

DISPOSITION OF SECTIONS FORMERLY
CODIFIED IN THIS CHAPTER

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| 458-65-010 | Time limitations. [Rule UCP 1, § 458-65-010, filed 1/17/68.] Repealed by 99-14-056, filed 6/30/99, effective 7/31/99. Statutory Authority: RCW 63.29.370. |
| 458-65-020 | Use of department forms. [Statutory Authority: 1983 c 179 § 38. 83-17-098 (Order IT 83-3), § 458-65-020, filed 8/23/83.] Repealed by 99-08-007, filed 3/25/99, effective 4/25/99. Statutory Authority: RCW 63.29.370. |
| 458-65-030 | Simultaneous reporting and remittance of unclaimed property. [Statutory Authority: 1983 c 179 § 38. 83-17-098 (Order IT 83-3), § 458-65-030, filed 8/23/83.] Repealed by 99-08-007, filed 3/25/99, effective 4/25/99. Statutory Authority: RCW 63.29.370. |
| 458-65-040 | Maturity of automatically renewable instruments. [Statutory Authority: 1983 c 179 § 38. 83-17-098 (Order IT 83-3), § 458-65-040, filed 8/23/83.] Repealed by 99-08-007, filed 3/25/99, effective 4/25/99. Statutory Authority: RCW 63.29.370. |

WAC 458-65-010 through 458-65-040 Repealed. See Disposition Table at beginning of this chapter.

Title 460 WAC

FINANCIAL INSTITUTIONS (SECURITIES DIVISION)

Chapters

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| 460-21B | Broker-dealer practices. |
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Chapter 460-21B WAC

BROKER-DEALER PRACTICES

WAC

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| 460-21B-060 | Dishonest or unethical business practices—Broker-dealers. |
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WAC 460-21B-060 Dishonest or unethical business practices—Broker-dealers. The phrase "dishonest or unethical practices" as used in RCW 21.20.110(7) as applied to broker-dealers is hereby defined to include any of the following:

(1) Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers and/or in the payment upon request of free credit balances reflecting completed transactions of any of its customers;

(2) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

(3) Recommending to a customer to purchase, sell or exchange any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

(4) Executing a transaction on behalf of a customer without authorization to do so;

(5) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;

(6) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;

(7) Failing to segregate customers' free securities or securities held in safekeeping;

(8) Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by rules of the securities and exchange commission;

(9) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

(10) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, a final or preliminary prospectus, and if the latter, failing to furnish a final prospectus within a reasonable period after the effective date of the offering;

(11) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

(12) Offering to buy from or sell to any person any security at a stated price unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell;

(13) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by such broker-dealer, or by any person for whom he/she is acting or with whom he/she is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer;

(14) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

(a) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(b) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to

the market for the security; provided, however, nothing in this subsection shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customer;

(c) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;

(15) Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;

(16) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security;

(17) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

(18) Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of security, the existence of such control to such customer, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

(19) Failing to make bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member or from a member participating in the distribution as an underwriter or selling group member;

(20) Failure or refusal to furnish a customer, upon reasonable request, information to which he is entitled, or to respond to a formal written request or complaint;

(21) In connection with the solicitation of a sale or purchase of an OTC non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act, when requested to do so by a customer;

(22) Marking any order ticket or confirmation as unsolicited when in fact the transaction is solicited;

(23) For any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account which with respect to all OTC non-NASDAQ equity securities in the account, contains a value for each such security based on the closing market bid on a date certain: Provided, That this subsection shall apply only if the firm has

been a market maker in such security at any time during the month in which the monthly or quarterly statement is issued;

(24) Failing to comply with any applicable provision of the Conduct Rules of the National Association of Securities Dealers or any applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission; or

(25) Any acts or practices enumerated in WAC 460-21B-010.

The conduct set forth above is not inclusive. Engaging in other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension or revocation of registration.

[Statutory Authority: RCW 21.20.450(1), 99-12-043, § 460-21B-060, filed 5/26/99, effective 7/9/99. Statutory Authority: RCW 21.20.070 and 21.20.450, 95-16-026, § 460-21B-060, filed 7/21/95, effective 8/21/95.]

Chapter 460-22B WAC

SALESPERSONS OF BROKER-DEALERS

WAC

460-22B-090

Dishonest and unethical business practices-salespersons.

WAC 460-22B-090 Dishonest and unethical business practices-salespersons. The phrase "dishonest or unethical practices" as used in RCW 21.20.110(7) as applied to salespersons, is hereby defined to include any of the following:

(1) Engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;

(2) Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;

(3) Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;

(4) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;

(5) Dividing or otherwise splitting the agent's commissions, profits or other compensation from the purchase or sale of securities with any person not also registered for the same broker-dealer, or for a broker-dealer under direct or indirect common control;

(6) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

(7) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

(8) Executing a transaction on behalf of a customer without authorization to do so;

(9) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;

(10) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;

(11) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

(12) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, a final or preliminary prospectus, and if the latter, failing to furnish a final prospectus within a reasonable period after the effective date of the offering;

(13) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

(a) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(b) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security;

(c) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;

(14) Guaranteeing a customer against loss in any securities account for such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;

(15) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation presents a bona fide bid for, or offer of, such security;

(16) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions of any brochure, flyer, or display by words, pictures, graphs or otherwise designed to sup-

plement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

(17) In connection with the solicitation of a sale or purchase of an OTC non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act, when requested to do so by a customer;

(18) Marking any order ticket or confirmation as unsolicited when in fact the transaction is solicited;

(19) Failing to comply with any applicable provision of the Conduct Rules of the National Association of Securities Dealers or any applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission; or

(20) Any act or practice enumerated in WAC 460-21B-010.

The conduct set forth above is not inclusive. Engaging in other conduct such a forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension or revocation of registration.

[Statutory Authority: RCW 21.20.450(1), 99-12-043, § 460-22B-090, filed 5/26/99, effective 7/9/99. Statutory Authority: RCW 21.20.450. 97-16-050, § 460-22B-090, filed 7/31/97, effective 8/31/97. Statutory Authority: RCW 21.20.070 and 21.20.450. 95-16-026, § 460-22B-090, filed 7/21/95, effective 8/21/95.]

Chapter 460-24A WAC INVESTMENT ADVISERS

WAC

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| 460-24A-040 | Use of certain terms. |
| 460-24A-050 | Investment adviser and investment adviser representative registration and examinations. |
| 460-24A-110 | Agency cross transactions. |
| 460-24A-145 | Investment adviser brochure rule. |
| 460-24A-150 | Performance compensation arrangements. |
| 460-24A-220 | Unethical business practices—Investment advisers and federal covered advisers. |

WAC 460-24A-040 Use of certain terms. (1) For the purposes of RCW 21.20.040(3), 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(3), 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 21.20.450. 00-01-001, § 460-24A-040, filed 12/1/99, effective 1/1/00; 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. 93-01-113, § 460-24A-040, filed 12/21/92, effective 1/21/93; 90-13-029, § 460-24A-040, filed 6/12/90, effective 7/13/90.]

WAC 460-24A-050 Investment adviser and investment adviser representative registration and examinations.

(1) Examination requirements. A person applying to be registered as an investment adviser or investment adviser representative under RCW 21.20.040 shall provide the director with proof that he or she has obtained a passing score on one of the following examinations:

(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) Grandfathering. (a) Any individual who is registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on the effective date of this amended rule shall not be required to satisfy the examination requirements for initial or continued registration, provided that the director may require additional examinations for any individual found to have violated the Securities Act of Washington, Chapter 21.20 RCW, or the Uniform Securities Act. (b) An individual who has not been registered in any jurisdiction for a period of two (2) years shall be required to comply with the examination requirements of subsection (1).

(3) Waivers. The examination requirements shall not apply to an individual who currently holds 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 Association for Investment Management and Research;

(e) Chartered Investment Counselor (CIC) granted by the Investment Counsel Association of America; or

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

(4) If the person applying for registration as an investment adviser is 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 taking the examination ceases to be a person of authority in the entity, then the investment adviser must notify the director of a substitute person of authority who has passed the examinations required in subsection (1) of this section within two months in order to maintain the investment adviser license.

(5) Registration requirements. (a) A person applying to be registered as an investment adviser shall submit: (i) proof of complying with the examination or waiver requirements specified in subsections (1) through (5) above; (ii) a completed Form ADV; (iii) a financial statement demonstrating compliance with the requirements of WAC 460-24A-170, if necessary; (iv) the application fee specified in RCW 21.20.340; and (v) such other documents as the director may require. (b) A person applying to be registered as an investment adviser representative shall submit: (i) proof of complying with the examination or waiver requirements specified

in subsections (1) through (5) above; (ii) a completed Form U-4; (iii) the application fee specified in RCW 21.20.340; and (iv) such other documents as the director may require.

[Statutory Authority: RCW 21.20.450. 00-01-001, § 460-24A-050, filed 12/1/99, effective 1/1/00; 97-16-050, § 460-24A-050, filed 7/31/97, effective 8/31/97. Statutory Authority: RCW 21.20.450 and 21.20.070. 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. 90-05-003, § 460-24A-050, filed 2/9/90, effective 3/12/90; 89-17-077 (Order SDO-123-89), § 460-24A-050, filed 8/17/89, effective 9/17/89. Statutory Authority: RCW 21.20.450. 85-23-063 (Order SDO-220-85), § 460-24A-050, filed 11/19/85; 85-16-068 (Order SDO-128-85), § 460-24A-050, filed 8/1/85. Statutory Authority: RCW 21.20.450 and 21.20.040. 83-03-024 (Order SDO-6-83), § 460-24A-050, filed 1/13/83. Statutory Authority: RCW 21.20.450. 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-110 Agency cross transactions. (a) 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.

(b) An investment effecting an agency cross transaction for an advisory client shall be in compliance with RCW 21.20.020(3) if the following conditions are met:

(1) The advisory client executes a written consent prospectively authorizing the investment adviser to effect agency cross transactions for such client;

(2) Before obtaining such written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as broker-dealer for, receive commissions from and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions;

(3) At or before the completion of each agency cross transaction, the investment adviser or any other person relying on this rule sends the client a written confirmation. The written confirmation shall include (A) a statement of the nature of the transaction, (B) the date the transaction took place (C) an offer to furnish, upon request, the time when the transaction took place and (D) 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;

(4) 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;

(5) 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 (b)(1) of this rule at any time by providing written notice to the investment adviser;

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

(c) 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 21.20.450. 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. 99-03-050, § 460-24A-110, filed 1/15/99, effective 2/15/99.]

WAC 460-24A-145 Investment adviser brochure rule. (1) General requirements. Unless otherwise provided in this rule, an investment adviser, registered or required to be registered pursuant to RCW 21.20.040 shall, in accordance with the provisions of this section, furnish each advisory client and prospective advisory client with a written disclosure statement which may be a copy of Part II of its Form ADV or written documents containing at least the information then so required by Part II of Form ADV, or such other information as the administrator may require.

(2) Delivery.

(a) An investment adviser, except as provided in subparagraph (b) of this paragraph, shall deliver the statement required by this section to an advisory client or prospective advisory client (i) not less than 48 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) delivery of the statement required by subparagraph (a) need not be made in connection with entering into (i) an investment company contract or (ii) a contract for impersonal advisory services.

(3) Offer to deliver.

(a) An investment adviser, except as provided in subdivision (b), annually shall, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the statement required by this section.

(b) The delivery or offer required by subparagraph (a) need not be made to advisory clients receiving advisory services solely pursuant to (i) an investment company contract

or (ii) a contract for impersonal advisory services requiring a payment of less than \$200.00.

(c) With respect to an advisory client entering into a contract or receiving advisory services pursuant to a contract for impersonal advisory services which requires a payment of \$200.00 or more, an offer of the type specified in subparagraph (a) shall also be made at the time of entering into an advisory contract.

(d) Any statement requested in writing by an advisory client pursuant to an offer required by this subsection must be mailed or delivered within seven days of the receipt of the request.

(4) Omission of inapplicable information. If an investment adviser renders substantially different types of investment advisory services to different advisory clients, any information required by Part II of Form ADV may be omitted from the statement furnished to an advisory client or prospective advisory client 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.

(5) Other disclosures. Nothing in this rule shall relieve any investment adviser from any obligation pursuant to any provision of chapter 21.20 RCW or the rules and regulations thereunder or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this rule.

(6) Definitions. For the purpose 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.

(c) "Investment company contract" means a contract with an investment company registered under the Investment Company Act of 1940 which meets the requirements of section 15(c) of that act.

[Statutory Authority: 1998 c 15 § 9. 99-03-052, § 460-24A-145, filed 1/15/99, effective 2/15/99.]

WAC 460-24A-150 Performance compensation arrangements. An investment adviser may, without violating RCW 21.20.030(1), enter into a performance compensation arrangement with a customer that complies with Securities and Exchange Commission Rule 205-3, as made effective in Release No. IA-996 and as amended in Release No. IA-1731, under the Investment Advisers Act of 1940. Rule 205-3 is found in the CCH Federal Securities Law Reports published by Commerce Clearing House. Copies of the rule are also available at the office of the securities administrator.

[Statutory Authority: RCW 21.20.450. 00-01-001, § 460-24A-150, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 21.20.450 and 1993 c 114. 93-20-012, § 460-24A-150, filed 9/23/93, effective 10/24/93.]

WAC 460-24A-220 Unethical business practices—Investment advisers and federal covered advisers. A person who is an investment adviser or a federal covered adviser is a fiduciary and has a duty to act primarily for the benefit of its clients. The provisions of this subsection apply to federal covered advisers 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 between an investment adviser and its clients and the circumstances of each case, an investment adviser or a federal covered adviser shall not engage in unethical business practices, including 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.

(2) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power 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 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 to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

(8) To misrepresent to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employees of the investment adviser, or to misrepresent 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 the adviser without disclosing that fact. (This prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders 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 adviser or any of its employees 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 a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees.

(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, affairs, or investments of any 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 the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the requirements of Reg. 206(4)-2 under the Investment Advisers Act of 1940.

(16) Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

(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 registered or required to be registered under the Securities Act of Washington, chapter 21.20 RCW, notwithstanding whether such adviser 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 com-

pliance with 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, or manipulative in contrary to the provisions of section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940.

(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.

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 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 21.20.450 and 21.20.100. 99-03-051, § 460-24A-220, filed 1/15/99, effective 2/15/99. Statutory Authority: RCW 21.20.450. 85-23-063 (Order SDO-220-85), § 460-24A-220, filed 11/19/85.]

Chapter 460-28A WAC ADVERTISEMENTS

WAC

460-28A-015 All advertisements to be filed.

WAC 460-28A-015 All advertisements to be filed. All sales and advertising literature and promotional material, other than that exempted by these rules, shall be governed by the following:

(1) The registration applicant or registrant shall file with the division, at least five business days before its intended dissemination, one copy of each item of literature or material.

(2) If not disallowed by the administrator by written notice or otherwise within three business days from the date filed, the literature or material may be disseminated.

(3) No formal approval of the literature or material shall be issued by the administrator.

(4) The disseminator of the literature or material shall be responsible for the accuracy and reliability of the literature and material, and its conformance with the code and these rules.

[Statutory Authority: RCW 21.20.450. 99-03-053, § 460-28A-015, filed 1/15/99, effective 2/15/99; Order 342, § 460-28A-015, filed 9/29/75; Order 304, § 460-28A-015, filed 2/28/75, effective 4/1/75. Formerly chapter 460-28 WAC.]

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Title 461 WAC SHORELINES HEARINGS BOARD

Chapters 461-08

Practice and procedure—Review of the granting, denying or rescinding of substantial development permits—Hearings.

Chapter 461-08 WAC

PRACTICE AND PROCEDURE—REVIEW OF THE GRANTING, DENYING OR RESCINDING OF SUBSTANTIAL DEVELOPMENT PERMITS—HEARINGS

WAC

461-08-355 Service of petitions for review with department and attorney general—Intervention by the department and attorney general.
461-08-360 Repealed.
461-08-555 Final decisions and orders.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

461-08-360 Service of the petition for review on local government and other parties. [Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-360, filed 7/3/96, effective 8/3/96.] Repealed by 99-23-038, filed 11/12/99, effective 12/13/99. Statutory Authority: RCW 90.58.175.

WAC 461-08-355 Service of petitions for review with department and attorney general—Intervention by the department and attorney general. (1) For a petition pertaining to a local government's final decision on a permit, the petitioner shall serve a copy of the petition with the department, the attorney general and that local government within seven days of filing the petition with the board.

(2) Within fifteen days of the date of receipt of the petition for review described in subsection (1) of this section, the department or the attorney general may intervene in the case before the board to protect the public interest and to insure compliance with chapter 90.58 RCW. Nothing in WAC 461-08-345, setting a twenty-one day limit on when the department or the attorney general can directly file a petition for review, limits the right of the department or attorney general to intervene under this section in a board proceeding.

(3) When the petitioner is not the permit applicant, the petitioner shall serve the permit applicant with a copy of the petition for review.

[Statutory Authority: RCW 90.58.175. 99-23-038, § 461-08-355, filed 11/12/99, effective 12/13/99; 96-15-002, § 461-08-355, filed 7/3/96, effective 8/3/96.]

WAC 461-08-360 Repealed. See Disposition Table at beginning of this chapter.

WAC 461-08-555 Final decisions and orders. (1) **Full-board cases.** When the hearing on the petition for