

# Chapter 460-24A WAC

## INVESTMENT ADVISERS

### WAC

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### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

460-24A-046	Dual representation and affiliation. [Statutory Authority: RCW 21.20.070 and 21.20.450. 95-16-026, § 460-24A-046, filed 7/21/95, effective 8/21/95.] Repealed by 97-03-122, filed 1/22/97, effective 2/22/97. Statutory Authority: RCW 21.20.100 and 21.020.450.
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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

(ii) 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 twenty-four hours of receipt and the adviser maintains a ledger or other listing of all securities or funds held or obtained inadvertently, including the following information:

(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.

(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; and

(c) Does not have, and has not had within the past two years, a material business relationship with the investment adviser.

(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 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 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 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.

[Statutory Authority: RCW 21.20.450, 21.20.900, 21.20.100, 21.20.050 - [21.20].060. 08-18-033, § 460-24A-005, filed 8/27/08, effective 9/27/08.]

**WAC 460-24A-010 Investment advisers—Where rules apply.** These rules apply only to that part of the investment advisers' business within the state of Washington.

[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.** An individual employed by or associated with a federal covered adviser is an "investment adviser representative," pursuant to RCW 21.20.005(14), if the representative has a "place of business" in this state, as that term is defined under section 203A of the Investment Advisers Act of 1940, and:

(1) Is an "investment adviser representative" pursuant to the Investment Advisers Act of 1940; or

(2) Solicits, offers, or negotiates for the sale of or sells investment advisory services on behalf of a federal covered adviser, but is not a "supervised person" as that term is defined under the Investment Advisers Act of 1940.

[Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. 01-16-125, § 460-24A-020, filed 7/31/01, effective 10/24/01.]

**WAC 460-24A-030 Use of the term "investment counsel."** No investment adviser shall use the title "investment counsel" in the conduct of his or its business nor represent that he or it is an "investment counsel" nor use the term "investment counsel" as descriptive of his or its business where such use is prohibited under the provisions of the Federal Investment Advisers Act of 1940, as amended.

[Order 304, § 460-24A-030, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

**WAC 460-24A-040 Use of certain terms.** (1) For the purposes of RCW 21.20.040(3), use of any term, or abbrevi-

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ation 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-045 Holding out as a financial planner.** A person using a term deemed similar to "financial planner" or "investment counselor" under WAC 460-24A-040(2) will not be considered to be holding himself out as a financial planner for purposes of RCW 21.20.005(6) and 21.20.040 under the following circumstances:

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

(2) The person does 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) The person delivers 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) The person is not registered as an investment adviser or investment adviser salesperson in the state of Washington;

(b) The person is not authorized to provide financial planning or investment advisory services and does not provide such services; and

(c) A brief description the person's business which description should include a statement of the kind of products offered or services provided (e.g., the person is in the business of selling securities and insurance products) and of the basis on which the person is compensated for the products sold or services provided; and

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

(6) If the person received compensation from the customer on more than one occasion, the person 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 the person must give the customer updated disclosure before receiving further compensation from the customer.

[Statutory Authority: RCW 21.20.450. 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. 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 operated by the National Association of Securities Dealers (IARD) 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 Web 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 by IARD shall be filed in paper 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 21.20.450, 21.20.050, 21.20.100. 01-16-125, § 460-24A-047, filed 7/31/01, effective 10/24/01.]

**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 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 for initial registration as an investment adviser shall 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) A financial statement demonstrating compliance with the requirements of WAC 460-24A-170, if necessary;

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

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

(b) A person applying for initial registration as an investment adviser representative shall file a completed Form U-4 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.

[Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. 01-16-125, § 460-24A-050, filed 7/31/01, effective 10/24/01. 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-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. 01-16-125, § 460-24A-055, filed 7/31/01, effective 10/24/01. Statutory Authority: RCW 21.20.070 and 21.20.450. 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. 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) Registration as an investment adviser or investment adviser representative may be renewed 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 U-4, unless:

(i) The Form U-4 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) 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.

(3) 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 21.20.450, 21.20.050, 21.20.100. 01-16-125, § 460-24A-057, filed 7/31/01, effective 10/24/01.]

**WAC 460-24A-058 Completion of filing.** An application for registration or renewal by an investment adviser or

investment adviser representative is not considered filed for purposes of RCW 21.20.050 until the required fee and all required submissions have been received by IARD.

[Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. 01-16-125, § 460-24A-058, filed 7/31/01, effective 10/24/01.]

**WAC 460-24A-060 Financial statements required on investment advisers.** Every investment adviser shall file with the director a balance sheet as of the end of the investment adviser's fiscal year. The balance sheet shall be prepared in accordance with generally accepted accounting principles (GAAP) unless the director, on a case-by-case basis, allows another basis of presentation. The balance sheet shall be filed annually with the director not more than ninety days after the end of the investment adviser's fiscal year-end (unless extension of time is granted by the director).

[Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. 01-16-125, § 460-24A-060, filed 7/31/01, effective 10/24/01. Statutory Authority: RCW 21.20.450. 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 filings for federal covered advisers.** (1) Notice filing. The notice filing required of a federal covered adviser pursuant to RCW 21.20.050 shall be filed with IARD on a completed Form ADV. A notice filing of a federal covered adviser shall be deemed filed when the fee required by RCW 21.20.340 and the Form ADV are filed with and accepted by IARD on behalf of the state.

(2) Portions of Form ADV not yet accepted by IARD. Until IARD provides for the filing of Part 2 of Form ADV, Part 2 will be deemed filed if it is provided to the director within five days of the director's request. The federal covered adviser is not required to submit Part 2 of the Form ADV to the director unless requested.

(3) Renewal. The annual renewal of the notice filing for a federal covered adviser shall be filed with IARD. The renewal of the notice filing for a federal covered adviser 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. A federal covered adviser must file any amendments to its Form ADV with IARD in accordance with the instructions in the Form ADV.

(5) A federal covered adviser that, because it has received a hardship exemption from the Securities and Exchange Commission (SEC), is not required to file its Form ADV with the SEC through IARD shall, in lieu of filing electronically, file the documents and fees required by this section directly with the director.

[Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. 01-16-125, § 460-24A-070, filed 7/31/01, effective 10/24/01.]

**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. An investment adviser or federal covered adviser may terminate its registration or notice filing status by complying with the instructions to Form ADV-W and filing a completed Form ADV-W with IARD.

(8/27/08)

(2) Investment adviser representative. The termination of registration as an investment adviser representative pursuant to RCW 21.20.080 shall be reported by complying with the instructions to Form U-5 and filing a completed Form U-5 with IARD.

[Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. 01-16-125, § 460-24A-080, filed 7/31/01, effective 10/24/01.]

**WAC 460-24A-100 Advertisements by investment advisers.** (1) 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 an investment adviser, directly or indirectly, to publish, circulate or distribute any advertisement:

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

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

(i) State 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) Contain 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 advertisement 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 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 security.

[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;

(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 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, 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, 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 at a time that is chosen by the accountant without prior notice or announcement to you and that is irregular from year to year, and files a copy of the special examination report with the director within thirty days after the completion of the examination, stating that it has examined the funds and securities and describing the nature and extent of the examination; and

(iii) The independent certified public accountant, upon finding any material discrepancies during the course of the examination, notifies the director within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the director; and

(c) **Account statements are sent to limited partners and members of limited liability companies that you advise.** If you are a general partner of a limited partnership (or managing member of a limited liability company, or hold a comparable position for another type of pooled investment vehicle), the account statements required under this subsection are sent to each limited partner (or member or other beneficial owner); and

(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.

[Statutory Authority: RCW 21.20.450, 21.20.900, 21.20.100, 21.20.050 - [21.20].060. 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. 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) solely because you have the authority to directly deduct fees from client accounts, you must comply with the safekeeping requirements 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.

[Statutory Authority: RCW 21.20.450, 21.20.900, 21.20.100, 21.20.050 - [21.20].060. 08-18-033, § 460-24A-106, filed 8/27/08, effective 9/27/08.]

**WAC 460-24A-107 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 either:

(a) **Comply with additional safekeeping requirements.** In addition to the safekeeping requirements set forth in WAC 460-24A-105, you must comply with the following safekeeping requirements:

(i) **You must engage an independent party to authorize withdrawals from the pooled account.** You must hire an independent party to review all fees, expenses, and capital withdrawals from the pooled account;

(ii) **You must send detailed invoices or receipts to the independent party.** 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 that you will comply with these additional safekeeping requirements.** You must notify the director on Form ADV that you will comply with the safekeeping requirements in (a) of this subsection; or

(b) **You must provide audited financial statements of the pooled investment vehicle to all limited partners or members.** If you do not comply with the safekeeping requirements set forth in WAC 460-24A-105 and (a) of this subsection, you must comply with the following alternative safekeeping requirements:

(i) **The pooled investment vehicle must be subject to annual audits.** 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 audited financial statements for the pooled investment vehicle to all beneficial owners.**

You must distribute audited financial statements prepared in accordance with generally accepted accounting principles for 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 all limited partners (or members or other beneficial owners) within one hundred twenty days of the end of its fiscal year; and

(iii) **You must notify the director that you will distribute audited financial statements of the pooled investment vehicle to all beneficial owners.** 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) **If you comply with the additional safekeeping requirements, you are not required to comply with the net worth and bonding requirements.** If you have custody solely as defined in WAC 460-24A-105 (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.

(3) **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 WAC 460-24A-105 (4)(b)(ii) and (iii) 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 comply with subsection (1)(b) of this section.

[Statutory Authority: RCW 21.20.450, 21.20.900, 21.20.100, 21.20.050 - [21.20].060. 08-18-033, § 460-24A-107, filed 8/27/08, effective 9/27/08.]

**WAC 460-24A-108 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 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 21.20.450, 21.20.900, 21.20.100, 21.20.050 - [21.20].060. 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 comply with the custody requirements for certain privately offered securities.** You are not required to comply with WAC 460-24A-105 through 460-24A-108 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 safekeeping 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 21.20.450, 21.20.900, 21.20.100, 21.20.050 - [21.20].060. 08-18-033, § 460-24A-109, filed 8/27/08, effective 9/27/08.]

**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;

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(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-140 Guarantees of success.** No representation or statement, whether direct or by implication, should be made guaranteeing the success of investments made pursuant to recommendations of the advisory service concerned.

[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, an investment adviser, registered or required to be registered pursuant to RCW 21.20.040 shall, in accordance with the provisions of this section, offer and deliver to each advisory client and prospective advisory client written disclosure materials containing at least the information then so required by Part II of Form ADV and such other information as the director may require. If a federal covered adviser may utilize a copy of Part II of its Form ADV to provide the disclosures required pursuant to 17 CFR 275.204-3, then an investment adviser may use a copy of Part II of its ADV to provide the disclosures required by this section.

(2) Delivery.

(a) An investment adviser, except as provided in (b) of this subsection, 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) Delivery of the materials required by (a) of this subsection need not be made in connection with entering into a contract for impersonal advisory services.

(3) Offer to deliver.

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

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(b) The delivery or offer required by (a) of this subsection need not be made to advisory clients receiving advisory services solely pursuant to 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 (a) of this subsection shall also be made at the time of entering into an advisory contract.

(d) Any materials 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) Delivery to limited partners. If the investment adviser is the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then, for purposes of this section, the investment adviser 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) Wrap fee program brochures.

(a) If the investment adviser is a sponsor of a wrap fee program, then the materials required to be delivered, by subsection (2) of this section, to a client or prospective client of the wrap fee program, must contain all information required by Form ADV. Any additional information must be limited to information applicable to wrap fee programs that the investment adviser sponsors.

(b) The investment adviser does not have to offer or deliver wrap fee information if another sponsor of the wrap fee program offers or delivers to the client or prospective client of the wrap fee program wrap fee program information containing all the information the investment adviser's wrap fee program brochure must contain.

(6) Delivery of updates and amendments. When the disclosure materials required to be delivered pursuant to subsection (2) of this section become materially inaccurate, the investment adviser must amend and promptly deliver to its clients amendments to such disclosure materials. The instructions to Part 2 of Form ADV contain updating and delivery instructions that the investment adviser must follow. An amendment will be considered to be delivered promptly if the amendment is delivered within thirty days of the event that requires the filing of the amendment.

(7) Omission of inapplicable information. If an investment adviser renders substantially different types of investment advisory services to different advisory clients, the investment adviser 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 II 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.

(8) Other disclosure obligations. Nothing in this section shall relieve any investment adviser from any obligation to disclose any information to its 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.

(9) 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.

(c) "Sponsor" of a wrap fee program means an investment adviser that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of other investment advisers in the program.

(d) "Wrap fee program" means an advisory program under which a specified fee or fees, not based directly upon transactions in a client's account, is charged for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and the execution of client transactions.

[Statutory Authority: RCW 21.20.450 and 21.20.110 (1)(g), 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, 01-16-125, § 460-24A-145, filed 7/31/01, effective 10/24/01. 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-160 Refunds.** Advisory services should not advertise or represent to subscribers or customers 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) the investment adviser's financial responsibility is adequate to insure its ability to meet all such refund demands.

[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) An investment adviser registered or required to be registered under RCW 21.20.040,

who has custody of client funds or securities, shall maintain at all times a minimum net worth of \$35,000 unless provided otherwise in this chapter. 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, shall maintain at all times a minimum net worth of \$10,000.

(2) An investment adviser registered or required to be registered under RCW 21.20.040 who has custody or discretion of client funds or securities, but does not meet the minimum net worth requirements in subsection (1) of this section shall be bonded 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 claim of all clients of the investment adviser regardless of the client's state of residence.

(3) An investment adviser registered or required to be registered under RCW 21.20.040, who accepts prepayment of more than \$500 per client and six or more months in advance, 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, every investment adviser registered or required to be registered under RCW 21.20.040 shall, by the close of business on the next business day, notify the director if the investment adviser's net worth is less than the minimum required. After transmitting such notice, each investment adviser 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, 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) The director may require that a current appraisal be submitted in order to establish the worth of any asset.

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

[Statutory Authority: RCW 21.20.450, 21.20.900, 21.20.100, 21.20.050 - [21.20].060. 08-18-033, § 460-24A-170, filed 8/27/08, effective 9/27/08. Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. 01-16-125, §

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460-24A-170, filed 7/31/01, effective 10/24/01. Statutory Authority: RCW 21.20.450. 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) Every investment adviser registered or required to be registered pursuant to RCW 21.20.040 shall make and keep true, accurate, and current the following books, ledgers, and records:

(a) A journal or journals, including cash receipts and disbursements 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 the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser 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 the investment adviser 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 the business of the investment adviser.

(f) All trial balances, financial statements, and internal audit working papers relating to the investment adviser's 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, and 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 the investment adviser relating 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, or (iii) the placing or execution of any order to purchase or sell any security: Provided, however, That the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser: And provided, That if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than ten persons, the investment adviser 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, the investment adviser 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 the investment adviser is vested with any discretionary power with respect to 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 the investment adviser.

(j) A written copy of each agreement entered into by the investment adviser with any client and all other written agreements otherwise relating to the investment adviser's 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, that the investment advisers circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser), and if such communication recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

(l)(i) A record of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except:

(A) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser 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 the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded 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), the following definitions will apply:

(A) "Advisory representative" shall mean any partner, officer or director of the investment adviser; 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 the investment adviser prior to the effective dissemination of 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.

(iii) An investment adviser 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 the investment adviser establishes that it 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, where the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:

(A) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser 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 the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.

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

(A) Its total sales and revenues; and

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

(iii) For purposes of this subsection (1)(m) 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 determina-

tion 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) An investment adviser shall not be deemed to have violated the provisions of this subsection (1)(m) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it 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 II of Form ADV:

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

(ii) Any summary of material changes that is required by Part II 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 was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser:

(i) Evidence of a written agreement to which the adviser is 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 the investment adviser's 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 the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser); 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 the investment adviser 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 procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

(t) 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 the registrant or its 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.

(u) Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to Disclosure Reporting Pages (DRPs U-4) must be retained by the investment adviser (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

(2) If an investment adviser subject to subsection (1) of this section has 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:

(a) 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.

(b) 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.

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

(d) 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.

(3) Every investment adviser subject to subsection (1) of this section who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the

information is reasonably available to or obtainable by the investment adviser, 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 the investment adviser can promptly furnish the name of each client, and the current amount of the interest of the client.

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

(5) Every investment adviser subject to subsection (1) of this section 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)(a), 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 the principal office of the investment adviser.

(b) Partnership articles and any amendments, articles of incorporation, charter documents, minute books and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser 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 the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser 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, the following records or copies shall be maintained at the business location of the investment adviser 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) An investment adviser subject to subsection (1) of this section, before ceasing to conduct or discontinuing business as an investment adviser, shall 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 by photograph on film or, as provided in (b) of this subsection, on magnetic disk, tape, or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:

(i) Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;

(ii) Be ready at all times to promptly provide any facsimile enlargement of film or computer printout or copy of the computer storage medium that the director, by its examiners or other representatives, may request;

(iii) Store, separately from the original, one copy of the film or computer storage medium for the time required;

(iv) With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction; and

(v) With respect to records stored on photographic film, at all times have available for the director's examination of its records pursuant to RCW 21.20.100, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

(b) Pursuant to (a) of this subsection, an investment adviser may maintain and preserve on computer tape, disk, or other computer storage medium records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or received by the adviser solely on electronic media or by electronic data transmission.

(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 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) Every investment adviser registered or required to be registered in this state and that has its principal place of business in a state other than this state shall be exempt from the requirements of this section, provided the investment adviser is licensed in the state where it has its principal place of business and is in compliance with that state's recordkeeping requirements.

[Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100, 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) Each licensed investment adviser must:

(a) Promptly file with IARD, in accordance with the instructions to Form ADV, any amendments to its 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; and

(b) File an updated Form ADV with IARD within ninety days of the end of the investment adviser's fiscal year.

(2) Each investment adviser representative has a continuing obligation to update the information required by Form U-4 as changes occur and must promptly file with IARD any amendments to the representative's Form U-4. 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 21.20.450, 21.20.050, 21.20.100, 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, 85-23-063 (Order SDO-220-85), § 460-24A-205, filed 11/19/85; 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.** Each licensed investment adviser who has filed a complaint against any of its 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, 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 21.20.450, 21.20.050, 21.20.100, 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.** 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 with the client and the circumstances of each case, in accordance with RCW 21.20.020 (1)(c) and 21.20.110 (1)(g) an investment adviser or a federal covered adviser shall not engage in dishonest or 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 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 compliance 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 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.

(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.

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, 21.20.020 (1)(c), 21.20.110 (1)(g), 08-14-006, § 460-24A-220, filed 6/19/08, effective 7/20/08. 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.]