent: Friday, August 4, 2023 2:36 PM
To: Rowe, Laura; Aiken, Cindy
Cc: Burgos, Alexander N
Subject: RRC Review - Local Govt Commission - 20 NCAC 03 - Change Requests
Attachments: Local Government Commission - 08.2023 - 20 NCAC 03 - Change Requests.docx

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Laura & Cindy,

I hope you are doing well. I have reviewed the rules submitted by the Treasurer on behalf of the Local Government Commission. Please see the attached requests for changes. Please let me know if you have any questions.

Have a good weekend!

Thank you,
Lawrence Duke



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Office of Administrative Hearings
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