

Chapter 460-21B WAC

BROKER-DEALER PRACTICES

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

460-21B-080	Written procedures. [Statutory Authority: RCW 21.20.070 and 21.20.450. WSR 95-16-026, § 460-21B-080, filed 7/21/95, effective 8/21/95.] Repealed by WSR 97-03-122, filed 1/22/97, effective 2/22/97. Statutory Authority: RCW 21.20.100 and 21.20.450.
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WAC 460-21B-008 Fraudulent practices of broker-dealers. A broker-dealer who engages in one or more of the following practices shall be deemed to have engaged in an "act, practice, or course of business which operates or would operate as a fraud" as used in RCW 21.20.010. This section is not intended to be all inclusive, and thus, acts or practices not enumerated herein may also be deemed fraudulent.

(1) Entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

(2) Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner.

(3) In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent is in possession of material, nonpublic information which would impact on the value of the security.

(4) In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors with similar investment objectives for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstance of each investor.

(5) Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things:

(a) Transferring securities to a customer, another broker-dealer, or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees; or

(b) Parking or withholding securities.

(6) Although nothing in this section precludes application of the general antifraud provisions against anyone for practices similar in nature to the practices discussed below,

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the following subsections specifically apply only in connection with the solicitation of a purchase or sale of OTC non-NASDAQ equity securities:

(a) Failing to comply with rules adopted by the Securities and Exchange Commission under authority granted by the Penny Stock Act of 1990, i.e., United States Securities and Exchange Commission Rules 15g-1 through 15g-9 and 15g-100 (17 C.F.R. §240.15g-1 through § 240.15g-6 adopted in Release 34-30608 issued 4/20/92; 17 C.F.R. §240.15g-8 adopted in Release 34-30577 issued 4/13/92; 17 C.F.R. §240.15g-9 originally adopted as § 240.15c2-6 in Release 34-27160 issued 8/22/89 and amended and redesignated as § 240.15g-9 in Release 34-32576 issued 8/11/93; 17 C.F.R. §240.15g-100 adopted in Release 34-30608 issued 4/20/92 and amended in Release 34-32576 issued 7/2/93) which are hereby incorporated by reference.

(b) Conducting sales contests in a particular security.

(c) After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders.

(d) Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market.

(e) Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security.

(7) Effecting any transaction in, or inducing the purchase or sale of any security by means of any manipulative, deceptive, or other fraudulent device or contrivance including but not limited to the use of boiler room tactics or use of fictitious or nominee accounts.

(8) Failing to comply with any prospectus delivery requirement promulgated under federal law.

[Statutory Authority: RCW 21.20.070 and 21.20.450. WSR 95-16-026, § 460-21B-008, filed 7/21/95, effective 8/21/95.]

WAC 460-21B-010 Churning. The phrase "employ any device, scheme or artifice," as used in RCW 21.20.010 (1), is hereby defined to include any act of any broker-dealer or agent designed to effect with or for any customer's account with respect to which such broker-dealer or his/her agent or employee is vested with any discretionary power, or with respect to which he/she is able by reason of the customer's trust and confidence to influence the volume and frequency of the trades, any transactions of purchase or sale which are excessive in size or frequency in view of the financial resources and character of such account.

[Statutory Authority: RCW 21.20.070 and 21.20.450. WSR 95-16-026, § 460-21B-010, filed 7/21/95, effective 8/21/95.]

WAC 460-21B-020 Transmission or maintenance of payments received in connection with underwritings. It shall constitute a "device, scheme, or artifice to defraud" as used in RCW 21.20.010(1), for any broker-dealer participat-

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ing in any distribution of securities, other than a firm commitment underwriting, to accept any part of the sale price of any security being distributed unless:

(1) The money or other consideration received is promptly transmitted to the persons entitled thereto; or

(2) If the distribution is being made on an "all-or-none" basis, or on any other basis which contemplates that payment is not to be made to the person on whose behalf the distribution is being made until some further event or contingency occurs:

(a) The money or other consideration received is promptly deposited in a separate bank account, as agent or trustee for the persons who have the beneficial interests therein, until the appropriate event or contingency has occurred, and then the funds are promptly transmitted or returned to the persons entitled thereto; or

(b) All such funds are promptly transmitted to a bank which has agreed in writing to hold all such funds in escrow for the persons who have the beneficial interests therein and to transmit or return such funds directly to the persons entitled thereto when the appropriate event or contingency has occurred.

[Statutory Authority: RCW 21.20.070 and 21.20.450. WSR 95-16-026, § 460-21B-020, filed 7/21/95, effective 8/21/95.]

WAC 460-21B-030 Minimum net capital requirement for broker-dealers. Every licensed broker-dealer shall meet the minimum net capital requirements required by the United States Securities and Exchange Commission. Copies of these requirements may be obtained from the securities division.

[Statutory Authority: RCW 21.20.070 and 21.20.450. WSR 95-16-026, § 460-21B-030, filed 7/21/95, effective 8/21/95.]

WAC 460-21B-040 Net capital defined. The definition of "net capital" shall be the same as the definition promulgated by the United States Securities and Exchange Commission. Copies of this definition may be obtained from the securities division.

[Statutory Authority: RCW 21.20.070 and 21.20.450. WSR 95-16-026, § 460-21B-040, filed 7/21/95, effective 8/21/95.]

WAC 460-21B-050 Books and records of broker-dealers. (1) Each registered broker-dealer shall make, maintain, and preserve books and records in compliance with United States Securities and Exchange Commission Rules 17a-3 (17 C.F.R. §240.17a-3 (1991)), 17a-4 (17 C.F.R. §240.17a-4 (1991)), 15c2-6 (17 C.F.R. §240.15c2-6 (1991)) and 15c2-11 (17 C.F.R. §240.15c2-11 (1991) as amended in Release No. 34-29094, 56 Fed. Reg. 19148 (1991)) which are hereby incorporated by reference. To the extent that the United States Securities and Exchange Commission promulgates changes to the above-referenced rules, dealers in compliance with such rules as amended shall not be subject to enforcement action by the commission for violation of this rule to the extent that the violation results solely from the dealer's compliance with the amended rule.

(2) The administrator may, by order, upon written request and for good cause shown, waive any of the requirements of this rule.

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[Statutory Authority: RCW 21.20.100 and 21.20.450. WSR 97-03-122, § 460-21B-050, filed 1/22/97, effective 2/22/97. Statutory Authority: RCW 21.20.070 and 21.20.450. WSR 95-16-026, § 460-21B-050, filed 7/21/95, effective 8/21/95.]

WAC 460-21B-060 Dishonest or unethical business practices—Broker-dealers. The phrase "dishonest or unethical practices" as used in RCW 21.20.110 (1)(g) as applied to broker-dealers is hereby defined to include any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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such conditions as are stated at the time of such offer to buy or sell;

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

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

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

(b) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this subsection shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customer;

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

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

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

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

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

mented by the giving or sending of written disclosure at or before the completion of the transaction;

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

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

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

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

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

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

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

(26) 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 forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension or revocation of registration.

[Statutory Authority: RCW 21.20.450, 21.20.020 (1)(c), 21.20.110 (1)(g). WSR 08-14-006, § 460-21B-060, filed 6/19/08, effective 7/20/08. Statutory Authority: RCW 21.20.450 and 21.20.110 (1)(g). WSR 02-19-093, § 460-21B-060, filed 9/17/02, effective 10/18/02. Statutory Authority: RCW 21.20.450(1). WSR 99-12-043, § 460-21B-060, filed 5/26/99, effective 7/9/99. Statutory Authority: RCW 21.20.070 and 21.20.450. WSR 95-16-026, § 460-21B-060, filed 7/21/95, effective 8/21/95.]

WAC 460-21B-070 Supervision of securities salespersons. (1) In order to supervise its salespersons reasonably, a broker-dealer must designate a qualified person as supervisor for each salesperson. For the purpose of this section, that person shall be referred to as the "designated supervisor" of the salesperson or salespersons he or she supervises. To be qualified, a designated supervisor must demonstrate competence by passing the examinations required by WAC 460-20B-040 to qualify as a broker-dealer.

(2) The administrator finds that a designated supervisor generally cannot reasonably supervise salespersons who conduct business at locations far from the principal place of business of the designated supervisor. A designated supervisor of salespersons (other than salespersons who are themselves designated supervisors) located in this state must maintain his or her principal place of business in this state or in a contiguous state, and that office may not, without the written permission of the administrator, be so distant from the principal place of business of any person for whose supervision the designated supervisor is responsible as to make it impractical for the designated supervisor to visit the premises at which the salesperson supervised works on at least a monthly basis.

[Statutory Authority: RCW 21.20.070 and 21.20.450. WSR 95-16-026, § 460-21B-070, filed 7/21/95, effective 8/21/95.]