

WAC 460-20C-160 Fraudulent practices of broker-dealers and salespersons. It is an "act, practice, or course of business which operates or would operate as a fraud" as used in RCW 21.20.010(3) for a broker-dealer or salesperson to engage in one or more of the following practices:

(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 salesperson 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, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member 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 any person for practices similar in nature to the practices discussed below, the following prohibited activities 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 Reform Act of 1990 (Pub. L. No. 101-429), including Securities and Exchange Commission Rules 15g-1 through 15g-6, 15g-8, 15g-9, and 15g-100 (17 C.F.R. 240.15g-1 as amended effective December 8, 2020; 17 C.F.R. 240.15g-2 as amended effective September 12, 2005; 17 C.F.R. 240.15g-3 through 17 C.F.R. 240.15g-6 as adopted April 28, 1992; 17 C.F.R. 240.15g-8 as adopted April 28, 1992; 17 C.F.R. 240.15g-9 as amended effective May 22, 2017; and 17 C.F.R. 240.15g-100 as amended effective September 12, 2005) 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; and

(e) Engaging in a pattern of compensating a salesperson 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. "Boiler room tactics" include any high-pressure sales tactics that have the effect of creating an artificially short period in which to make a decision or are designed to overcome a customer's reluctance to make an investment. Such tactics include the use of scripts designed to meet the customer's objections, repeated phone calls, phone calls designed to "set up" the customer, threatening tones on the telephone, informing the customer that there is little time to make a decision, and other similar techniques;

(8) Failing to comply with any prospectus delivery requirement promulgated under state or federal law;

(9) Giving or permitting to be given, directly or indirectly, anything of value, including gratuities, in excess of \$100 per individual per year to any person, principal, proprietor, employee, agent, or representative of another person where such payment or gratuity is in relation to the business of the employer of the recipient of the payment or gratuity. For the purpose of this subsection, a gift of any kind is considered a gratuity. This subsection does not apply to contracts of employment with, or compensation for services rendered by the persons enumerated in this subsection provided that a written agreement between you and the person who is to be employed to perform such services exists prior to the time of employment or before the services are to be rendered that includes the nature of the proposed employment, the amount of the proposed compensation, and the written consent of such person's employer or principal. You must retain a record of all payments or gratuities in any amount, and a copy of any employment agreement and compensation paid as a result thereof;

(10) Making or causing to be made any statement in any examination or other proceeding under the Securities Act of Washington or in any document filed with the director if the statement is, at the time and in light of the circumstances under which it is made, false or misleading in any material respect; and

(11) Advertising or otherwise holding out as providing investment advisory services to others while not registered as an investment adviser in Washington. For the purposes of this subsection, the use of the terms "financial planner," "investment counselor," or similar terms as set forth in WAC 460-24A-040 are deemed to be holding out as providing investment advisory services. This subsection does not apply if you follow the procedures set forth in WAC 460-24A-045.

This section is not intended to be all inclusive, and thus, acts or practices not enumerated herein may also be fraudulent practices.

[Statutory Authority: RCW 21.20.070 and 21.20.450. WSR 24-19-055, s 460-20C-160, filed 9/12/24, effective 10/13/24.]