

Chapter 460-24A WAC

INVESTMENT ADVISERS

21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330,
21.20.340, 21.20.450, and 21.20.702.

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460-24A-005 460-24A-010 460-24A-020 460-24A-030 460-24A-035 460-24A-040 460-24A-045 460-24A-047 460-24A-050 460-24A-055 460-24A-057 460-24A-059 460-24A-060 460-24A-070 460-24A-071 460-24A-072 460-24A-080 460-24A-100 460-24A-105 460-24A-106 460-24A-107 460-24A-108 460-24A-109 460-24A-110 460-24A-120 460-24A-125 460-24A-130 460-24A-140 460-24A-145 460-24A-150 460-24A-160 460-24A-170 460-24A-200 460-24A-205 460-24A-210 460-24A-220	Definitions. Application of rules to out-of-state investment advisers. Investment adviser representatives employed by federal covered advisers. Use of the term "investment counsel" is prohibited. Definition of "client" of an investment adviser. Use of certain terms deemed similar to "financial planner" or "investment counselor." Holding out as a financial planner. Electronic filing with designated entity. Registration and examination requirements. Effective date of license. Renewal of investment adviser and investment adviser representative registration—Delinquency fees. Pending application—Notice of termination—Application for continuation. Financial reporting requirements for investment advisers. Notice filing requirements for federal covered advisers. Registration exemption for investment advisers to private funds. Registration exemption for investment advisers to venture capital funds. Termination of investment adviser and investment adviser representative registration and federal covered adviser notice filing status. Advertisements by investment advisers. Requirements for an investment adviser that has custody or possession of client funds or securities. Additional custody requirements for an investment adviser that directly deducts fees from client accounts. Additional custody requirements for an investment adviser that manages a pooled investment vehicle or trust. Additional custody requirements for an investment adviser that acts as trustee and investment adviser to a trust. Exceptions from custody requirements. Agency cross transactions. Compliance procedures and practices. Proxy voting. Contents of investment advisory contract. Guarantees of success are prohibited. Investment adviser brochure rule. Performance compensation arrangements. Restrictions on advertising refunds. Minimum financial requirements for investment advisers. Books and records to be maintained by investment advisers. Notice of changes by investment advisers and investment adviser representatives. Notice of complaint must be filed with director. Unethical business practices—Investment advisers and federal covered advisers.
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WAC 460-24A-005 Definitions. For purposes of this chapter:

(1) **"Custody"** means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them or the ability to appropriate them.

(a) **"Custody"** includes:

(i) Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving them;

(ii) Any arrangement (including a general power of attorney) under which an investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon an investment adviser's instruction to the custodian; and

(iii) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives an investment adviser or its supervised person legal ownership of or access to client funds or securities.

(b) Receipt of checks drawn by clients and made payable to unrelated third parties will not meet the definition of custody if forwarded to the third party within three business days of receipt and the adviser maintains a ledger or other listing of all securities or funds held or obtained inadvertently as set forth in WAC 460-24A-200.

(2) **"Independent party"** means a person who:

(a) Is engaged by an investment adviser to act as a gatekeeper for the payment of fees, expenses, and capital withdrawals from a pooled investment;

(b) Does not control and is not controlled by and is not under common control with the investment adviser;

(c) Does not have, and has not had within the past two years, a material business relationship, including acting as an independent representative on behalf of a client of the investment adviser, with the investment adviser;

(d) Shall not negotiate or agree to have material business relations with an investment adviser, or relationships with entities under common control with an investment adviser, for a period of two years after serving as the person engaged in an independent party agreement; and

(e) Is required to act in the best interest of the limited partners, members, or other beneficial owners.

(3) **"Independent representative"** means a person who:

(a) Acts as an agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

460-24A-046 460-24A-058	Dual representation and affiliation. [Statutory Authority: RCW 21.20.070 and 21.20.450. WSR 95-16-026, § 460-24A-046, filed 7/21/95, effective 8/21/95.] Repealed by WSR 97-03-122, filed 1/22/97, effective 2/22/97. Statutory Authority: RCW 21.20.100 and 21.20.450. Completion of filing. [Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. WSR 01-16-125, § 460-24A-058, filed 7/31/01, effective 10/24/01.] Repealed by WSR 14-13-068, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 21.20.005, 21.20.-020, 21.20.030, 21.20.040, 21.20.050, 21.20.060,
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the best interest of the advisory client or the limited partners or members, or other beneficial owners;

(b) Does not control, is not controlled by, and is not under common control with the investment adviser;

(c) Does not have, and has not had within the past two years, a material business relationship, including acting as an independent party, with the investment adviser.

(4) **"Qualified custodian"** means the following independent institutions or entities:

(a) A bank as defined in section 202 (a)(2) of the Advisers Act, 15 U.S.C. 80b-2 (a)(2), or a savings association as defined in section 3 (b)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1813 (b)(1), that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act, 12 U.S.C. 1811;

(b) A broker-dealer registered in this state and under section 15 (b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78o (b)(1), holding the client assets in customer accounts;

(c) A futures commission merchant registered under section 4f(a) of the Commodity Exchange Act, 7 U.S.C. 6f(a), holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon;

(d) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets; and

(e) The transfer agent for an open-end company as defined in section 5 (a)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-5 (a)(1), only with respect to shares of the open-end company.

(5) **"Independent certified public accountant"** means a certified public accountant that meets the standards of independence described in rule 2-01 (b) and (c) of Regulation S-X, 17 C.F.R. 210.2-01 (b) and (c).

(6) **"Related person"** means any person, directly or indirectly, controlling or controlled by the investment adviser, and any person that is under common control with the investment adviser.

(7) **"Control"** means the power, directly or indirectly, to direct the management or policies of a person whether through ownership of securities, by contract, or otherwise. The following persons are presumed to have control:

(a) Each of the investment adviser's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions); and

(b) A person who:

(i) Directly or indirectly has the right to vote twenty-five percent or more of a class of the voting securities of a corporation or limited liability company;

(ii) Has the power to sell or direct the sale of twenty-five percent or more of a class of the voting securities of a corporation or limited liability company;

(iii) Has the right to receive, upon dissolution, or that has contributed, twenty-five percent or more of the capital of a partnership or limited liability company; or

(iv) Is the manager of a limited liability company or the trustee or managing agent of a trust.

(8) **"Private fund adviser"** means an investment adviser who provides advice solely to one or more qualifying private funds.

(9) **"Qualifying private fund"** means a private fund that meets the definition of a qualifying private fund in Securities and Exchange Commission Rule 203 (m)-1, 17 C.F.R. 275.203 (m)-1, other than a private fund that qualifies for the exclusion from the definition of "investment company" provided in section 3 (c)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-3 (c)(1).

(10) **"Discretionary authority"** means the authority, directly or indirectly, to:

(a) Determine what securities or other property shall be purchased or sold by or on behalf of a client;

(b) Make decisions as to what securities or other property shall be purchased or sold by or for the benefit of a client even though some other person may have responsibility for such investment decisions; or

(c) Make decisions as to what investment advisers to retain on behalf of a client.

(11) **"FINRA"** means the Financial Industry Regulatory Authority, Inc., the self-regulatory organization for broker-dealers and broker-dealer representatives that is registered as a national securities association with the Securities and Exchange Commission under Section 15A of the Securities Exchange Act of 1934, 15 U.S.C. § 78o.

(12) **"Central Registration Depository"** or **"CRD"** means the electronic filing system operated by FINRA for the registration of broker-dealers and broker-dealer representatives.

(13) **"Investment Adviser Registration Depository"** or **"IARD"** means the electronic filing system operated by FINRA for the registration of investment advisers and investment adviser representatives and submission of filings by exempt reporting advisers.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-005, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 21.20.450, 21.20.900, 21.20.100, 21.20.050 - [21.20].060. WSR 08-18-033, § 460-24A-005, filed 8/27/08, effective 9/27/08.]

WAC 460-24A-010 Application of rules to out-of-state investment advisers. If you are an investment adviser or investment adviser representative with your principal office and place of business outside the state of Washington, these rules apply only to that part of your business within the state of Washington.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-010, filed 6/12/14, effective 7/13/14; Order 304, § 460-24A-010, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

WAC 460-24A-020 Investment adviser representatives employed by federal covered advisers. If you are an individual employed by or associated with a federal covered adviser you are an "investment adviser representative," as defined under RCW 21.20.005, if you have a "place of business" in this state, as that term is defined under section 203A of the Investment Advisers Act of 1940, and:

(1) You are an "investment adviser representative" as that term is defined in rules or regulations promulgated under the Investment Advisers Act of 1940 by the U.S. Securities and Exchange Commission; or

(2) You solicit, offer, or negotiate for the sale of or sell investment advisory services on behalf of a federal covered adviser, but are not a "supervised person" as that term is defined under the Investment Advisers Act of 1940.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-020, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 21.20.450. WSR 12-10-051, § 460-24A-020, filed 4/30/12, effective 5/31/12. Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. WSR 01-16-125, § 460-24A-020, filed 7/31/01, effective 10/24/01.]

WAC 460-24A-030 Use of the term "investment counsel" is prohibited. If you are an investment adviser or investment adviser representative, you shall not use the title "investment counsel" in the conduct of your business nor represent that you are an "investment counsel" nor use the term "investment counsel" as descriptive of your business where such use is prohibited under the provisions of the Federal Investment Advisers Act of 1940, as amended.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-030, filed 6/12/14, effective 7/13/14; Order 304, § 460-24A-030, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

WAC 460-24A-035 Definition of "client" of an investment adviser. (1) **General.** You may deem the following to be a single client for purposes of RCW 21.20.040(3):

- (a) A natural person; and
- (i) Any minor child of the natural person;
- (ii) Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;
- (iii) All accounts of which the natural person and/or the persons referred to in (a) of this subsection are the only primary beneficiaries; and
- (iv) All trusts of which the natural person and/or the persons referred to in (a) of this subsection are the only primary beneficiaries;

(b)(i) A corporation, general partnership, limited partnership, limited liability company, trust (other than a trust referred to in subsection (1)(a)(iv) of this section), or other legal organization (any of which are referred to hereinafter as a "legal organization") to which you provide investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries (any of which are referred to hereinafter as an "owner"); and

(ii) Two or more legal organizations referred to in subsection (1)(b)(i) of this section that have identical owners.

(2) **Special rules.** For purposes of this section:

(a) You must count an owner as a client if you provide investment advisory services to the owner separate and apart from the investment advisory services you provide to the legal organization; provided, however, that the determination that an owner is a client will not affect the applicability of this section with regard to any other owner;

(6/12/14)

(b) You are not required to count an owner as a client solely because you, on behalf of the legal organization, offer, promote, or sell interests in the legal organization to the owner, or report periodically to the owners as a group solely with respect to the performance of or plans for the legal organization's assets or similar matters;

(c) A limited partnership or limited liability company is a client of any general partner, managing member or other person acting as investment adviser to the partnership or limited liability company;

(d) You are not required to count as a client any person for whom you provide investment advisory services without compensation;

(e) If you have your principal office and place of business outside the United States, you are not required to count clients that are not United States residents, but if your principal office and place of business is in the United States, you must count all clients;

(f) You may not rely on subsection (1)(b)(i) of this section with respect to any company that would be an investment company under section 3(a) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(a), but for the exception from that definition by either section 3 (c)(1) or 3 (c)(7) of such act, 15 U.S.C. 80a-3 (c)(1) or (7); and

(g) For purposes of (e) of this subsection, a client who is an owner of a private fund is a resident of the place at which the client resides at the time of the client's investment in the fund.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-035, filed 6/12/14, effective 7/13/14.]

WAC 460-24A-040 Use of certain terms deemed similar to "financial planner" or "investment counselor." (1) For the purposes of RCW 21.20.040(4), use of any term, or abbreviation for a term, including the word "financial planner" or the word "investment counselor" is considered the same as the use of either of those terms alone.

(2) For the purposes of RCW 21.20.040(4), terms that are deemed similar to "financial planner" and "investment counselor" include, but are not limited to, the following:

- (a) Financial consultant;
- (b) Investment consultant;
- (c) Money manager;
- (d) Investment manager;
- (e) Investment planner;
- (f) Chartered financial consultant or its abbreviation ChFC; or
- (g) The abbreviation CFP®.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-040, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 21.20.450. WSR 00-01-001, § 460-24A-040, filed 12/1/99, effective 1/1/00; WSR 97-16-050, § 460-24A-040, filed 7/31/97, effective 8/31/97. Statutory Authority: RCW 21.20.040(2) and 21.20.450. WSR 93-01-113, § 460-24A-040, filed 12/21/92, effective 1/21/93; WSR 90-13-029, § 460-24A-040, filed 6/12/90, effective 7/13/90.]

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WAC 460-24A-045 Holding out as a financial planner. If you use a term deemed similar to "financial planner" or "investment counselor" under WAC 460-24A-040(2), you will not be considered to be holding yourself out as a financial planner for purposes of RCW 21.20.005 and 21.20.040 under the following circumstances:

(1) You are not in the business of providing advice relating to the purchase or sale of securities, and would not, but for your use of such a term, be an investment adviser required to register pursuant to RCW 21.20.040; and

(2) You do not directly or indirectly receive a fee for providing investment advice. Receipt of any portion of a "wrap fee," that is, a fee for some combination of brokerage and investment advisory services, constitutes receipt of a fee for providing investment advice for the purpose of this section; and

(3) You deliver to every customer, at least forty-eight hours before accepting any compensation, including commissions from the sale of any investment product, a written disclosure including the following information:

(a) You are not registered as an investment adviser or investment adviser representative in the state of Washington;

(b) You are not authorized to provide financial planning or investment advisory services and do not provide such services; and

(c) A brief description of your business which description shall include a statement of the kind of products offered or services provided (e.g., you are in the business of selling securities and insurance products) and of the basis on which you are compensated for the products sold or services provided; and

(4) You have each customer to whom a disclosure described in subsection (3) of this section is given sign a written dated acknowledgment of receipt of the disclosure; and

(5) You retain the executed acknowledgments of receipt required by subsection (4) of this section and of the disclosure given for so long as you continue to receive compensation from such customers, but in no case for less than three years from date of execution of the acknowledgment; and

(6) If you received compensation from the customer on more than one occasion, you need give the customer the disclosure described in subsection (3) of this section only on the first occasion unless the information in the disclosure becomes inaccurate, in which case you must give the customer updated disclosure before receiving further compensation from the customer.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-045, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 21.20.-450. WSR 12-10-051, § 460-24A-045, filed 4/30/12, effective 5/31/12; WSR 97-16-050, § 460-24A-045, filed 7/31/97, effective 8/31/97. Statutory Authority: RCW 21.20.040(2) and 21.20.450. WSR 93-01-113, § 460-24A-045, filed 12/21/92, effective 1/21/93.]

WAC 460-24A-047 Electronic filing with designated entity. (1) Designation. Pursuant to RCW 21.20.050, the director designates the Investment Adviser Registration Depository (IARD) operated by Financial Industry Regulatory Authority (FINRA) to receive and store filings and collect related fees from investment advisers, federal covered

advisers, and investment adviser representatives on behalf of the director.

(2) Use of IARD. Unless otherwise provided, all investment adviser, federal covered adviser, and investment adviser representative applications, amendments, reports, notices, related filings, and fees required to be filed with the director pursuant to the rules promulgated under this chapter, shall be filed electronically with and transmitted to IARD. The following additional conditions relate to such electronic filings:

(a) Electronic signature. When a signature or signatures are required by the particular instructions of any filing to be made through IARD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.

(b) When filed. Solely for purposes of a filing made through IARD, a document is considered filed with the director when all fees are received and the filing is accepted by IARD on behalf of the state.

(3) Electronic filing. Notwithstanding subsection (2) of this section, the electronic filing of any particular document and the collection of related processing fees shall not be required until such time as IARD provides for receipt of such filings and fees and thirty days' notice is provided by the director. Any documents required to be filed with the director that are not permitted to be filed with or cannot be accepted electronically by IARD shall be filed directly with the director.

(4) Hardship exemptions. Notwithstanding subsection (2) of this section, electronic filing is not required under the following circumstances:

(a) Temporary hardship exemption.

(i) Investment advisers registered or required to be registered under RCW 21.20.040, who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD, may request a temporary hardship exemption from the requirements to file electronically.

(ii) To request a temporary hardship exemption, the investment adviser must:

(A) File Form ADV-H in paper format with the appropriate regulatory authority in the state where the investment adviser's principal place of business is located, no later than one business day after the filing, that is the subject of the Form ADV-H, was due. If the state where the investment adviser's principal place of business is located has not mandated the use of IARD, the investment adviser should file the Form ADV-H with the appropriate regulatory authority in the first state that mandates the use of IARD by the investment adviser; and

(B) Submit the filing that is the subject of the Form ADV-H in electronic format to IARD no later than seven business days after the filing was due.

(iii) Effective date - Upon filing. The temporary hardship exemption will be deemed effective by the director upon receipt of the complete Form ADV-H by appropriate regulatory authority noted in (a)(ii)(A) of this subsection. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the director.

(b) Continuing hardship exemption.

(i) Criteria for exemption. A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this section are prohibitively burdensome.

(ii) To apply for a continuing hardship exemption, the investment adviser must:

(A) File Form ADV-H in paper format with the director at least twenty business days before a filing is due; and

(B) If a filing is due to more than one state, the Form ADV-H must be filed with the appropriate regulatory authority in the state where the investment adviser's principal place of business is located. If the state where the investment adviser's principal place of business is located has not mandated the use of IARD, the investment adviser should file the Form ADV-H with the appropriate regulatory authority in the first state that mandates the use of IARD by the investment adviser. Any applications received by the director will be granted or denied within ten business days after the filing of Form ADV-H.

(iii) Effective date - Upon approval. The exemption is effective upon approval by the director. The time period of the exemption may be no longer than one year after the date on which the Form ADV-H is filed. If the director approves the application, the investment adviser must, no later than five business days after the exemption approval date, submit filings in paper format (along with the appropriate processing fees) for the period of time for which the exemption is granted.

(c) Recognition of exemption. The decision to grant or deny a request for a hardship exemption will be made by the appropriate regulatory authority in the state where the investment adviser's principal place of business is located. If the state where the investment adviser's principal place of business is located has not mandated the use of IARD, the decision to grant or deny a request for a hardship exemption will be made by appropriate regulatory authority in the first state that mandates the use of IARD by the investment adviser. The decision will be followed by the director if the investment adviser is registered in this state.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-047, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 21.20.450. WSR 14-10-040, § 460-24A-047, filed 4/29/14, effective 5/30/14. Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. WSR 01-16-125, § 460-24A-047, filed 7/31/01, effective 10/24/01.]

WAC 460-24A-050 Registration and examination requirements. (1) **Examination requirements.** If you are applying to be registered as an investment adviser or investment adviser representative under RCW 21.20.040, you shall provide the director with proof that you have obtained a passing score on:

(a) The Uniform Investment Adviser Law Examination (Series 65 examination); or

(b) The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).

(2) **Exceptions from examination requirements.**

(a) If you were registered as an investment adviser or investment adviser representative in any jurisdiction in the

United States on January 1, 2000, and there has been no period longer than two years since that date in which you were not registered as an investment adviser or investment adviser representative, you shall not be required to satisfy the examination requirements for initial or continued registration, provided that the director may require additional examinations if you are found to have violated the Securities Act of Washington, Chapter 21.20 RCW, or the Uniform Securities Act.

(b) Any person who has been registered as an investment adviser or investment adviser representative in any state requiring the licensing, registration, or qualification of investment advisers or investment adviser representatives within the two-year period immediately preceding the date of filing of an application shall not be required to comply with the examination requirement set forth in subsection (1) of this section provided that the person previously met the examination requirement in subsection (1) of this section.

(c) An applicant who has taken and passed the Uniform Investment Adviser State Law Examination (Series 65 examination) within two years prior to the date the application is filed with the director shall not be required to take and pass the Uniform Investment Adviser State Law Examination again.

(d) An applicant who is an agent for a broker-dealer/investment adviser and who is not required by the agent's home jurisdiction to make a separate filing on CRD as an investment adviser representative but who has previously met the examination requirement in subsection (1) of this section necessary to provide advisory services on behalf of the broker-dealer/investment adviser, shall not be required to take and pass the Uniform Investment Adviser State Law Examination (Series 65 examination) or the Uniform Combined State Law Examination (Series 66 examination) again.

(3) **Examination waivers.** You are not required to take the examinations set forth in subsection (1) of this section if you currently hold one of the following professional designations:

(a) Certified Financial Planner (CFP®) issued by the Certified Financial Planner Board of Standards, Inc.;

(b) Chartered Financial Consultant (ChFC) awarded by The American College, Bryn Mawr, Pennsylvania;

(c) Personal Financial Specialist (PFS) administered by the American Institute of Certified Public Accountants;

(d) Chartered Financial Analyst (CFA) granted by the CFA Institute;

(e) Chartered Investment Counselor (CIC) granted by the Investment Adviser Association; or

(f) Such other professional designation as the director may by order recognize.

(4) If you are applying for registration as an investment adviser and you are any entity other than a sole proprietor, an officer, general partner, managing member, or other equivalent person of authority in the entity may take the examination on behalf of the entity. If the person that took the examination ceases to be a person of authority in the entity, then you must notify the director of a substitute person of authority who has registered with the director as an investment adviser representative.

(5) Registration requirements.

(a) To apply for initial registration as an investment adviser, you must file a completed Form ADV with IARD along with the following:

(i) Proof of complying with the examination or waiver requirements specified in subsections (1) through (4) above;

(ii) Such financial statements as are set forth in WAC 460-24A-060, including a copy of the balance sheet for the last fiscal year, and if such balance sheet is as of a date more than ninety days from the date of filing the application, an unaudited balance sheet prepared as set forth in WAC 460-24A-060, if necessary;

(iii) A copy of the surety bond required by WAC 460-24A-170, if applicable;

(iv) The application fee specified in RCW 21.20.340; and

(v) Such other documents as the director may require.

(b) To apply for initial registration as an investment adviser representative, you shall file a completed Form U4 with IARD along with the following:

(i) Proof of complying with the examination or waiver requirements specified in subsections (1) through (4) above;

(ii) The application fee specified in RCW 21.20.340; and

(iii) Such other documents as the director may require.

(c) If you advise one or more pooled investment vehicles, then you must also submit to the division as part of your application, copies of the following documents:

(i) Account agreement with each qualified custodian for each pooled investment vehicle pursuant to WAC 460-24A-105;

(ii) Engagement letter with an independent certified public accountant or agreement with an independent party for each pooled investment vehicle pursuant to WAC 460-24A-107;

(iii) Private placement memorandum or other offering circular used to solicit investors to purchase interests in each pooled investment vehicle;

(iv) Subscription agreement for each pooled investment vehicle;

(v) Operating agreement for each pooled investment vehicle; and

(vi) Such other documents as the director may require in order to complete the application.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-050, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. WSR 01-16-125, § 460-24A-050, filed 7/31/01, effective 10/24/01. Statutory Authority: RCW 21.20.450. WSR 00-01-001, § 460-24A-050, filed 12/1/99, effective 1/1/00; WSR 97-16-050, § 460-24A-050, filed 7/31/97, effective 8/31/97. Statutory Authority: RCW 21.20.450 and 21.20.070. WSR 95-16-026 and 95-17-002, § 460-24A-050, filed 7/21/95 and 8/2/95, effective 8/21/95 and 9/2/95. Statutory Authority: RCW 21.20.070 and 21.20.450. WSR 90-05-003, § 460-24A-050, filed 2/9/90, effective 3/12/90; WSR 89-17-077 (Order SDO-123-89), § 460-24A-050, filed 8/17/89, effective 9/17/89. Statutory Authority: RCW 21.20.450. WSR 85-23-063 (Order SDO-220-85), § 460-24A-050, filed 11/19/85; WSR 85-16-068 (Order SDO-128-85), § 460-24A-050, filed 8/1/85. Statutory Authority: RCW 21.20.450 and 21.20.040. WSR 83-03-024 (Order SDO-6-83), § 460-24A-050, filed 1/13/83. Statutory Authority: RCW 21.20.450. WSR 82-02-033 (Order SDO-149-81), § 460-24A-050, filed 12/31/81; Order SD-131-77, § 460-24A-050, filed 11/23/77; Order 304, § 460-24A-050, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

WAC 460-24A-055 Effective date of license. All investment adviser and investment adviser representative licenses shall be effective until December 31 of the year of issuance at which time the license shall be renewed, or if not renewed, shall be deemed delinquent.

[Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. WSR 01-16-125, § 460-24A-055, filed 7/31/01, effective 10/24/01. Statutory Authority: RCW 21.20.070 and 21.20.450. WSR 95-16-026, § 460-24A-055, filed 7/21/95, effective 8/21/95. Statutory Authority: RCW 21.20.080, 21.20.340 and 21.20.450. WSR 88-17-011 (Order SDO-047-88), § 460-24A-055, filed 8/8/88.]

WAC 460-24A-057 Renewal of investment adviser and investment adviser representative registration—Delinquency fees. (1) **Application for renewal.** You may renew your registration as an investment adviser or investment adviser representative by filing the following with IARD:

(a) Any renewal application required by IARD;

(b) The renewal fee required by RCW 21.20.340; and

(c) An electronically submitted Form U4, unless:

(i) The Form U4 has been previously submitted to IARD electronically; or

(ii) The investment adviser, filing on behalf of the investment adviser representative, has been granted a hardship exemption under WAC 460-24A-047(4).

(2) **Delinquency fees.** For any renewal application received by IARD after the expiration date set forth in WAC 460-24A-055, but on or before March 1 of the following year, the licensee shall pay a delinquency fee in addition to the renewal fee. The delinquency fee for investment advisers shall be one hundred dollars. The delinquency fee for investment adviser representatives shall be fifty dollars.

No renewal applications will be accepted after March 1. An investment adviser or investment adviser representative may apply for reregistration by complying with WAC 460-24A-050.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-057, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. WSR 01-16-125, § 460-24A-057, filed 7/31/01, effective 10/24/01.]

WAC 460-24A-059 Pending application—Notice of termination—Application for continuation. The director may at his or her discretion send notice to an applicant for investment adviser or investment adviser representative registration with respect to any pending application in which no action has been taken for nine months immediately prior to the sending of such notice, advising such applicant that the pending registration will be terminated thirty days from the date of sending such notice unless on or before the termination date the applicant responds in writing to the director showing good cause why the application should be continued as a pending application. If the applicant does not request in writing that the application be continued or show good cause why it should be continued, the director may terminate the pending application.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-059, filed 6/12/14, effective 7/13/14.]

WAC 460-24A-060 Financial reporting requirements for investment advisers. (1) If you are an investment adviser registered or required to be registered under RCW 21.20.040 who has custody of client funds or securities or you require payment of advisory fees six months or more in advance and in excess of five hundred dollars per client, you must file with the director an audited balance sheet as of the end of your fiscal year. Each balance sheet filed pursuant to this subsection must be:

(a) Prepared in conformity with generally accepted accounting principles (GAAP) and audited in accordance with generally accepted auditing standards by an independent certified public accountant; and

(b) Accompanied by an audit opinion of the accountant on the audit of the balance sheet.

(2) If you are an investment adviser registered or required to be registered under RCW 21.20.040 that has custody as defined in WAC 460-24A-005 (1)(a)(iii) and you have notified the director on Form ADV that you will comply with the safekeeping requirements in WAC 460-24A-107 (1)(b), you must file with the director a copy of the audited financial statements of each pooled investment vehicle for which you are a general partner (or managing member or other comparable position).

(3) If you are an investment adviser registered or required to be registered under RCW 21.20.040 and are not subject to the financial statement reporting requirements in subsection (1) or (2) of this section, you must file with the director a balance sheet, which need not be audited, but which must be prepared in accordance with generally accepted accounting principles and represented by you or the person who prepared the statement as true and accurate, as of the end of your fiscal year.

(4) The financial statements required by this section must be filed with the director within one hundred twenty days following the end of your fiscal year, except for the audited financial statements of pooled investment vehicles you obtain and distribute pursuant to WAC 460-24A-107(1), which must be filed with the director within one hundred twenty days following the end of each pooled investment vehicle's fiscal year.

(5) If you are an investment adviser that has its principal place of business in a state other than this state, you must file only such reports as required by the state in which you maintain your principal place of business, provided that you are licensed in such state and are in compliance with such state's financial reporting requirements.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-060, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. WSR 01-16-125, § 460-24A-060, filed 7/31/01, effective 10/24/01. Statutory Authority: RCW 21.20.450. WSR 85-16-068 (Order SDO-128-85), § 460-24A-060, filed 8/1/85; Order 304, § 460-24A-060, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

WAC 460-24A-070 Notice filing requirements for federal covered advisers. (1) **Notice filing.** If you are a federal covered adviser, you must file the notice filing required pursuant to RCW 21.20.050 with IARD on a completed Form ADV. The notice filing shall be deemed filed when the fee

(6/12/14)

required by RCW 21.20.340 and the Form ADV are filed with and accepted by IARD on behalf of the state.

(2) **Form ADV Part 2.** The director will accept a copy of Part 2 of Form ADV as filed electronically with IARD.

(3) **Renewal.** If you are a federal covered adviser, you must file the annual renewal of your notice filing with IARD. The renewal shall be deemed filed when the fee required by RCW 21.20.340 is filed with and accepted by IARD on behalf of the state.

(4) **Updates and amendments.** If you are a federal covered adviser, you must file any amendments to your Form ADV with IARD in accordance with the instructions in the Form ADV.

(5) **Hardship exemption.** If you are a federal covered adviser that, because you have received a hardship exemption from the Securities and Exchange Commission (SEC), are not required to file your Form ADV with the SEC through IARD you shall, in lieu of filing electronically, file the documents and fees required by this section directly with the director.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-070, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. WSR 01-16-125, § 460-24A-070, filed 7/31/01, effective 10/24/01.]

WAC 460-24A-071 Registration exemption for investment advisers to private funds. (1) **Exemption for private fund advisers.** You are exempt from the registration requirements for investment advisers in RCW 21.20.040 if you are a private fund adviser as defined in WAC 460-24A-005 and you satisfy each of the following conditions:

(a) Neither you nor any of your advisory affiliates are subject to a disqualification as described in WAC 460-44A-505 (2)(d); and

(b) You file with the division each report and amendment thereto that an exempt reporting adviser is required to file with the Securities and Exchange Commission pursuant to Securities and Exchange Commission Rule 204-4, 17 C.F.R. 275.204-4.

(2) **Federal covered investment advisers.** If you are a private fund adviser that is registered with the Securities and Exchange Commission, you are not eligible for the exemption provided in subsection (1) of this section and you must comply with the state notice filing requirements applicable to federal covered investment advisers in WAC 460-24A-070.

(3) **Investment adviser representatives.** You are exempt from the registration requirements for investment adviser representatives set forth in RCW 21.20.040 if you are employed by or associated with an investment adviser that is exempt from registration in this state pursuant to subsection (1) of this section and you do not otherwise act as an investment adviser representative.

(4) **Electronic filing.** You must make the report filings described in subsection (1)(b) of this section electronically through IARD. A report shall be deemed filed when the report is filed and accepted by the IARD on the state's behalf.

(5) **Transition.** If you become ineligible for the exemption provided in subsection (1) of this section, you must comply with all applicable laws and rules requiring registration or

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notice filing within ninety days from the date your eligibility for this exemption ceases.

(6) **Waiver authority with respect to statutory disqualification.** Subsection (1)(a) of this section shall not apply upon a showing of good cause and without prejudice to any other action of the securities division, if the securities administrator determines that it is not necessary under the circumstances that an exemption be denied.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-071, filed 6/12/14, effective 7/13/14.]

WAC 460-24A-072 Registration exemption for investment advisers to venture capital funds. (1) Exemption for venture capital fund advisers. You are exempt from the registration requirements for investment advisers in RCW 21.20.040 if you are exempt from registration under Section 203(l) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-3(l), and Rule 203 (l)-1 adopted thereunder, 17 C.F.R. 275.203 (l)-1, provided you satisfy each of the following conditions:

(a) Neither you nor any of your advisory affiliates are subject to a disqualification as described in WAC 460-44A-505 (2)(d); and

(b) You file with the division each report and amendment thereto that an exempt reporting adviser is required to file with the Securities and Exchange Commission pursuant to Securities and Exchange Commission Rule 204-4, 17 C.F.R. 275.204-4.

(2) **Federal covered investment advisers.** If you are a venture capital fund adviser that is registered with the Securities and Exchange Commission, you are not eligible for the exemption provided in subsection (1) of this section and you must comply with the state notice filing requirements applicable to federal covered investment advisers in WAC 460-24A-070.

(3) **Investment adviser representatives.** You are exempt from the registration requirements for investment adviser representatives set forth in RCW 21.20.040 if you are employed by or associated with an investment adviser that is exempt from registration in this state pursuant to subsection (1) of this section and you do not otherwise act as an investment adviser representative.

(4) **Electronic filing.** You must make the report filings described in subsection (1)(b) of this section electronically through IARD. A report shall be deemed filed when the report is filed and accepted by the IARD on the state's behalf.

(5) **Transition.** If you become ineligible for the exemption provided in subsection (1) of this section, you must comply with all applicable laws and rules requiring registration or notice filing within ninety days from the date your eligibility for this exemption ceases.

(6) **Waiver authority with respect to statutory disqualification.** Subsection (1)(a) of this section shall not apply upon a showing of good cause and without prejudice to any other action of the securities division, if the securities administrator determines that it is not necessary under the circumstances that an exemption be denied.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100,

21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-072, filed 6/12/14, effective 7/13/14.]

WAC 460-24A-080 Termination of investment adviser and investment adviser representative registration and federal covered adviser notice filing status. (1) Investment advisers and federal covered advisers. If you are an investment adviser or federal covered adviser and you want to terminate your registration or notice filing, you must do so by complying with the instructions to Form ADV-W and filing a completed Form ADV-W with IARD.

(2) Investment adviser representative. If you are an investment adviser and you terminate an investment adviser representative, you must terminate the registration of the investment adviser representative pursuant to RCW 21.20-080 by complying with the instructions to Form U5 and filing a completed Form U5 with IARD within thirty days of termination.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-080, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. WSR 01-16-125, § 460-24A-080, filed 7/31/01, effective 10/24/01.]

WAC 460-24A-100 Advertisements by investment advisers. (1) If you are an investment adviser, federal covered adviser, or investment adviser representative, it is an "act, practice, or course of business" which operates or would operate as a fraud within the meaning of RCW 21.20.020 for you, directly or indirectly, to publish, circulate or distribute any advertisement:

(a) Which refers, directly or indirectly, to any testimonial of any kind concerning you or concerning any advice, analysis, report or other service rendered by you; or

(b) Which refers, directly or indirectly, to any past specific recommendations you made which were or would have been profitable to any person: Provided, however, That this clause (b) does not prohibit you from setting out or offering to furnish a list of all recommendations you made within the immediately preceding period of not less than one year if such advertisement, and such list if it is furnished separately:

(i) States the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date; and

(ii) Contains the following cautionary legend on the first page thereof in print or type as large as the largest print or type used in the body or text thereof: "It should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list"; or

(c) Which represents, directly or indirectly, that any graph, chart, formula or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula or other device being offered will assist any person in making his own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertise-

ment the limitations thereof and the difficulties with respect to its use; or

(d) Which contains any statement to the effect that any report, analysis, or other service will be furnished free or without charge, unless such report, analysis or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly; or

(e) Which contains any untrue statement of a material fact, or which is otherwise false or misleading.

(2) For the purposes of this section, the term "advertisement" includes any notice, circular, letter or other written communication addressed to more than one person, or any notice or other announcement in any publication or by electronic means, including online, or by radio or television, which offers:

(a) Any analysis, report, or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or

(b) Any graph, chart, formula or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or

(c) Any other investment advisory service with regard to securities.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-100, filed 6/12/14, effective 7/13/14; Order 304, § 460-24A-100, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

WAC 460-24A-105 Requirements for an investment adviser that has custody or possession of client funds or securities. If you are an investment adviser registered or required to be registered under RCW 21.20.040, it shall constitute an "act, practice, or course of business" which operates or would operate as a fraud within the meaning of RCW 21.20.020 for you to have custody of client funds or securities unless:

(1) **You notify the director.** You notify the director promptly on Form ADV that you have or may have custody;

(2) **A qualified custodian maintains your clients' funds and securities.**

(a) A qualified custodian maintains your clients' funds and securities:

(i) In a separate account for each client under that client's name; or

(ii) In accounts that contain only your clients' funds and securities, under either your name as agent or trustee for the clients or, in the case of a pooled investment vehicle that you manage, in the name of the pooled investment vehicle; and

(b) You maintain a separate record for each such account which shows the name and address of the qualified custodian where such account is maintained, the dates and amounts of deposits in and withdrawals from such account, and the exact amount of each client's beneficial interest in such account;

(3) **You notify clients of the identity of the qualified custodian.** If you open an account with a qualified custodian on your client's behalf, either under the client's name, under your name as agent, or under the name of a pooled investment vehicle, you notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or

securities are maintained, promptly when the account is opened and following any changes to this information. If both you and the qualified custodian send account statements to a client to which you are required to provide this notice, you must include in the notification provided to that client and in any subsequent account statement you send that client a statement urging the client to compare the account statements from the custodian with those from you;

(4) **Either you or a qualified custodian sends account statements to your clients.** You or a qualified custodian sends your clients account statements subject to the following requirements:

(a) **Requirements if qualified custodian sends account statements.** If you do not send account statements to your clients, you have a reasonable basis for believing, after due inquiry, that the qualified custodian sends an account statement, at least quarterly, to each of your clients for which the qualified custodian maintains funds or securities, within a reasonable period of time after the end of the statement period, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period;

(b) **Requirements if you send account statements.** If the qualified custodian does not send account statements to your clients:

(i) You send account statements, at least quarterly, to each of your clients for whom you have custody of funds or securities, within a reasonable period of time after the end of the statement period, identifying the amount of funds and of each security of which you have custody at the end of the period and setting forth all transactions during that period;

(ii) An independent certified public accountant verifies all client funds and securities by actual examination at least once during each calendar year, pursuant to a written agreement between you and the accountant, at a time that is chosen by the accountant without prior notice or announcement to you and that is irregular from year to year. The written agreement must provide for the first examination to occur within six months of becoming subject to this subsection, except that, if the investment adviser maintains client funds or securities pursuant to this rule as a qualified custodian, the agreement must provide for the first examination to occur no later than six months after obtaining the internal control report. The written agreement must require the accountant to:

(A) File a certificate on Form ADV-E with the director within one hundred twenty days of the time chosen by the independent certified public accountant to conduct the examination, stating that it has examined the funds and securities and describing the nature and extent of the examination; and

(B) Notify the director within one business day of the finding of any material discrepancies during the course of the examination, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the director; and

(C) File within four business days of the resignation or dismissal from, or other termination of, the engagement, or removing itself or being removed from consideration for being reappointed, Form ADV-E accompanied by a statement that includes:

(I) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(II) An explanation of any problems relating to examination scope or procedure that contributed to such resignation, dismissal, removal, or other termination;

(5) **A client may designate an independent representative to receive account statements.** A client may designate an independent representative to receive, on his or her behalf, notices and account statements as required under subsections (3) and (4) of this section;

(6) **Investment advisers acting as qualified custodians.** If you are an investment adviser that maintains, or if you have custody because a related person maintains, client funds or securities pursuant to this rule as a qualified custodian in connection with the advisory services you provide to clients:

(a) You must enter into an agreement with an independent certified public accountant to conduct an examination to verify client funds and securities as otherwise provided in subsection (4)(b)(ii) of this section. The independent certified public accountant you retain must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules; and

(b) You must obtain, or receive from your related person, within six months of becoming subject to this subsection (6) and thereafter no less frequently than once each calendar year a written internal control report prepared by an independent certified public accountant subject to the following:

(i) The internal control report must include an opinion of an independent certified public accountant as to whether controls have been placed in operation as of a specific date, and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including safeguarding of funds and securities held by either you or a related person on behalf of your clients;

(ii) The independent certified public accountant must verify that the funds and securities are reconciled to a custodian other than you or your related person; and

(iii) The independent certified public accountant must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-105, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 21.20.450, 21.20.900, 21.20.100, 21.20.050 - [21.20].060. WSR 08-18-033, § 460-24A-105, filed 8/27/08, effective 9/27/08. Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. WSR 01-16-125, § 460-24A-105, filed 7/31/01, effective 10/24/01; Order 304, § 460-24A-105, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

WAC 460-24A-106 Additional custody requirements for an investment adviser that directly deducts fees from client accounts. (1) If you are an investment adviser registered or required to be registered under RCW 21.20.040 who has custody as defined in WAC 460-24A-005(1) because you have the authority to directly deduct fees from client accounts, you must comply with the safekeeping require-

ments in WAC 460-24A-105 and the following additional safeguards:

(a) **You must have your client's written authorization.** You must have written authorization from your client to deduct advisory fees from the account held with the qualified custodian.

(b) **You must provide notice to the qualified custodian and an itemized invoice to your client.** Each time a fee is directly deducted from your client's account, you must concurrently:

(i) Send the qualified custodian notice of the amount of the fee to be deducted from your client's account; and

(ii) Send your client an invoice itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee.

(c) **You must notify the director that you will comply with these safekeeping requirements.** You must notify the director on Form ADV that you will comply with the safekeeping requirements set forth in this section.

(2) **Waiver of net worth and bonding requirements.** If you have custody as defined in WAC 460-24A-005(1) solely because you have the authority to have fees directly deducted from client accounts and you comply with the safekeeping requirements set forth in this section, you are not required to comply with the net worth and bonding requirements for an investment adviser that has custody set forth in WAC 460-24A-170.

(3) **Waiver of audited balance sheet requirement.** If you have custody as defined in WAC 460-24A-005(1) solely because you have the authority to directly deduct fees from client accounts, you are not required to comply with the requirement to file an audited balance sheet as set forth in WAC 460-24A-060(1) if you comply with WAC 460-24A-060(3), the safekeeping requirements in WAC 460-24A-105, and subsection (1) of this section.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-106, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 21.20.450, 21.20.900, 21.20.100, 21.20.050 - [21.20].060. WSR 08-18-033, § 460-24A-106, filed 8/27/08, effective 9/27/08.]

WAC 460-24A-107 Additional custody requirements for an investment adviser that manages a pooled investment vehicle or trust. (1) If you are an investment adviser registered or required to be registered under RCW 21.20.040 that has custody as defined in WAC 460-24A-005 (1)(a)(iii), you must, in addition to complying with the safekeeping requirements set forth in WAC 460-24A-105, either:

(a) **Engage an independent party to authorize withdrawals from the pooled account.**

(i) You must enter into a written agreement with an independent party to review all fees, expenses, and capital withdrawals from the pooled accounts;

(ii) You must send all invoices or receipts to the independent party, detailing the amount of the fee, expenses, or capital withdrawal and the method of calculation such that the independent party can:

(A) Determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement); and

(B) Forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser; and

(iii) You must notify the director on Form ADV that you will comply with the safekeeping requirements in (a) of this subsection; or

(b) Provide audited financial statements of the pooled investment vehicle to all limited partners or members.

(i) You must cause the financial statements of the limited partnership (or limited liability company, or another type of pooled investment vehicle) for which you are a general partner (or managing member or other comparable position) to be subject to audit, at least annually, by an independent certified public accountant to be conducted in accordance with generally accepted auditing standards;

(ii) You must distribute the audited financial statements to all limited partners (or members or other beneficial owners), or the independent representative where one has been designated, within one hundred twenty days of the end of the pooled investment vehicle's fiscal year. If the limited partners (or members or other beneficial owners) are themselves limited partnerships (or limited liability companies, or another type of pooled investment vehicle) that are related persons to you, you must distribute the audited financial statements to each beneficial owner that is unrelated to you;

(iii) You must distribute, upon liquidation, the fund's final audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners), or the independent representative where one has been designated, and the director promptly after the completion of such audit;

(iv) You must enter into a written agreement with the independent certified public accountant who will audit the financial statements of the pooled investment vehicle. The written agreement with the independent certified public accountant must require the independent certified public accountant to, upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, notify the director within four business days accompanied by a statement that includes:

(A) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(B) An explanation of any problems relating to audit scope or procedure that contributed to such resignation, dismissal, removal, or other termination; and

(v) You must notify the director on Form ADV that you will comply with the safekeeping requirements in (b)(i) and (ii) of this subsection;

(2) You must deliver account statements to each limited partner (or member or other beneficial owner). If you are an investment adviser registered or required to be registered under RCW 21.20.040 and you are an investment adviser to a limited partnership (or managing member of a limited liability company, or hold a comparable position for another type of pooled investment vehicle), you must:

(a) Send the account statements required under WAC 460-24A-105 to each limited partner (or member or other beneficial owner). If the limited partners (or members or other beneficial owners) are themselves limited partnerships (or limited liability companies, or another type of pooled investment vehicle) that are your related persons, you must send the account statements required under WAC 460-24A-105 to each beneficial owner of the fund that is unrelated to you; and

(b) Include the following information in the account statements, which will satisfy the requirements under WAC 460-24A-105 (4)(a) and (b)(i):

(i) The total amount of all additions to and withdrawals from the fund as a whole as well as the opening and closing net asset value of the fund at the end of the quarter based on the fund's governing documents;

(ii) A listing of the fund's long and short positions on the closing date of the statement in a form and to the extent required by FASB Rule ASC 946-210-50; and

(iii) The total amount of additions to and withdrawals from the fund by the investor as well as the total value of the investor's interest in the fund at the end of the quarter.

(3) If you engage an independent party, you are not required to comply with the net worth and bonding requirements for an investment adviser that has custody. If you have custody solely as defined in WAC 460-24A-005 (1)(a)(iii) and you comply with the safekeeping requirements in WAC 460-24A-105 and subsection (1)(a) of this section, you are not required to comply with the net worth and bonding requirements for an investment adviser that has custody set forth in WAC 460-24A-170.

(4) If you distribute audited financial statements of the pooled investment vehicle to all beneficial owners, you are not required to comply with the surprise examination requirements. You are not required to comply with the surprise examination requirements set forth in WAC 460-24A-105 (4)(b)(ii) with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit if you otherwise comply with the safekeeping requirements in WAC 460-24A-105 and subsection (1)(b) of this section.

(5) If you distribute audited financial statements of the pooled investment vehicle to all beneficial owners, you are not required to file an audited balance sheet. If you have custody solely as defined in WAC 460-24A-005 (1)(a)(iii), you are not required to comply with the requirement to file an audited balance sheet as set forth in WAC 460-24A-060(1) if you comply with WAC 460-24A-060(3), the safekeeping requirements in WAC 460-24A-105, and subsections (1)(b) and (2) of this section.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-107, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 21.20.450, 21.20.900, 21.20.100, 21.20.050 - [21.20].060. WSR 08-18-033, § 460-24A-107, filed 8/27/08, effective 9/27/08.]

WAC 460-24A-108 Additional custody requirements for an investment adviser that acts as trustee and investment adviser to a trust. If you are an investment adviser registered or required to be registered under RCW 21.20.040

that acts as an investment adviser to a trust and the trust has retained you or one of your representatives, employees, directors, or owners as trustee, you must comply with the following requirements:

(1) **You must send invoices to the qualified custodian and a person connected to the trust at the same time.** You must send to the grantor of the trust, the attorney for the trust if it is a testamentary trust, the co-trustee (other than you or one of your representatives, employees, directors, or owners); or a defined beneficiary of the trust, at the same time that you send any invoice to the qualified custodian, an invoice showing the amount of the trustees' fee or investment management or advisory fee, the value of the assets on which the fees were based, and the specific manner in which the fees were calculated.

(2) **You must have an agreement with a qualified custodian that contains certain terms.** You must enter into a written agreement with a qualified custodian that complies with the following requirements:

(a) **The agreement must restrict payments to you or persons related to you.** The agreement must specify that the qualified custodian will neither deliver trust securities nor transmit any funds to you or one of your representatives, employees, directors, or owners, except that the qualified custodian may pay trustees' fees to the trustee and investment management or advisory fees to you, provided that:

(i) The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than you or one of your representatives, employees, directors, or owners), or a defined beneficiary of the trust has authorized the qualified custodian in writing to pay those fees;

(ii) The statements for those fees show the amount of the fees for the trustee and, in the case of statements for investment management or advisory fees, show the value of the trust assets on which the fee is based and the manner in which the fee was calculated; and

(iii) The qualified custodian agrees to send to the grantor of the trust, the attorneys for a testamentary trust, the co-trustee (other than you or one of your representatives, employees, directors, or owners); or a defined beneficiary of the trust, at least quarterly, a statement of all disbursements from the account of the trust, including the amount of investment management fees paid to you and the amount of trustees' fees paid to the trustee.

(b) **The agreement must restrict the transfer of funds or securities.** Except as otherwise set forth in subsection (1)(b)(i) of this section, the agreement must specify that the qualified custodian may transfer funds or securities, or both, of the trust only upon the direction of the trustee (who may be you or one of your representatives, employees, directors, or owners), who you have duly accepted as an authorized signatory. The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than you or one of your representatives, employees, directors, or owners), or a defined beneficiary of the trust, must designate the authorized signatory for management of the trust. The agreement must further specify that the direction to transfer funds or securities, or both, can only be made to the following:

(i) To a trust company, bank trust department or brokerage firm independent from you for the account of the trust to which the assets relate;

(ii) To the named grantors or to the named beneficiaries of the trust;

(iii) To a third person independent from you in payment of the fees or charges of the third person including, but not limited to:

(A) Attorney's, accountant's, or qualified custodian's fees for the trust; and

(B) Taxes, interest, maintenance, or other expenses, if there is property other than securities or cash owned by the trust;

(iv) To third persons independent from you for any other purpose legitimately associated with the management of the trust; or

(v) To a broker-dealer in the normal course of portfolio purchases and sales, provided that the transfer is made on payment against delivery basis or payment against trust receipt.

(3) **You must notify the director that you will comply with these safekeeping requirements.** You must notify the director on Form ADV that you will comply with the safekeeping requirements set forth in this section.

(4) **You are not required to comply with the net worth and bonding requirements for an investment adviser that has custody if you comply with these safekeeping requirements.** If you have custody solely as defined in WAC 460-24A-005 (1)(a)(iii) because you are the trustee of a trust and you comply with the safekeeping requirements in WAC 460-24A-105 and this section, you are not required to comply with the net worth and bonding requirements for an investment adviser that has custody set forth in WAC 460-24A-170.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-108, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 21.20.450, 21.20.900, 21.20.100, 21.20.050 - [21.20].060. WSR 08-18-033, § 460-24A-108, filed 8/27/08, effective 9/27/08.]

WAC 460-24A-109 Exceptions from custody requirements. Exceptions from the custody requirements for investment advisers that are registered or required to be registered under RCW 21.20.040 are available in the following circumstances:

(1)(a) **You are not required to engage a qualified custodian to hold certain privately offered securities.** You are not required to comply with WAC 460-24A-105(2) with respect to securities that are:

(i) Acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(ii) Uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and

(iii) Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(b) Notwithstanding (a) of this subsection, the provisions of this subsection (1) are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if you comply with the requirements in WAC 460-24A-107 (1)(b).

(2) **You are not required to comply with the custody requirements with respect to the account of a registered investment company.** You are not required to comply with WAC 460-24A-105 through 460-24A-108 with respect to the account of an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 to 80a-64.

(3) **You are not required to comply with the custody requirements with respect to a trust for the benefit of your relative.** You are not required to comply with the safe-keeping requirements of WAC 460-24A-105 through 460-24A-108 or the net worth and bonding requirements for an investment adviser that has custody set forth in WAC 460-24A-170 if you have custody solely because you or one of your representatives, employees, directors, or owners is a trustee for a beneficial trust, if all of the following conditions are met for each trust:

(a) The beneficial owner of the trust is your parent, a grandparent, a spouse, a sibling, a child, or a grandchild. These relationships shall include "step" relationships.

(b) For each account under (a) of this subsection, you comply with the following:

(i) You provide a written statement to each beneficial owner of the account setting forth a description of the requirements of WAC 460-24A-105 through 460-24A-108 and WAC 460-24A-170 and the reasons why you will not be complying with those requirements;

(ii) You obtain from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement required under (b)(i) of this subsection; and

(iii) You maintain a copy of both documents described in (b)(i) and (ii) of this subsection until the account is closed or you are no longer trustee.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-109, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 21.20.450, 21.20.900, 21.20.100, 21.20.050 - [21.20].060. WSR 08-18-033, § 460-24A-109, filed 8/27/08, effective 9/27/08.]

WAC 460-24A-110 Agency cross transactions. (1)

For purposes of this rule, "agency cross transaction for an advisory client" means a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, including an investment adviser representative, acts as a broker-dealer for both the advisory client and another person on the other side of the transaction. When acting in such capacity such person is required to be registered as a broker-dealer in this state unless excluded from the definition.

(2) If you are an investment adviser or investment adviser representative, it shall be unlawful for you to effect an agency cross transaction for an advisory client under RCW 21.20.020(2) unless you satisfy these conditions:

(a) You obtain the written consent of the advisory client prospectively authorizing you to effect agency cross transactions for such client;

(b) Before obtaining such written consent from the client, you make full written disclosure to the client that, with respect to agency cross transactions, you will act as broker-

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dealer for, receive commissions from and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions;

(c) At or before the completion of each agency cross transaction, you or any other person relying on this rule sends the client a written confirmation. You must include the following in the written confirmation:

(i) A statement of the nature of the transaction;

(ii) The date the transaction took place;

(iii) An offer to furnish, upon request, the time when the transaction took place; and

(iv) The source and amount of any other remuneration the investment adviser received or will receive in connection with the transaction. In the case of a purchase, if the investment adviser was not participating in a distribution, or, in the case of a sale, if the investment adviser was not participating in a tender offer, the written confirmation may state whether the investment adviser has been receiving or will receive any other remuneration and that the investment adviser will furnish the source and amount of such remuneration to the client upon the client's written request;

(3) At least annually, and with or as part of any written statement or summary of the account from the investment adviser, the investment adviser or any other person relying on this rule sends each client a written disclosure statement identifying:

(a) The total number of agency cross transactions during the period for the client since the date of the last such statement or summary; and

(b) The total amount of all commissions or other remuneration the investment adviser received or will receive in connection with agency cross transactions for the client during the period.

(4) Each written disclosure and confirmation required by this rule must include a conspicuous statement that the client may revoke the written consent required under subsection (2)(a) of this section at any time by providing written notice to the investment adviser.

(5) No agency cross transaction may be effected in which the same investment adviser recommended the transaction to both any seller and any purchaser.

(6) Nothing in this rule shall be construed to relieve an investment adviser or investment adviser representative from acting in the best interest of the client, including fulfilling his duty with respect to the best price and execution for the particular transaction for the client nor shall it relieve any investment adviser or investment adviser representative of any other disclosure obligations imposed by the Securities Act of Washington, chapter 21.20 RCW, and the rules and regulations thereunder.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-110, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 21.20.450. WSR 00-01-001, § 460-24A-110, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 21.20.450 and 1998 c 15 § 2. WSR 99-03-050, § 460-24A-110, filed 1/15/99, effective 2/15/99.]

WAC 460-24A-120 Compliance procedures and practices. If you are an investment adviser registered or required to be registered under RCW 21.20.040, or a federal covered adviser, and have more than one employee, it is

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unlawful under RCW 21.20.020 for you to provide investment advice to clients unless you:

(1) **Policies and procedures.** Adopt and implement written policies and procedures reasonably designed to prevent violation, by you and your supervised persons, of the Securities Act of Washington, chapter 21.20 RCW, and the rules adopted thereunder, and the federal securities laws;

(2) **Annual review of policies and procedures.** Review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation; and

(3) **Chief compliance officer.** Designate an individual responsible for administering the policies and procedures that you adopt under subsection (1) of this section.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-120, filed 6/12/14, effective 7/13/14.]

WAC 460-24A-125 Proxy voting. If you are an investment adviser registered or required to be registered under RCW 21.20.040, or a federal covered adviser, it is unlawful under RCW 21.20.020 for you to exercise voting authority with respect to client securities, unless you:

(1) Adopt and implement written policies and procedures that are reasonably designed to ensure that you vote client securities in the best interest of clients, which procedures must include how you address material conflicts that may arise between your interests and those of your clients;

(2) Disclose to clients how they may obtain information from you about how you voted with respect to their securities; and

(3) Describe to clients your proxy voting policies and procedures and, upon request, furnish a copy of the policies and procedures to the requesting client.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-125, filed 6/12/14, effective 7/13/14.]

WAC 460-24A-130 Contents of investment advisory contract. If you are an investment adviser registered or required to be registered under RCW 21.20.040, it is unlawful under RCW 21.20.020 and 21.20.030 for you to enter into, extend, or renew any investment advisory contract unless it provides in writing:

(1) The services to be provided, the term of the contract, the investment advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of termination or nonperformance of the contract, and whether and the extent to which the contract grants discretionary authority to you and any limits on such authority;

(2) That no direct or indirect assignment or transfer of the contract may be made by you without the written consent of the client or other party to the contract;

(3) That you shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client except as permitted under WAC 460-24A-150;

(4) That if you are a partnership, you shall notify the client or other party to the investment contract of any change in

the membership of the partnership within a reasonable time after the change;

(5) That if you are an investment adviser who has custody as a consequence of your authority to make withdrawals from client accounts to pay your advisory fee, that the contract gives you the authority to deduct your advisory fees from the account held with the qualified custodian;

(6) The nature and extent to which you are granted proxy voting authority with respect to client securities;

(7) The terms for termination of the contract;

(8) The nature and extent to which you may deliver electronically the documents specified in WAC 460-24A-145, account statements, fee invoices, and other documents and the extent and manner in which a client may opt out of receiving documents electronically; and

(9) For clients residing in Washington, the advisory contract shall not waive or limit compliance with, or require indemnification for any violations of, any provision of the Securities Act of Washington, chapter 21.20 RCW.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-130, filed 6/12/14, effective 7/13/14.]

WAC 460-24A-140 Guarantees of success are prohibited. It is an unlawful act, practice, or course of business which operates or would operate as a fraud or deceit under RCW 21.20.020 (1)(b) to make any representation or statement, whether directly or by implication, guaranteeing the success of investments made pursuant to the recommendations of an investment adviser or investment adviser representative.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-140, filed 6/12/14, effective 7/13/14; Order 304, § 460-24A-140, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

WAC 460-24A-145 Investment adviser brochure rule. (1) **General requirements.** Unless otherwise provided in this rule, if you are an investment adviser registered or required to be registered pursuant to RCW 21.20.040, you shall, in accordance with the provisions of this section, deliver to each advisory client and prospective advisory client:

(a) A brochure which may be a copy of Part 2A of your Form ADV or written documents containing the information required by Part 2A of Form ADV. The brochure must comply with the language, organizational format and filing requirements specified in the Instructions to Form ADV Part 2;

(b) A copy of your Part 2B brochure supplement for each individual:

(i) Providing investment advice and having direct contact with clients in this state; or

(ii) Exercising discretion over assets of clients in this state, even if no direct contact is involved;

(c) A copy of your Part 2A Appendix 1 wrap fee brochure if you sponsor or participate in a wrap fee account;

(d) A summary of material changes, which may be included in Form ADV Part 2 or given as a separate document; and

(e) Such other information as the director may require.

(2) Delivery.

(a) **Initial delivery.** Except as provided in (c) of this subsection, you shall deliver the materials required by this section to an advisory client or prospective advisory client (i) not less than forty-eight hours prior to entering into any investment advisory contract with such client or prospective client, or (ii) at the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

(b) **Annual delivery.** Except as provided in (c) of this subsection, if there have been any material changes that have taken place since the last summary and brochure delivery to your clients, you must:

(i) Deliver within one hundred twenty days of the end of your fiscal year a free, updated brochure and related brochure supplements which include or are accompanied by a summary of the material changes; or

(ii) Deliver a summary of material changes that includes an offer to provide a copy of the updated brochure and supplements and information on how the client may obtain a copy of the brochure and supplements. You must mail or deliver any materials requested by the client pursuant to such an offer within seven days of the receipt of the request.

(c) **Exception for certain clients.** You are not required to deliver the materials set forth in (1) of this section to:

(i) Clients receiving advisory services solely pursuant to a contract for impersonal advisory services requiring a payment of less than two hundred dollars;

(ii) An investment company registered under the Investment Company Act of 1940; or

(iii) A business development company as defined in the Investment Company Act of 1940 and whose advisory contract meets the requirements of section 15c of that act.

(3) Electronic delivery. You may deliver the materials required by this section electronically if you:

(a) In the case of an initial delivery to a potential client, obtain a verification that readable copies of the materials were received by the client;

(b) In the case of deliveries other than initial deliveries, obtain each client's prior consent to provide the materials electronically;

(c) Prepare the electronically delivered materials in the format prescribed in (a) of this subsection and the instructions to Form ADV Part 2;

(d) Deliver the materials in a format that can be retained by the client in either electronic or paper form; and

(e) Establish procedures to supervise personnel transmitting the materials and prevent violations of this rule.

(4) Delivery to limited partners. If you are the adviser to a limited partnership, a limited liability company, or a trust, then you must treat each of the partnership's limited partners, the company's members, or the trust's beneficial owners, as a client. For purposes of this section, a limited liability partnership or limited liability limited partnership is a "limited partnership."

(5) Omission of inapplicable information. If you render substantially different types of investment advisory services to different advisory clients, you may provide them with different disclosure materials, provided that each client

receives all applicable information about services and fees. The disclosure delivered to a client may omit any information required by Part 2 of Form ADV if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(6) Other disclosure obligations. Nothing in this section shall relieve you from any obligation to disclose any information to your advisory clients or prospective advisory clients not specifically required by this rule under chapter 21.20 RCW, the rules and regulations thereunder, or any other federal or state law.

(7) Definitions. For the purposes of this rule:

(a) "Contract for impersonal advisory services" means any contract relating solely to the provision of investment advisory services:

(i) By means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;

(ii) Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

(iii) Any combination of the foregoing services.

(b) "Entering into," in reference to an investment advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-145, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 21.20.450 and 21.20.110 (1)(g). WSR 02-19-093, § 460-24A-145, filed 9/17/02, effective 10/18/02. Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.-100. WSR 01-16-125, § 460-24A-145, filed 7/31/01, effective 10/24/01. Statutory Authority: 1998 c 15 § 9. WSR 99-03-052, § 460-24A-145, filed 1/15/99, effective 2/15/99.]

WAC 460-24A-150 Performance compensation arrangements. **(1) General.** If you are an investment adviser you may, without violating RCW 21.20.030(1), enter into, extend, or renew an investment advisory contract which provides for compensation to you on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, of the client if:

(a) You are an investment adviser who is not registered and is not required to be registered under RCW 21.20.040; or

(b) The client is a "qualified client" as defined in subsection (2) of this section and the conditions of subsections (3) through (8) of this section are met.

(2) Definitions. For the purposes of this section:

(a) The term "qualified client" means:

(i) A natural person who, or a company that, immediately after entering into the contract has at least one million dollars under the management of the investment adviser;

(ii) A natural person who, or a company that, the investment adviser entering into the contract (and any person acting on his or her behalf) reasonably believes, immediately prior to entering into the contract, either:

(A) Has a net worth (together, in the case of a natural person, with assets held jointly with a spouse) of more than two million dollars. For purposes of calculating a natural person's net worth:

(I) The person's primary residence must not be included as an asset;

(II) Indebtedness secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time the investment advisory contract is entered into may not be included as a liability (except that if the amount of such indebtedness outstanding at the time of calculation exceeds the amount outstanding sixty days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess must be included as a liability); and

(III) Indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the residence must be included as a liability; or

(B) Is a qualified purchaser as defined in section 2 (a)(51)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a-2 (a)(51)(A)) at the time the contract is entered into; or

(iii) A natural person who immediately prior to entering into the contract is:

(A) An executive officer, director, trustee, general partner, or person serving in a similar capacity, of the investment adviser; or

(B) An employee of the investment adviser (other than an employee performing solely clerical, secretarial, or administrative functions with regard to the investment adviser) who, in connection with his or her regular functions or duties, participates in the investment activities of such investment adviser, provided that such employee has been performing such functions and duties for or on behalf of the investment adviser, or substantially similar functions or duties for or on behalf of another company for at least twelve months.

(b) The term "company" has the same meaning as in section 202 (a)(5) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2 (a)(5)), but does not include a company that is required to be registered under the Investment Company Act of 1940 but is not registered.

(c) The term "private investment company" means a company that would be defined as an investment company under section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)) but for the exception provided from that definition by section 3 (c)(1) of such Act (15 U.S.C. 80a-3 (c)(1)).

(d) The term "executive officer" means the president, any vice-president in charge of a principal business unit, division or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions, for the investment adviser.

(3) **Compensation formula.** The compensation paid to you with respect to the performance of any securities over a given period must be based on a formula with the following characteristics:

(a) In the case of securities for which market quotations are readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940 (Definition of "Current Net Asset Value" for Use in Computing Periodically the Current Price of Redeemable Security), 17 C.F.R. 270.2a-4 (a)(1), the formula must include the realized capital losses and unrealized capital depreciation of the securities over the period;

(b) In the case of securities for which market quotations are not readily available within the meaning of Rule 2a-4 (a)(1) under the Investment Company Act of 1940, 17 C.F.R. 270.2a-4 (a)(1), the formula must include:

(i) The realized capital losses of securities over the period;

(ii) If the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and

(c) The formula must provide that any compensation paid to you under this section is based on the gains less the losses (computed in accordance with (a) and (b) of this subsection) in the client's account for a period of not less than one year.

(4) **Client disclosure.** To the extent not otherwise disclosed on Form ADV Part 2, you must disclose in writing to the client all material information concerning the proposed advisory arrangement, including the following:

(a) That the fee arrangement may create an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;

(b) Where relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;

(c) The period which will be used to measure investment performance throughout the contract and their significance in the computation of the fee;

(d) The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser believes that the index is appropriate; and

(e) Where your compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available within the meaning of Rule 2a-4 (a)(1) under the Investment Company Act of 1940, 17 C.F.R. 270.2a-4 (a)(1), how the securities will be valued and the extent to which the valuation will be independently determined.

(5) **Equity owners.** In the case of a private investment company, as defined in subsection (2)(c) of this rule, an investment company registered under the Investment Company Act of 1940, or a business development company, as defined in section 202 (a)(22) of the Investment Advisers Act of 1940, each equity owner of any such company (except for the investment adviser entering into the contract and any other equity owners not charged a fee on the basis of a share of capital gains or capital appreciation) will be considered a client for the purposes of subsection (1) of this rule.

(6) **Informed consent.** You or any of your investment adviser representatives that enter into a contract under this rule, must reasonably believe, immediately before entering into the contract that the contract represents an arm's length arrangement between the parties and that the client, alone or together with the client's independent agent, understands the proposed method of compensation and its risks.

(7) **Nonexclusive.** Any person entering into or performing an investment advisory contract under this section is not relieved of any obligations under RCW 21.20.020 or any other applicable provision of the Securities Act of Washington, chapter 21.20 RCW, or any rule or order thereunder.

(8) **Obligations of independent representative.** Nothing in this section shall relieve a client's independent representative from any obligation to the client under applicable law.

(9) **Transition rules.**

(a) **Registered investment advisers.** If you are a registered investment adviser that entered into a contract and satisfied the conditions of this section that were in effect when the contract was entered into, you will be considered to satisfy the conditions of this section. If a natural person or company who was not a party to the contract becomes a party (including an equity owner of a private investment company advised by the adviser), however, the conditions of this section in effect at that time will apply with regard to that person or company.

(b) **Registered investment advisers that were previously not registered.** This section shall not apply to an advisory contract entered into when you were not required to register and were not registered. If a natural person or a company who was not a party to the contract becomes a party (including an equity owner of a private investment company advised by the adviser) when you are registered or required to register, however, the conditions of this section in effect at that time will apply with regard to that person or company.

(c) **Certain transfers of interest.** Solely for purposes of (a) and (b) of this subsection, a transfer of an equity ownership interest in a private investment company by gift or bequest, or pursuant to an agreement related to a legal separation or divorce, will not cause the transferee to "become a party" to the contract and will not cause this section to apply to such transferee.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-150, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 21.20.450. WSR 00-01-001, § 460-24A-150, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 21.20.450 and 1993 c 114. WSR 93-20-012, § 460-24A-150, filed 9/23/93, effective 10/24/93.]

WAC 460-24A-160 Restrictions on advertising refunds. If you are in an investment adviser or investment adviser representative, it is unlawful under RCW 21.20.020 to advertise or represent to subscribers or customers for advisory services that subscriptions, fees or other payments will be refunded if they are not satisfied unless:

(1) Such undertaking to refund is clear and unequivocal and is concerned not with the merit or success of the service, but with the customer's satisfaction therewith; and

(2) Your financial situation is adequate to ensure your ability to meet all such refund demands.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-160, filed 6/12/14, effective 7/13/14; Order 304, § 460-24A-160, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

WAC 460-24A-170 Minimum financial requirements for investment advisers. (1) If you are an investment adviser registered or required to be registered under RCW 21.20.040, who has custody of client funds or securities, you shall maintain at all times a minimum net worth of \$35,000 unless provided otherwise in this chapter. If you are an

investment adviser registered or required to be registered under RCW 21.20.040, who has discretionary authority over client funds or securities, but does not have custody of client funds or securities, you shall maintain at all times a minimum net worth of \$10,000.

(2) If you are an investment adviser registered or required to be registered under RCW 21.20.040 who has custody or discretionary authority over client funds or securities, but does not meet the minimum net worth requirements in subsection (1) of this section you shall maintain a bond in the amount of the net worth deficiency rounded up to the nearest \$5,000. Any bond required by this section shall be in the form determined by the director, issued by a company qualified to do business in this state, and shall be subject to the claims of all clients of the investment adviser regardless of the clients' states of residence.

(3) If you are an investment adviser registered or required to be registered under RCW 21.20.040, you shall maintain at all times a positive net worth.

(4) Unless otherwise exempted, as a condition of the right to transact business in this state, if you are an investment adviser registered or required to be registered under RCW 21.20.040 you shall, by the close of business on the next business day, notify the director if your net worth is less than the minimum required. After transmitting such notice, you shall file, by the close of business on the next business day, a report with the director of its financial condition, including the following:

(a) A trial balance of all ledger accounts;

(b) A statement of all client funds or securities which are not segregated;

(c) A computation of the aggregate amount of client ledger debit balances; and

(d) A statement as to the number of client accounts.

(5) For purposes of this section, the term "net worth" shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: Prepaid expenses (except as to items properly classified as assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature; primary residence, home furnishings, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

(6) For purposes of this section, if you are an investment adviser you shall not be deemed to be exercising discretion when you place trade orders with a broker-dealer pursuant to a third-party trading agreement if:

(a) You have executed an investment adviser contract exclusively with your client which acknowledges that a third-party trading agreement will be executed to allow you to effect securities transactions for your client in your client's broker-dealer account;

(b) Your contract specifically states that your client does not grant discretionary authority to you and you in fact do not exercise discretion with respect to the account; and

(c) A third-party trading agreement is executed between your client and a broker-dealer which specifically limits your

authority in your client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

(7) The director may require that a current appraisal be submitted in order to establish the worth of any asset for the purposes of meeting the minimum net worth requirements in subsection (1) of this section or the positive net worth requirement in subsection (3) of this section.

(8) If you are an investment adviser that has its principal place of business in a state other than this state, you shall maintain only such minimum net worth as required by the state in which you maintain your principal place of business, provided you are licensed in that state and are in compliance with that state's minimum capital requirements.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-170, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 21.20.450, 21.20.900, 21.20.100, 21.20.050 - [21.20].060. WSR 08-18-033, § 460-24A-170, filed 8/27/08, effective 9/27/08. Statutory Authority: RCW 21.20.430, 21.20.050, 21.20.100. WSR 01-16-125, § 460-24A-170, filed 7/31/01, effective 10/24/01. Statutory Authority: RCW 21.20.450. WSR 97-16-050, § 460-24A-170, filed 7/31/97, effective 8/31/97; Order 304, § 460-24A-170, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

WAC 460-24A-200 Books and records to be maintained by investment advisers. (1) If you are an investment adviser registered or required to be registered pursuant to RCW 21.20.040, you shall make and keep true, accurate, and current the following books, ledgers, and records:

(a) A journal or journals, including cash receipts and disbursement records, and any other records of original entry forming the basis of entries in any ledger.

(b) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

(c) A memorandum of each order given by you for the purchase or sale of any security, of any instruction received by you from a client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with you who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of a power of attorney shall be so designated.

(d) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser.

(e) All bills or statements (or copies thereof), paid or unpaid, relating to your business.

(f) All trial balances, financial statements, and internal audit working papers or other supporting financial records relating to your business as an investment adviser. For purposes of this subsection, "financial statements" shall mean a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement, and a net worth computation, if applicable, as required by WAC 460-24A-170.

(g) Originals of all written communications received and copies of all written communications sent by you relating to your investment advisory business including, but not limited to:

(i) Any recommendation made or proposed to be made and any advice given or proposed to be given;

(ii) Any receipt, disbursement or delivery of funds or securities; and

(iii) The placing or execution of any order to purchase or sell any security: Provided, however, That you shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for you: And provided, That if you send any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than ten persons, you shall not be required to keep a record of the names and addresses of the persons to whom it was sent, except that if such notice, circular or advertisement is distributed to persons named on any list, you shall retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.

(h) A list or other record of all accounts in which you are vested with any discretionary authority over the funds, securities or transactions of any client.

(i) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to you.

(j) A written copy of each signed agreement entered into by you with any client and all other written agreements otherwise relating to your business as an investment adviser.

(k) A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication, including by electronic media, and all amendments thereto, that you circulate or distribute, directly or indirectly, to two or more persons (other than persons connected with you), and if such communication recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum by you indicating the reasons for the recommendation.

(l)(i) A record of every transaction in a security in which you or any of your advisory representatives has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except:

(A) Transactions effected in any account over which neither you nor any of your advisory representatives has any direct or indirect influence or control; and

(B) Transactions in securities which are direct obligations of the United States.

The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that you or your advisory representative has any direct or indirect beneficial ownership in the security. You shall record each transaction not later than ten days after the end of the calendar quarter in which the transaction was effected.

(ii) For the purposes of this subsection (1)(l), the following definitions will apply:

(A) "Advisory representative" shall mean any of your partners, officers or directors; any employee who participates in any way in the determination of which recommendations shall be made, or whose functions or duties relate to the determination of which recommendation shall be made; any employee who, in connection with his or her duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by you prior to the effective dissemination of the recommendations:

- (I) Any person in a control relationship to you;
- (II) Any affiliated person of a controlling person; and
- (III) Any affiliated person of an affiliated person.

(B) "Control" shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than twenty-five percent of the voting securities of a company shall be presumed to control such company.

(iii) You shall not be deemed to have violated the provisions of this subsection (1) because of the failure to record securities transactions of any advisory representative if you establish that you instituted adequate procedures, and used reasonable diligence to obtain promptly, reports of all transactions required to be recorded.

(m)(i) Notwithstanding the provisions of (l) of this subsection, if you are primarily engaged in a business or businesses other than advising investment advisory clients, you must maintain a record of every transaction in a security in which you or any of your advisory representatives (as hereinafter defined) has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:

(A) Transactions effected in any account over which neither you nor any of your advisory representatives has any direct or indirect influence or control; and

(B) Transactions in securities which are direct obligations of the United States.

The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that you or any of your advisory representatives has any direct or indirect beneficial ownership in the security. You shall record a transaction not later than ten days after the end of the calendar quarter in which the transaction was effected.

(ii) You are "primarily engaged in a business or businesses other than advising investment advisory clients" if, for each of your most recent three fiscal years or for the period of time since organization, whichever is lesser, you derived, on an unconsolidated basis, more than fifty percent of:

- (A) Your total sales and revenues; and

(B) Your income (or loss) before income taxes and extraordinary items, from such other business or businesses.

(iii) For purposes of this subsection (1)(m) of this section the following definitions will apply:

(A) "Advisory representative," when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean any partner, officer, director, or employee of the investment adviser who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

(I) Any person in a control relationship to the investment adviser;

- (II) Any affiliated person of a controlling person; and
- (III) Any affiliated person of an affiliated person.

(B) "Control" shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than twenty-five percent of the voting securities of a company shall be presumed to control such company.

(iv) You shall not be deemed to have violated the provisions of this subsection (1)(m) because of your failure to record securities transactions of any advisory representative if you establish that you instituted adequate procedures, and used reasonable diligence to obtain promptly, reports of all transactions required to be recorded.

(n) The following items related to WAC 460-24A-145 and Part 2 of Form ADV:

(i) A copy of each written statement, and each amendment or revision, given or sent to any of your clients or prospective clients as required by WAC 460-24A-145;

(ii) Any summary of material changes that is required by Part 2 of Form ADV that is not included in the written statement; and

(iii) A record of the dates that each written statement, each amendment or revision thereto, and each summary of material changes was given or offered to any client or prospective client who subsequently becomes a client.

(o) For each client that you obtained by means of a solicitor to whom you paid a cash fee:

(i) Evidence of a written agreement to which you are a party related to the payment of such fee;

(ii) A signed and dated acknowledgment of receipt from the client evidencing the client's receipt of your disclosure statement and a written disclosure statement of the solicitor; and

(iii) A copy of the solicitor's written disclosure statement. The written agreement, acknowledgment, and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 275.206 (4)-3 of the Investment Advisers Act of 1940.

For purposes of this subsection, the term "solicitor" shall mean any person or entity who, for compensation, acts as an agent of an investment adviser in referring potential clients.

(p) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including, but not limited to, electronic media that you circulate or distribute, directly or indirectly, to two or more persons (other than persons connected with you); provided however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this subsection.

(q) A file containing a copy of all written communications received or sent regarding any litigation involving you or any investment adviser representative or employee, and regarding any written customer or client complaint.

(r) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

(s) Written information about each security that you recommended a client buy or sell that is the basis for making any recommendation or providing any investment advice to such client.

(t) Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

(u) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self regulatory organization and that pertains to you or your advisory representatives as that term is defined in (m)(iii)(A) of this subsection, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

(v) If you inadvertently held or obtained a client's securities or funds and returned them to the client within three business days or forwarded third-party checks within three business days, you shall keep the following records relating to the inadvertent custody:

- (i) Issuer;
- (ii) Type of security and series;
- (iii) Date of issue;
- (iv) For debt instruments, the denomination, interest rate and maturity date;
- (v) Certificate number, including alphabetical prefix or suffix;
- (vi) Name in which registered;
- (vii) Date given to the adviser;
- (viii) Date sent to client or sender;
- (ix) Form of delivery to client or sender, or copy of the form of delivery to client or sender; and
- (x) Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

(w) Copies, with original signatures of your appropriate signatory and the investment adviser representative, of each initial Form U4 and each amendment to Disclosure Reporting Pages (DRPs) must be retained by you (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

(x) If you obtain possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody under WAC 460-24A-109(1), you shall keep the following records:

(i) A record showing the issuer or current transfer agent's name, address, phone number, and other applicable contact information pertaining to the party responsible for recording client interests in the securities; and

(ii) A copy of any legend, shareholder agreement or other agreement showing that those securities are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(y) A copy of a current written business continuity plan which identifies procedures to be followed in the event of an emergency or significant business disruption and which is reasonably designed to enable you to meet your fiduciary obligations to your clients.

(2)(a) If you are subject to subsection (1) of this section and have custody or possession of securities or funds of any client, the records required to be made and kept under subsection (1) of this section shall include:

(i) A copy of any and all documents executed by the client (including a limited power of attorney) under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian.

(ii) A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.

(iii) A separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase or sale, and all debits and credits.

(iv) Copies of confirmations of all transactions effected by or for the account of any client.

(v) A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount of interest of each client, and the location of each security.

(vi) A copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If you also generate a statement that is delivered to the client, you shall also maintain copies of such statements along with the date such statements were sent to the clients.

(vii) If applicable to your situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination.

(viii) A record of any finding by the independent certified public accountant of any material discrepancies found during the examination.

(ix) If applicable, evidence of the client's designation of an independent representative.

(b) If you have custody because you advise a pooled investment vehicle, as defined in WAC 460-24A-005 (1)(a)(iii), you shall also keep the following records:

(i) True, accurate and current account statements;
(ii) Where you comply with WAC 460-24A-107 (1)(b) the records required to be made and kept shall include:

(A) The date of the audit;
(B) A copy of the audited financial statements; and
(C) Evidence of the mailing of the audited financial statements to all limited partners, members or other beneficial owners within one hundred twenty days of the end of its fiscal year.

(iii) Where you comply with WAC 460-24A-107 (1)(a) the records required to be made and kept shall include:

(A) A copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent party; and

(B) Copies of all invoices and receipts showing the approval by the independent party for payment through the qualified custodian.

(c) If you have custody because you are acting as the trustee for a beneficial trust as it is described in WAC 460-24A-109(3), you shall also keep the following records until the account is closed or the adviser is no longer acting as trustee:

(i) A copy of the written statement given to each beneficial owner setting forth a description of the requirements of WAC 460-24A-105 and the reason why you will not be complying with those requirements; and

(ii) A written acknowledgment signed and dated by each beneficial owner, and evidencing receipt of the statement required under WAC 460-24A-109 (3)(b).

(3) If you are subject to subsection (1) of this section and you render any investment supervisory or management service to any client, you shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by you, make and keep true, accurate and current:

(a) Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase or sale.

(b) For each security in which any client has a current position, information from which you can promptly furnish the name of each client, and the current amount or the interest of the client.

(4) Any books or records required by this section may be maintained by you in such manner that the identity of any client to whom you render investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(5) If you are subject to subsection (1) of this section, you shall preserve the following records in the manner prescribed:

(a) All books and records required to be made under the provisions of subsections (1) to (3), inclusive, of this section except for books and records required to be made pursuant to subsection (1)(k) and (p) of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on the record, the first two years in your principal office.

(b) Your partnership articles and any amendments, articles of incorporation, charter documents, minute books and stock certificate books of you and any of your predecessors, shall be maintained in your principal office and preserved until at least three years after termination of the enterprise.

(c) Books and records required to be made pursuant to subsection (1)(k) and (p) of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in your principal office, from the end of the fiscal year during which you last published or otherwise disseminated, directly or indirectly, including by electronic media, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication.

(d) Notwithstanding other record preservation requirements of this section, you shall maintain the following records or copies at your business location from which the customer or client is being provided or has been provided with investment advisory services:

(i) Records required to be preserved under subsections (1)(c), (g) through (j), (n), (o), and (q) through (s), (2), and (3) of this section shall be maintained for the period prescribed in (a) of this subsection; and

(ii) Records or copies required pursuant to subsection (1)(k) and (p) of this section which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number shall be maintained for the period prescribed in (c) of this subsection.

(6) If you are an investment adviser subject to subsection (1) of this section, you shall, before ceasing to conduct or discontinuing business as an investment adviser, arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the director in writing of the exact address where the books and records will be maintained during the period.

(7)(a) The records required to be maintained and preserved pursuant to this section may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser on:

(i) Paper or hard copy form, as those records are kept in their original form;

(ii) Micrographic media, including microfilm, microfiche, or any similar medium; or

(iii) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

(b) If you are an investment adviser required to maintain and preserve records pursuant to this section, you must:

(i) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(ii) Provide promptly any of the following that the director may request:

(A) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(B) A legible, true, and complete printout of the record; and

(C) Means to access, view, and print the records; and

(iii) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

(c) If the records that the investment adviser is required to maintain and preserve pursuant to this section are created or maintained on electronic storage media, the investment adviser must establish and maintain procedures:

(i) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(ii) To limit access to the records to properly authorized personnel and the director; and

(iii) To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(8) As used in this section, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and "discretionary authority" shall not include discretion as to the price at which, or the time when, a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

(9) Any book or other record made, kept, maintained, and preserved in compliance with Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained, and preserved under this section, shall be deemed to be made, kept, maintained, and preserved in compliance with this section.

(10) If you are an investment adviser registered or required to be registered in this state and have your principal place of business in a state other than this state, you are exempt from the requirements of this section, provided you are licensed in the state where you have your principal place of business and are in compliance with that state's record-keeping requirements.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-200, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. WSR 01-16-125, § 460-24A-200, filed 7/31/01, effective 10/24/01; Order 304, § 460-24A-200, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

WAC 460-24A-205 Notice of changes by investment advisers and investment adviser representatives. (1) If you are an investment adviser registered or required to be registered pursuant to RCW 21.20.040, you must:

(a) Promptly file with IARD, in accordance with the instructions to Form ADV, any amendments to your Form ADV. An amendment will be considered promptly filed if it is filed within thirty days of the event that requires the filing of the amendment;

(b) File an annual updating amendment to the Form ADV with IARD within ninety days after the end of your fiscal year; and

(c) File thirty days prior to use any amendments to your advisory contracts or offering materials for any pooled investment vehicles that you advise.

(2) If you are an investment adviser representative registered or required to be registered pursuant to RCW 21.20.-040, you have a continuing obligation to update the informa-

tion required by Form U4 as changes occur and you must promptly file with IARD any amendments to your Form U4. An amendment will be considered promptly filed if it is filed within thirty days of the event that requires the filing of the amendment.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-205, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. WSR 01-16-125, § 460-24A-205, filed 7/31/01, effective 10/24/01. Statutory Authority: RCW 21.20.450 and 21.20.040(2). 90-13-029, § 460-24A-205, filed 6/12/90, effective 7/13/90. Statutory Authority: RCW 21.20.450. WSR 85-23-063 (Order SDO-220-85), § 460-24A-205, filed 11/19/85; WSR 85-16-068 (Order SDO-128-85), § 460-24A-205, filed 8/1/85; Order 304, § 460-24A-205, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

WAC 460-24A-210 Notice of complaint must be filed with director. If you are an investment adviser registered or required to be registered pursuant to RCW 21.20.040 who has filed a complaint against any of your partners, officers, directors, agents licensed in Washington or associated persons with any law enforcement agency, any other regulatory agency having jurisdiction over the securities industry, or with any bonding company regarding any loss arising from alleged acts of such person, you shall send a copy of such complaint to the director, within ten days following its filing with such other agency or bonding company.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-210, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. WSR 01-16-125, § 460-24A-210, filed 7/31/01, effective 10/24/01; Order 304, § 460-24A-210, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

WAC 460-24A-220 Unethical business practices—Investment advisers and federal covered advisers. If you are an investment adviser, investment adviser representative, or a federal covered adviser, you are a fiduciary and have a duty to act primarily for the benefit of your clients. If you are a federal covered adviser, the provisions of this subsection apply to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). While the extent and nature of this duty varies according to the nature of the relationship with the client and the circumstances of each case, in accordance with RCW 21.20.020 (1)(c) and 21.20.110 (1)(g) you shall not engage in dishonest or unethical business practices including, but not limited to, the following:

(1) 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 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 by the investment adviser, investment adviser representative, or federal covered investment adviser.

(2) Exercising any discretion in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten

business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretion relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(3) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account in light of the fact that an investment adviser, investment adviser representative, or federal covered adviser in such situations can directly benefit from the number of securities transactions effected in a client's account. The rule appropriately forbids an excessive number of transaction orders to be induced by an adviser for a "customer's account."

(4) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(5) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

(6) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds.

(7) Loaning money or securities to a client unless you are a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

(8) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative, federal covered adviser, or any employee, or person affiliated with the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(9) Providing a report or recommendation to any advisory client prepared by someone other than you without disclosing that fact. (This prohibition does not apply to a situation where you use published research reports or statistical analyses to render advice or where you order such a report in the normal course of providing service.)

(10) Charging a client an unreasonable advisory fee.

(11) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser, investment adviser representative, federal covered adviser, or any employees or affiliated persons thereof which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(a) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(b) Charging a client an advisory fee for rendering advice when compensation for effecting securities transactions pursuant to such advice will be received by the investment adviser, investment adviser representative, federal covered investment adviser, or employees or affiliated persons thereof.

(12) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.

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

(14) Disclosing the identity, investments, or other financial information of any client or former client unless required by law to do so, or unless consented to by the client.

(15) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where you have custody or possession of such securities or funds when the action of the investment adviser, federal covered adviser, or investment adviser representative or employee is subject to and does not comply with applicable custody requirements.

(16) Entering into, extending or renewing any investment advisory contract that does not comply with the requirements set forth in WAC 460-24A-130.

(17) Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of Section 204A of the Investment Advisers Act of 1940.

(18) Entering into, extending, or renewing any advisory contract contrary to the provisions of section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers and investment adviser representatives registered or required to be registered under the Securities Act of Washington, chapter 21.20 RCW, notwithstanding whether you would be exempt from federal registration pursuant to section 203(b) of the Investment Advisers Act of 1940.

(19) To indicate, in an advisory contract, any condition, stipulation, or provisions binding any person to waive or limit compliance with, or require indemnification for any violations of, any provision of the Securities Act of Washington, chapter 21.20 RCW, or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of section 215 of the Investment Advisers Act of 1940.

(20) Engaging in any act, practice, or course of business which is fraudulent, deceptive, manipulative or unethical.

(21) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Securities Act of Washington, chapter 21.20 RCW, or any rule or regulation thereunder.

(22) Using any term or abbreviation thereof in a manner that misleadingly states or implies that a person has special expertise, certification, or training in financial planning, including, but not limited to, the misleading use of a senior-specific certification or designation as set forth in WAC 460-25A-020.

(23) Making, in the solicitation of clients, any untrue statement of fact, or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which they are made, not misleading.

The conduct set forth above is not inclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices shall be deemed an unethical business practice. The federal statutory and regulatory provisions referenced herein shall apply to investment advisers, investment

adviser representatives, and federal covered advisers, to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 14-13-068, § 460-24A-220, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 21.20.450, 21.20.020 (1)(c), 21.20.110 (1)(g). WSR 08-14-006, § 460-24A-220, filed 6/19/08, effective 7/20/08. Statutory Authority: RCW 21.20.450 and 21.20.100. WSR 99-03-051, § 460-24A-220, filed 1/15/99, effective 2/15/99. Statutory Authority: RCW 21.20.450. WSR 85-23-063 (Order SDO-220-85), § 460-24A-220, filed 11/19/85.]