WSR 26-15-068
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
(Securities Division)
[Filed July 15, 2026, 11:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 25-09-059.

Title of Rule and Other Identifying Information: Investment advisers, chapter 460-24A WAC.

Hearing Location(s): On August 26, 2026, at 11 a.m., at the Department of Financial Institutions (DFI), 150 Israel Road S.W., Tumwater, WA 98501. Teams option available. Information will be posted on DFI's rule making docket web page at https://dfi.wa.gov/rulemaking/investment-adviser-rulemaking.

Date of Intended Adoption: August 27, 2026.

Submit Written Comments to: Jill Vallely, P.O. Box 41200, Olympia, WA 98504-1200, email jill.vallely@dfi.wa.gov, beginning July 22, 2026, by August 25, 2026.

Assistance for Persons with Disabilities: Contact Keera Earskine, phone 360-902-8760, TTY 1-800-833-6384, email keera.earskine@dfi.wa.gov, by August 25, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The securities division proposes to amend the investment adviser rules in chapter 460-24A WAC to make changes consistent with federal law and North American Securities Administrators Association (NASAA) model rules, and to add protections for the investing public who use the services of investment advisers. The proposed rules would make the following changes:

- Revise WAC 460-24A-005 to add new definitions used in NASAA model rules to be adopted in other sections;
- Revise the examination requirements in WAC 460-24A-050 to adopt the NASAA investment adviser representative (IAR) examination validity extension program model rule and to reflect recent amendments to the NASAA examination requirements model rule;
- Revise WAC 460-24A-050(6) to require the filing of an investment adviser's business continuity plan with an application for registration, and revise WAC 460-24A-205 to require filing of any material amendments to the business continuity plan;
- Add a new rule at WAC 460-24A-051 to adopt a requirement for investment advisers to maintain an error and omissions insurance policy, and revise WAC 460-24A-205 to require annual proof of errors and omissions insurance;
- Add a new rule at WAC 460-24A-056 to adopt the NASAA IAR continuing education (CE) model rule;
- Revise WAC 460-24A-057(2) to increase delinquency fee from $50 to $100. This increase would conform to the delinquency fee applicable to broker-dealers under WAC 460-20C-050(3);
- Revise the private fund adviser exemption at WAC 460-24A-071 to make corrections and update references to federal rules;
- Revise the venture capital fund adviser exemption at WAC 460-24A-072 to update references to federal rules;
- Revise the advertising rule at WAC 460-24A-100 to adopt the provisions of the Securities and Exchange Commission (SEC) marketing rule, Rule 206(4)-1;

- Revise the custody rules at WAC 460-24A-106, 460-24A-107, and 460-24A-109 to make clarifications, and repeal the custody rule at WAC 460-24A-108;
- Add a new rule at WAC 460-24A-121 to specify the required content of the investment adviser's written physical and cybersecurity policies and procedures;
- Revise the material nonpublic information policies and procedures rule at WAC 460-24A-122 to add a requirement for the investment adviser to deliver a privacy policy to each client;
- Add a new rule at WAC 460-24A-123 to specify the required content of the investment adviser's code of ethics;
- Revise the proxy voting policies and procedures requirement at WAC 460-24A-125 to require that the investment adviser conduct an annual review of the policy;
- Revise the performance compensation rule at WAC 460-24A-150 to adopt the latest definition of "qualified client" promulgated by SEC, and to add a provision to allow the securities administrator to update the definition by order to conform to the periodic inflation adjustments promulgated by SEC;
- Revise the books and records rule at WAC 460-24A-200 to add a requirement to retain documentation of due diligence of third-party vendors, and to conform recordkeeping requirements to the SEC marketing rule and the NASAA model rule for investment adviser written policies and procedures;
- Revise the notice of changes rule at WAC 460-24A-205 to require the filing of amendments to Form BR if it has become incomplete or inaccurate, to require filing of amendments to the business continuity plan, and to clarify that an investment adviser may not use new or amended advisory contracts or offering materials until cleared by the securities administrator;
- Revise the unethical practices rule at WAC 460-24A-220 to revise subsections (6) and (7) to allow borrowing from or lending to relatives, and add new subsections (27) to (29) to address unpaid arbitration awards; and
- Make other clarifications and corrections.

Reasons Supporting Proposal: The investment adviser rules in chapter 460-24A WAC were last updated in 2019. Since that time, there have been updates to federal law and NASAA model rules. The proposed amendments will promote uniformity by making Washington's rules consistent with federal law and NASAA model rules. By adopting the provisions of the SEC marketing rule, the proposed amendments will promote equity by allowing state-registered investment advisers to advertise in the same manner as federal covered advisers. The proposed amendments will increase investor protection by requiring IARs to complete CE. In addition, the proposed amendments will increase investor protection by requiring state-registered investment advisers to maintain an errors and omissions insurance policy. The proposed amendments will make necessary updates, clarifications, and corrections.

Statutory Authority for Adoption: RCW 21.20.450.

Statute Being Implemented: Chapter 21.20 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DFI, governmental.

Name of Agency Personnel Responsible for Drafting: Jill Vallely, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8760; Implementation: Mark Kissler, 150 Israel Road S.W., Tumwater, WA 98501,

360-902-8760; and Enforcement: Faith Anderson, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8760.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. DFI is not one of the agencies listed in RCW 34.05.328(5).

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement (SBEIS)

Chapter 460-24A WAC
Investment Advisers
July 6, 2026

SECTION 1:

Description of the proposed rule amendments: DFI, securities division has prepared this SBEIS in support of proposed amendments to the investment adviser rules in chapter 460-24A WAC.

Prior to preparing this SBEIS, the securities division prepared a preliminary draft of amendments to chapter 460-24A WAC and conducted a survey to assess the economic impact of the potential rule amendments. The results of the survey are discussed in sections 3 through 6 of this SBEIS. The preliminary rules draft amended 25 sections, added four new sections, and repealed one section. The preliminary rules draft included the following substantive changes:

- Revised WAC 460-24A-005 to add new definitions used in NASAA model rules to be adopted in other sections.
- Revised the examination requirements in WAC 460-24A-050 to adopt the NASAA IAR examination validity extension program model rule and to reflect recent amendments to the NASAA examination requirements model rule.
- Revised WAC 460-24A-050(6) to require the filing of an investment adviser's business continuity plan with an application for registration, and revised WAC 460-24A-205 to require filing of any material amendments to the business continuity plan.
- Added a new rule at WAC 460-24A-051 to adopt a requirement for investment advisers to maintain an error and omissions insurance policy, and revised WAC 460-24A-205 to require annual proof of errors and omissions insurance.
- Added a new rule at WAC 460-24A-056 to adopt the NASAA IAR CE model rule.
- Revised WAC 460-24A-057(2) to increase delinquency fee from $50 to $100. This increase would conform to the delinquency fee applicable to broker-dealers under WAC 460-20C-050(3).
- Revised the private fund adviser exemption at WAC 460-24A-071 to make corrections and update references to federal rules.
- Revised the venture capital fund adviser exemption at WAC 460-24A-072 to update references to federal rules.
- Revised the advertising rule at WAC 460-24A-100 to adopt the provisions of the SEC marketing rule, SEC Rule 206(4)-1.
- Revised the custody rules at WAC 460-24A-106, 460-24A-107, and 460-24A-109 to make clarifications, and repealed the custody rule at WAC 460-24A-108.

- Added a new rule at WAC 460-24A-121 to specify the required content of the investment adviser's written physical and cybersecurity policies and procedures.
- Revised the material nonpublic information policies and procedures rule at WAC 460-24A-122 to add a requirement for the investment adviser to deliver a privacy policy to each client.
- Added a new rule at WAC 460-24A-123 to specify the required content of the investment adviser's code of ethics.
- Revised the proxy voting policies and procedures requirement at WAC 460-24A-125 to require that the investment adviser conduct an annual review of the policy.
- Revised the advisory agreement rule at WAC 460-24A-130 to require that advisory agreements state the physical and mailing address of the investment adviser's place of business.*
- Revised the performance compensation rule at WAC 460-24A-150 to adopt the latest definition of "qualified client" promulgated by SEC, and to add a provision to allow the securities administrator to update the definition by order to conform to the periodic inflation adjustments promulgated by SEC.
- Revised the books and records rule at WAC 460-24A-200 to add a requirement to retain documentation of due diligence of third-party vendors, to add a requirement to retain a trusted contact person for clients,* to add a requirement to keep a hard copy of the business continuity plan,* and to conform recordkeeping requirements to the SEC marketing rule and the NASAA model rule for investment adviser written policies and procedures.
- Revised the notice of changes rule at WAC 460-24A-205 to require the filing of amendments to Form BR if it has become incomplete or inaccurate, and to clarify that an investment adviser may not use new or amended advisory contracts or offering materials until cleared by the securities administrator.
- Revised the unethical practices rule at WAC 460-24A-220 to revise subsections (6) and (7) to allow borrowing from or lending to relatives, add new subsections (27) to (29) to address unpaid arbitration awards, and add a new subsection (30) to state that it is an unethical practice to fail to keep a copy of the written advisory contract.*

* The securities division eliminated these provisions upon review of the economic impact survey results, as described in section 6 below.

SECTION 2:

Identify which businesses must comply with the proposed rule using the North American Industry Classification System (NAICS) codes and the minor cost thresholds: All investment advisers registered or required to be registered in Washington under RCW 21.20.040(3) will be required to comply with the proposed rules. In addition, all IARs who are registered or required to be registered in Washington under RCW 21.20.040(3) will be required to comply with the proposed rules that pertain to IARs, including the unethical practices rule and the draft rule to adopt a CE requirement. Federal covered advisers must comply with the rules regarding unethical practices, and their IARs who are registered or required to be registered in Washington under RCW 21.20.040(3) must comply with the rules pertaining to IARs. Exempt reporting advisers must comply with the private fund adviser exemption rule or the venture capital fund adviser rule, as applicable.

The NAICS code for investment advisers is 523940. The minor cost threshold that applies to this rule making under the Regulatory Fairness Act (RFA), chapter 19.85 RCW, is a cost per business of less than

three-tenths of one percent of annual revenue or income, or $100, whichever is greater, or one percent of annual payroll.

SECTION 3:

Analyze the probable cost of compliance: In drafting the proposed rules, the securities division attempted to balance the business concerns of investment advisers with the securities division's mission to protect the investing public and to promote confidence in the capital markets. We anticipate that compliance with certain proposed rules may increase compliance costs for some investment advisers. While the proposed rules may increase costs to investment advisers, the securities division believes the proposed rules will increase investor protection. Further, as described in section 6, the securities division made certain revisions to the initial rules draft to reduce costs.

Survey of Investment Advisers: For the preparation of an SBEIS, RCW 19.85.040 provides that an agency may survey a representative sample of affected businesses to assist in the accurate assessment of the costs of proposed rules. To that end, the securities division conducted a survey to gather information from its registered investment advisers, its exempt reporting advisers, and its notice-filed federal covered advisers with a principal place of business in Washington.

The securities division prepared an online survey designed to determine the economic impact of the draft amendments on small businesses. On February 27, 2026, the securities division sent an email containing a link to the online survey to the investment adviser registration depository contact person for all Washington-registered investment advisers, all Washington-filed exempt reporting advisers, and all notice-filed federal covered advisers with principal places of business in Washington. The email explained the reasons for conducting the survey and requested that each investment adviser's chief compliance officer or other appropriate representative complete the online survey. The email also provided links to the draft rules and a PDF copy of the survey questions.

The survey consisted of 25 questions. Each substantive question in the survey focused on amendments in the draft rules by topic and provided a background statement briefly explaining the draft amendments. The survey asked whether the draft amendments would increase costs. If a respondent answered "yes," the survey requested information on the additional costs of compliance with that rule in the categories of professional services, equipment, supplies, labor, and administrative costs. Each question also provided a free-form section for survey respondents to make comments or provide additional information. The survey requested that responding investment advisers provide their number of employees. The survey also queried whether the rule making would cause a loss of revenue or the loss or addition of any jobs.

The survey period lasted from February 27, 2026, until March 20, 2026. The securities division received 36 unique responses, although some respondents did not complete all the questions in the survey. All 36 respondents were small businesses as defined by RCW 19.85.020(3) of RFA (business with 50 or fewer employees).

The following table provides the responses to the survey question regarding whether compliance with the proposed changes to each rule section would create any additional costs:

Whether Rule Amendments Would Create Additional Costs		
	Yes	No

WAC 460-24A-050: Examination Requirements	19%	81%
WAC 460-24A-050(6): File the Business Continuity Plan	33%	67%
New WAC 460-24A-051: Errors and Omissions Insurance	40%	60%
New WAC 460-24A-056: Adopt IAR Continuing Education Model Rule	70%	30%
WAC 460-24A-057(2): Increase Delinquency Fee	3%	97%
WAC 460-24A-071: Private Fund Adviser Exemption	3%	97%
WAC 460-24A-072: Venture Capital Fund Adviser Exemption	3%	97%
WAC 460-24A-100: Adopt SEC Marketing Rule	23%	77%
WAC 460-24A-106, -107, -108, and -109: Revise Custody Rules	10%	90%
New WAC 460-24A-121: NASAA Cybersecurity Model Rule	60%	40%
WAC 460-24A-122: Privacy Policy Requirement	27%	73%
New WAC 460-24A-123: NASAA Code of Ethics Model Rule	67%	33%
WAC 460-24A-125: Conform Proxy Policy to NASAA model rule	43%	57%
WAC 460-24A-130: Require Investment Advisory (IA) Address in Advisory Contracts	37%	63%
WAC 460-24A-150: Update Qualified Client Definition	13%	87%
WAC 460-24A-200: Books and Records	79%	21%
WAC 460-24A-205: Notice of Changes	66%	34%
WAC 460-24A-220: Unethical Business Practices	37%	63%
Will the rules result in lost sales or revenue?	34%	66%
Will the rules cause your business to eliminate jobs?	17%	83%
Will the rules cause your business to add jobs?	7%	93%

The securities division used the survey data to calculate the increased costs per employee for the survey respondents in the categories of professional services, equipment, supplies, labor, and administrative costs for the draft amendments. The following table provides the average cost increase per employee for the draft amendments for all survey respondents:

Average Cost Increase Per Employee (All Respondents)					
Rule Provision	**Professional Services**	**Equipment**	**Supplies**	**Labor**	**Admin**
WAC 460-24A-050: Examination Requirements	$419.94	$161.29	$96.77	$667.74	$79.03
WAC 460-24A-050(6): File the Business Continuity Plan	$732.72	$ -	$0.53	$214.44	$467.78
New WAC 460-24A-051: Errors and Omissions Insurance	$319.17	$ -	$ -	$25.83	$116.67
New WAC 460-24A-056: Adopt IAR Continuing Education Model Rule	$931.16	$ -	$15.56	$871.57	$347.83
WAC 460-24A-057(2): Increase Delinquency Fee	$1.67	$ -	$ -	$ -	$ -
WAC 460-24A-071: Private Fund Adviser Exemption	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-072: Venture Capital Fund Adviser Exemption	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-100: Adopt SEC Marketing Rule	$110.00	$ -	$ -	$126.67	$141.67

WAC 460-24A-106, -107, -108, and -109: Revise Custody Rules					
	$10.00	$ -	$ -	$20.00	
New WAC 460-24A-121: NASAA Cybersecurity Model Rule					
	$493.06	$ -	$1.67	$284.17	$308.89
WAC 460-24A-122: Privacy Policy Requirement					
	$20.00	$ -	$ -	$66.67	$33.33
New WAC 460-24A-123: NASAA Code of Ethics Model Rule					
	$528.61	$ -	$ -	$366.39	$325.56
WAC 460-24A-125: Conform Proxy Policy to Model Rule					
	$299.17	$ -	$ -	$139.44	$170.83
WAC 460-24A-130: Require IA Address in Advisory Contracts					
	$568.33	$ -	$ -	$176.70	$5,058.33
WAC 460-24A-150: Update Qualified Client Definition					
	$83.33	$ -	$16.67	$16.67	$33.33
WAC 460-24A-200: Books and Records					
	$2,377.01	$68.97	$22.41	$778.16	$1,824.71
WAC 460-24A-205: Notice of Changes					
	$247.70	$ -	$ -	$100.57	$157.47
WAC 460-24A-220: Unethical Business Practices					
	$17.27	$ -	$ -	$44.83	$34.54

The following table provides the average cost increase per employee only for those survey respondents who indicated that a particular rule change would create additional costs:

Average Cost Increase Per Employee (Responses Greater than $0)					
Rule Provision	**Professional Services**	**Equipment**	**Supplies**	**Labor**	**Admin**
WAC 460-24A-050: Examination Requirements					
	$2,603.60	$5,000.00	$3,000.00	$6,900.00	$816.67
WAC 460-24A-050(6): File the Business Continuity Plan					
	$2,198.17	$ -	$7.92	$919.05	$2,004.76
New WAC 460-24A-051: Errors and Omissions Insurance					
	$736.54	$ -	$ -	$193.75	$437.50
New WAC 460-24A-056: Adopt IAR Continuing Education Model Rule					
	$1,471.25	$ -	$233.33	$2,377.00	$948.64
WAC 460-24A-057(2): Increase Delinquency Fee					
	$50.00	$ -	$ -	$ -	$ -
WAC 460-24A-071: Private Fund Adviser Exemption					
	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-072: Venture Capital Fund Adviser Exemption					
	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-100: Adopt SEC Marketing Rule					
	$1,100.00	$ -	$ -	$950.00	$2,125.00
WAC 460-24A-106, -107, -108, and -109: Revise Custody Rules					
	$300.00	$ -	$ -	$600.00	
New WAC 460-24A-121: NASAA Cybersecurity Model Rule					
	$1,137.82	$ -	$50.00	$775.00	$1,158.33

WAC 460-24A-122: Privacy Policy Requirement					
	$600.00	$ -	$ -	$500.00	$500.00
New WAC 460-24A-123: NASAA Code of Ethics Model Rule					
	$1,219.87	$ -	$ -	$999.24	$1,627.78
WAC 460-24A-125: Conform Proxy Policy to Model Rule					
	$997.22	$ -	$ -	$464.81	$854.17
WAC 460-24A-130: Require IA Address in Advisory Contracts					
	$2,481.67	$ -	$ -	$1,325.00	$37,937.50
WAC 460-24A-150: Update Qualified Client Definition					
	$833.33	$ -	$500.00	$500.00	$500.00
WAC 460-24A-200: Books and Records					
	$4,308.33	$2,000.00	$216.67	$1,880.56	$4,810.61
WAC 460-24A-205: Notice of Changes					
	$98.15	$ -	$ -	$416.67	$570.83
WAC 460-24A-220: Unethical Business Practices					
	$500.00	$ -	$ -	$433.33	$333.89

The following table presents the survey results for the lost sales or revenue anticipated to be caused by the draft rules as a whole:

Amount of Lost Sales or Revenue Caused by the Rules (Per Employee)	
Average of All Survey Respondents	$4,365.52
Average of Responses Greater than $0	$15,825.00

Discussion of Survey Results: The survey results indicated that certain draft rule amendments would be likely to increase costs and that those costs would exceed more-than-minor costs. These included the draft rule amendments regarding submission of business continuity plans (33 percent indicating increased costs), errors and omissions insurance (40 percent indicating increased costs), IAR CE (70 percent indicating increased costs), cybersecurity policies and procedures (60 percent indicating increased costs), code of ethics (67 percent indicating increased costs), proxy policies and procedures (43 percent indicating increased costs), advisory contracts (37 percent indicating increased costs), books and records (79 percent indicating increased costs), notice of changes (66 percent indicating increased costs), and unethical business practices (37 percent indicating increased costs). We discuss the survey results in further detail below.

WAC 460-24A-050(6): File the Business Continuity Plan: The draft amendments would revise WAC 460-24A-050(6) to require the filing of an investment adviser's business continuity plan upon its application for registration. Currently, WAC 460-24A-126 requires investment advisers registered in Washington to maintain a business continuity plan. However, the securities division does not currently require advisers to file a copy of it. Investment advisers may incur professional services, labor, or administrative expenses in reviewing and filing the business continuity plan.

The survey results indicated that approximately 33 percent of survey respondents believed that the draft rule at WAC 460-24A-050(6) would increase costs. For all survey respondents, these costs included an average of $732.72 per employee for professional services, $0.53 for supplies, $214.44 for labor, and $467.78 for administrative costs.

New WAC 460-24A-051: Errors and Omissions Insurance: The draft rule amendments would create a new rule, WAC 460-24A-051, that would require registered investment advisers to maintain an errors and omissions insurance policy of $1 million or more. Draft amendments to WAC 460-24A-205 would also require investment advisers to file annual proof of insurance with the securities division. This would represent a new substantive requirement. While 87 percent of the survey respondents indicated that they already maintained errors and omissions insurance of $1 million or more, 40 percent of the respondents expected the draft rule to increase their costs. Respondents expressed that the need to file annual proof of insurance and to obtain coverage or verify that their current coverage would meet the state's requirements would increase costs. For all survey respondents, these costs included an average of $319.17 per employee for professional services, $25.83 for labor, and $116.67 for administrative costs.

The survey also asked respondents who currently maintain errors and omissions insurance to state their annual cost of coverage. The average cost of coverage per investment adviser was $12,596.69. However, one adviser reported an annual cost of $120,000, which was $106,000 more than any of the other 25 responses. Disregarding this outlier, the average annual cost of coverage per adviser was $3,646.42.

New WAC 460-24A-056: Adopt IAR CE Model Rule: The draft rule WAC 460-24A-056 would create a CE requirement for IARs. Under the draft rule, an IAR would be required to complete annually six credits of ethics and professional responsibility content and six credits of products and practice content. If an IAR is out of compliance at the end of one annual period, and fails to make up the missing credits by the end of the next annual period, the securities division would have a basis to not renew the IAR's registration. IARs, or their investment adviser firms, will likely incur tuition expenses to attend CE classes. IARs will also spend time attending classes and engaging in administrative tasks such as reporting and tracking credits. The time an IAR must spend on CE may reduce the time available for revenue-generating activities.

The survey results indicated that approximately 70 percent of survey respondents believed that the draft CE rule would increase costs. For all survey respondents, these costs included an average of $931.16 per employee for professional services, $15.56 for supplies, $871.57 for labor, and $347.83 for administrative costs.

New WAC 460-24A-121: NASAA Cybersecurity Model Rule: The draft amendments would create a new rule at WAC 460-24A-121 to adopt the provisions of the NASAA model rule for investment adviser written policies and procedures that specify the content of the investment adviser's physical and cybersecurity policies and procedures. Currently, registered investment advisers must maintain written physical and cybersecurity policies and procedures pursuant to WAC 460-24A-200 (1)(bb). Regardless, the draft rule may increase professional services, labor, or administrative expenses related to reviewing and revising existing physical and cybersecurity policies and procedures to ensure compliance with the provisions of the NASAA model rule for investment adviser written policies and procedures. Some investment advisers may hire third-party consultants to assist them with this task. The survey results indicated that approximately 60 percent of survey respondents believed that the draft cybersecurity rule would increase costs. For all survey respondents, these costs included an average of

$493.06 per employee for professional services, $1.67 for supplies, $284.17 for labor, and $308.89 for administrative costs.

New WAC 460-24A-123: NASAA Code of Ethics Model Rule: The draft amendments would create a new rule at WAC 460-24A-123 to adopt the provisions of the NASAA model rule for investment adviser written policies and procedures that specify the content of the investment adviser's code of ethics. Currently, registered investment advisers must maintain a written code of ethics pursuant to WAC 460-24A-200 (1)(aa). Regardless, the draft rule may increase professional services, labor, or administrative expenses related to reviewing or revising the existing code of ethics to ensure compliance with the provisions of the NASAA model rule for investment adviser written policies and procedures. Some investment advisers may hire third-party consultants to assist them with this task. Implementing a code of ethics that meets the requirements of the NASAA model rule may also increase recordkeeping and other administrative expenses. The survey results indicated that approximately 67 percent of survey respondents believed that the draft code of ethics rule would increase costs. For all survey respondents, these costs included an average of $528.61 per employee for professional services, $366.39 for labor, and $325.56 for administrative costs.

WAC 460-24A-125: Conform Proxy Policy to NASAA Model Rule: The draft rule amendments would revise the proxy policies and procedures rule at WAC 460-24A-125 to conform its language to the NASAA model rule for investment adviser written policies and procedures. The draft amendment would require the adviser, consistent with the NASAA model rule, to conduct an annual review of its proxy voting policy. The draft rule amendment may increase professional services, labor, or administrative expenses related to the adviser's annual review of the proxy voting policies and procedures. Some investment advisers may hire third-party consultants to assist them with the annual review. The survey results indicated that approximately 43 percent of survey respondents believed that the draft amendments to the proxy voting rule would increase costs. For all survey respondents, these costs included an average of $299.17 per employee for professional services, $139.44 for labor, and $170.83 for administrative costs.

WAC 460-24A-130: Require IA Address in Advisory Contracts: The draft amendments would revise the advisory agreement rule at WAC 460-24A-130 to add a requirement that the advisory agreement state the physical and mailing address of the investment adviser's principal place of business. The draft amendment may increase professional services, labor, or administrative expenses related to the revision of advisory agreement to include its physical and mailing addresses. Certain advisers indicated in response to the survey that they work solely from home and object to providing a physical address for safety and privacy reasons. Certain advisers stated they may incur significant expenses by renting an office to avoid disclosing their home address.

The survey results indicated that approximately 37 percent of survey respondents believed that the requirement to include a physical and mailing address on the advisory contract would increase costs. For all survey respondents, these costs included an average of $568.33 per employee for professional services, $176.70 for labor, and $5,058.33 for administrative costs. After reviewing the survey results, the securities division removed this draft provision to reduce costs, as described in section 6.

WAC 460-24A-200: Books and Records: The draft amendments to the books and records rule at WAC 460-24A-200 would make revisions requiring the retention of records related to the adoption of the SEC mar-

keting rule, and would update internal references to include new rule sections. The amendments would also accomplish the following:

- Revise subsection (1)(r) to add net worth, liquid net worth, and annual income to the written client suitability information that advisers must keep.
- Revise subsection (1)(y) to require evidence of annual review of business continuity plan, and add a requirement to store a hard copy.
- Specify that the documentation required under subsection (1)(dd) must be made within 10 business days.
- Add new subsection (1)(ff) to require advisers to keep documentation of their due diligence regarding third-party vendors.
- Add new subsection (1)(gg) to require advisers to keep a record of a trusted contact person for clients.
- Revise subsection (5)(c) to change the retention period from five years to six years. This change is consistent with the retention period in subsection (5)(a).

The draft amendments may increase professional services, labor, or administrative expenses related to the implementation of the new recordkeeping requirements. Advisers may incur professional services, labor, or administrative expenses to amend compliance policies to reflect the new recordkeeping requirements. There may also be storage expenses incurred from the need to retain additional records. The survey results indicated that approximately 79 percent of survey respondents believed that the amendments to the books and records rule would increase costs. For all survey respondents, these costs included an average of $2,377.01 per employee for professional services, $68.97 for equipment, $22.41 for supplies, $778.16 for labor, and $1,824.71 for administrative costs. After reviewing the survey results, the securities division removed certain amendments to reduce costs, as described in section 6.

WAC 460-24A-205: Notice of Changes: The draft amendments to the notice of changes rule at WAC 460-24A-205 would clarify that an investment adviser may not use new or amended advisory contracts or offering materials until the director has cleared them for use. The draft amendments would also require the investment adviser to promptly file an amendment to Form BR if the information on the form has become incomplete or inaccurate. This includes the opening, closing, relocation, or acquisition of a branch office in Washington, or the engagement of a new person in charge of a branch office in Washington. The draft amendments may increase professional services, labor, or administrative expenses related to the requirement to file amendments to Form BR. Survey respondents expressed concern regarding the amount of time they may be required to wait for approval of contracts and offering materials from the securities division before they could begin using the revised documents. The survey results indicated that approximately 66 percent of survey respondents believed that the amendments to the notice of changes rule would increase costs. For all survey respondents, these costs included an average of $247.70 per employee for professional services, $100.57 for labor, and $157.47 for administrative costs.

WAC 460-24A-220: Unethical Business Practices: The draft amendments to the unethical practice rule at WAC 460-24A-220 including revising subsections (6) and (7) to allow borrowing or lending to relatives as defined in RCW 21.20.005(13); adding provisions to address unpaid arbitration awards from the NASAA unethical practices of in-

vestment advisers model rule; and adding a new subsection to make it an unethical practice to fail to keep a copy of the written advisory contracts required by WAC 460-24A-130 and 460-24A-200 (1)(j). Advisers may incur professional services, labor, or administrative expenses to amend compliance policies to reflect the amendments to the unethical business practices rule. The survey results indicated that approximately 37 percent of survey respondents believed that the amendments to the unethical business practices rule would increase costs. For all survey respondents, these costs included an average of $17.24 per employee for professional services, $44.83 for labor, and $34.54 for administrative costs. After reviewing the survey results, the securities division removed certain amendments to reduce costs, as described in section 6.

Lost Sales or Revenue: The survey revealed that 34 percent of respondents believed that compliance with the draft rule changes would result in lost sales or revenue. For all survey respondents, the estimated lost revenue per employee was $4,365.52. The 34 percent who believed the changes would lead to lost sales or revenue estimated they would lose an average of $15,825.00 in revenue per employee.

The survey requested a free-form response to identify which provisions in the draft rules would cause lost sales or revenue. The responses stated that IAR CE would reduce time available to serve clients and generate revenue. The responses also expressed that investment advisers would spend time on legal and compliance matters, including updating books and records procedures and reviewing compliance policies. Many Washington-registered investment advisers have one employee, who is also the chief compliance officer. The time spent reviewing and implementing rule changes may decrease the time available to spend on revenue-generating activities. Certain investment advisers may hire outside consultants or incur additional costs to assist with these tasks. Funds spent on compliance would not be available to spend on other activities, such as advertising, that might potentially increase revenue.

SECTION 4:

Analyze whether the proposed rule may impose more-than-minor costs on businesses in the industry: RCW 19.85.030 provides that an agency must prepare an SBEIS if the agency proposes rules that would impose more-than-minor costs on businesses in an industry. RCW 19.85.020 defines a "minor cost" as a cost per business that is less than three-tenths of one percent of annual revenue or income, or $100, whatever is greater; or one percent of annual payroll.

The securities division has determined, based on the results of the survey described in section 3, that at least some of the rule amendments may impose more-than-minor costs on investment advisers because such costs may exceed $100.

SECTION 5:

Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule. Also, consider, based on input received, whether compliance with the rule will cause businesses to lose sales or revenue: RCW 19.85.040 requires that the securities division determine whether compliance with the proposed rules would have a disproportionate impact on small businesses by comparing the cost of compliance for small business with the cost of compliance for the 10 percent of businesses that are the largest businesses required to comply with the proposed rules.

The securities division categorized each survey response based on whether it came from a small business or whether it represented the 10 percent of businesses that were the largest businesses that responded. Small businesses are defined by RCW 19.85.020(3) as 50 or fewer employees. We likewise determined the largest 10 percent of businesses by the number of employees. We then compared the two categories to each other. Certain businesses were in both categories, because all respondents met the definition of a small business.

The survey results demonstrated that the increased costs per employee of small businesses were generally greater than the increased costs per employee of the largest 10 percent of businesses.

The following table compares the average cost increase associated with the draft rules for small businesses and the largest 10 percent of businesses required to comply:

Average Cost Increase - Comparison of Small Business and Largest 10% of Businesses					
	Professional Services	**Equipment**	**Supplies**	**Labor**	**Admin**
WAC 460-24A-050: Examination Requirements					
Small Businesses	$419.94	$161.29	$96.77	$667.74	$79.03
Largest 10%	$100.00	$ -	$ -	$50.00	$50.00
WAC 460-24A-050(6): File the Business Continuity Plan					
Small Businesses	$732.72	$ -	$0.53	$214.44	$467.78
Largest 10%	$541.67	$ -	$0.21	$533.33	$8.33
New WAC 460-24A-051: Errors and Omissions Insurance					
Small Businesses	$319.17	$ -	$ -	$25.83	$116.67
Largest 10%	$75.00	$ -	$ -	$ -	$75.00
New WAC 460-24A-056: Adopt IAR Continuing Education Model Rule					
Small Businesses	$931.16	$ -	$15.56	$871.57	$347.83
Largest 10%	$538.83	$ -	$ -	$536.75	$2.08
WAC 460-24A-057(2): Increase Delinquency Fee					
Small Businesses	$1.67	$ -	$ -	$ -	$ -
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-071: Private Fund Adviser Exemption					
Small Businesses	$ -	$ -	$ -	$ -	$ -
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-072: Venture Capital Fund Adviser Exemption					
Small Businesses	$ -	$ -	$ -	$ -	$ -
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-100: Adopt SEC Marketing Rule					
Small Businesses	$110.00	$ -	$ -	$126.67	$141.67
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-106, -107, -108, and -109: Revise Custody Rules					
Small Businesses	$10.00	$ -	$ -	$20.00	
Largest 10%	$ -	$ -	$ -	$ -	$ -
New WAC 460-24A-121: NASAA Cybersecurity Model Rule					
Small Businesses	$493.06	$ -	$1.67	$284.17	$308.89
Largest 10%	$41.67	$ -	$ -	$37.50	$4.17
WAC 460-24A-122: Privacy Policy Requirement					
Small Businesses	$20.00	$ -	$ -	$66.67	$33.33
Largest 10%	$150.00	$ -	$ -	$150.00	$ -

Average Cost Increase - Comparison of Small Business and Largest 10% of Businesses					
	Professional Services	**Equipment**	**Supplies**	**Labor**	**Admin**
New WAC 460-24A-123: NASAA Code of Ethics Model Rule					
Small Businesses	$528.61	$ -	$ -	$366.39	$325.56
Largest 10%	$583.33	$ -	$ -	$579.17	$4.17
WAC 460-24A-125: Conform Proxy Policy to NASAA Model Rule					
Small Businesses	$299.17	$ -	$ -	$139.44	$170.83
Largest 10%	$150.00	$ -	$ -	$158.33	$ -
WAC 460-24A-130: Require IA Address in Advisory Contracts					
Small Businesses	$568.33	$ -	$ -	$176.70	$5,058.33
Largest 10%	$125.00	$ -	$ -	$125.00	$ -
WAC 460-24A-150: Update Qualified Client Definition					
Small Businesses	$83.33	$ -	$16.67	$16.67	$33.33
Largest 10%	$125.00	$ -	$ -	$125.00	$ -
WAC 460-24A-200: Books and Records					
Small Businesses	$2,377.01	$68.97	$22.41	$778.16	$1,824.71
Largest 10%	$1,708.33	$500.00	$ -	$604.17	$604.17
WAC 460-24A-205: Notice of Changes					
Small Businesses	$247.70	$ -	$ -	$100.57	$157.47
Largest 10%	$833.33	$ -	$ -	$204.17	$629.17
WAC 460-24A-220: Unethical Business Practices					
Small Businesses	$17.27	$ -	$ -	$44.83	$34.54
Largest 10%	$ -	$ -	$ -	$ -	$0.42

Comparison of Lost Sales or Revenue: The largest 10 percent of businesses indicated in their survey responses that they would not lose any revenue. The small businesses estimated that they would lose an average of $4,365.52 in revenue per employee, with 10 small businesses reporting that they expected to lose revenue because of the rule changes (although only eight provided an estimate of anticipated lost sales or revenue).

Comparison of Addition or Elimination of Jobs: Approximately seven percent of survey respondents indicated that the rule changes would cause them to add jobs. This represented two small businesses, none of which were among the 10 percent of the largest businesses required to comply with the rule amendments. Therefore, the rule changes may disproportionately cause small businesses to create jobs.

Approximately 17 percent of survey respondents indicated that the rule changes would cause them to eliminate jobs. This figure represented five small businesses, two of which were the 10 percent of the largest businesses required to comply with the rule changes. This figure represented 17 percent of small businesses and 50 percent of the largest 10 percent of businesses required to comply. Therefore, the rule changes will not disproportionately cause small businesses to eliminate jobs as compared to the largest 10 percent of businesses required to comply with the rules.

SECTION 6:

If the proposed rule is likely to impose a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses: As a result of feedback received from affected businesses, the securities division made certain revisions to the initial rules draft to reduce the cost of compliance for small

businesses. We detail these revisions below. The securities division also outlines additional mitigation steps we intend to take to reduce the burden of compliance. The securities division does not believe that it can reduce costs further and still accomplish the investor protection purpose of the rule making.

Reducing, Modifying, or Eliminating Substantive Regulatory Requirements: The securities division removed the provision in its draft rules at WAC 460-24A-130(11) that would have required investment advisers to add their physical and mailing address to all advisory contracts. This will reduce administrative expenses for investment advisers. The securities division also removed the provision in its draft rules at WAC 460-24A-220(30) that would have made it an unethical practice to fail to keep a written advisory contract for each client.

Simplifying, Reducing, or Eliminating Recordkeeping and Reporting Requirements: The securities division revised the draft rules at WAC 460-24A-200 (1)(y) to remove the provision that would have required investment advisers to keep a hard copy of the business continuity plan. In addition, the securities division revised the draft rules to remove WAC 460-24A-200 (1)(gg), which would have required investment advisers to keep a record of a trusted contact person for each client. These changes will reduce recordkeeping requirements and any associated administrative expenses.

Reducing the Frequency of Inspections: The securities division does not believe that reducing the frequency of inspections or examinations would be in the interest of the investing public. Therefore, we have not made any changes to the draft rules that would reduce the frequency of inspections or examinations.

Delaying Compliance Timetables: The securities division will allow investment advisers adequate time to implement the rule changes through existing processes. Through the exam and deficiency letter process, the securities division will provide reasonable time for investment advisers to fix any deficiencies related to the new rules that the staff identifies during its routine examinations of investment advisers.

Further, the draft CE rule at WAC 460-24A-056 provides one year of registration in "CE inactive" status for IARs who fail to complete all credits in the prior year. Only after failure to complete credits at the end of the CE inactive year would an IAR become ineligible to renew a license. Accordingly, the draft CE rule by its terms will provide reasonable time for investment advisers to achieve compliance with the CE requirement.

Reducing or Modifying Fine Schedules for Noncompliance: The securities division does not believe that reducing or modifying fine schedules for noncompliance would be in the interest of the investing public. Therefore, we have not made any changes to the draft rules that would reduce or modify fine schedules for noncompliance.

Any Other Mitigation Techniques, Including those Suggested by Small Businesses or Small Business Advocates: Upon adoption of the rules, to facilitate compliance with new requirements, the securities division intends to hold outreach events to provide information to its registered investment advisers regarding the amended rules. In addition, the securities division will fulfill reasonable requests received from investment advisers in Washington to provide training or technical assistance visits regarding compliance with the amended rules. In addition, the securities division undertakes to provide a sample code of ethics that advisers may adopt to comply with the amended code of ethics requirements. The securities division will also

provide links on its website to NASAA resources regarding CE and cybersecurity policies.

SECTION 7:

Describe how small businesses were involved in the development of the proposed rule: Throughout the rule-making process, the securities division has involved its registered investment advisers, exempt reporting advisers, and notice-filed federal covered advisers. Many of these investment advisers are small businesses with fewer than 50 employees.

The securities division filed a CR-101 preproposal statement of inquiry with the code reviser's office (CRO) on April 14, 2025, stating that the securities division was considering amending the rules in chapter 460-24A WAC. On May 5, 2025, the securities division electronically mailed the CR-101 to its securities rule-making interested persons list. On May 9, 2025, the securities division electronically mailed the CR-101 to all its registered investment advisers, exempt reporting advisers, and notice-filed federal covered advisers to solicit comments. The securities division received five comment letters on the CR-101, and incorporated the suggestions into the preparation of an initial draft of possible amendments to chapter 460-24A WAC.

On February 27, 2026, the securities division posted the draft amendments on our website. In addition, the securities division conducted a survey to determine the costs associated with the draft rule amendments. The survey was emailed to all investment advisers registered in Washington, all exempt reporting advisers filed in Washington, and all notice-filed federal covered advisers with a principal place of business in Washington. The survey period remained open until March 20, 2026. All the respondents to the survey were small businesses. Following the completion of the survey, the securities division revised the draft rules in response to feedback received in the survey, as detailed in section 6.

The securities division now intends to proceed with the rule making by formally proposing amendments to chapter 460-24A WAC in a CR-102 filing with CRO. Investment advisers and all interested members of the public will have an opportunity to submit comments on the proposed rule and participate in the rule-making hearing.

SECTION 8:

Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule: The results of the survey indicated that 17 percent of survey respondents may eliminate jobs as a result of compliance with the draft rule amendments. This represented an average of 0.068 jobs eliminated per survey respondent.

The results of the survey indicated that seven percent of survey respondents thought they may add jobs as a result of compliance with the draft rule amendments. This represented an average of 0.078 jobs added per survey respondent.

SECTION 9:

Summarize the results of the analysis, including the determination if costs are disproportionate: As discussed in section 5 above, the survey indicated that several of the rules may impose disproportionate costs on small businesses as compared to the largest 10 percent of businesses required to comply with the rules. To mitigate this, the securities division revised its draft rules to lower costs as detailed in section 6. While the potential rule changes may increase costs to licensees, the securities division believes the in-

creased investor protection outweighs the concerns regarding cost increases.

A copy of the statement may be obtained by contacting Jill Vallely, P.O. Box 41200, Olympia, WA 98504-1200, phone 360-902-8760, TTY 1-800-833-6384, email jill.vallely@dfi.wa.gov.

July 14, 2026
Charlie Clark
Director

RDS-6957.2

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-005 Definitions. For purposes of this chapter:

(1) **"Access person"** means:

(a) Any of the investment adviser's supervised persons:

(i) Who has access to nonpublic information regarding any client's purchase or sale of securities, or nonpublic information regarding the portfolio holdings of any reportable fund; or

(ii) Who is involved in making securities recommendations to clients or who has access to such recommendations that are nonpublic.

(b) If providing investment advice is the investment adviser's primary business, all of its directors, officers, and partners are presumed to be access persons.

(2) **"Advertisement"** means: ((~~any business card, notice, circular, letter or other written communication addressed to more than one person, or any notice or other announcement in any publication or by electronic means, including online, or by radio or television, which offers:~~

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

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

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

~~(2)~~)) (a) Any direct or indirect communication an investment adviser makes to more than one person, or to one or more persons if the communication includes hypothetical performance, that offers the investment adviser's investment advisory services with regard to securities to prospective clients (including prospective investors in a private fund advised by the investment adviser), but does not include:

(i) Extemporaneous, live, oral communications;

(ii) Information contained in a statutory or regulatory notice, filing, or other required communication, provided that such information is reasonably designed to satisfy the requirements of such notice, filing, or other required communication; or

(iii) A communication that includes hypothetical performance that is provided:

(A) In response to an unsolicited request for such information from a prospective or current client, including an investor in a private fund advised by the investment adviser; or

(B) To a prospective or current investor in a private fund advised by the investment adviser in a one-on-one communication; and

(b) Any endorsement or testimonial for which an investment adviser provides compensation, directly or indirectly, but does not include any information contained in a statutory or regulatory notice, filing, or other required communication, provided that such information is reasonably designed to satisfy the requirements of such notice, filing, or other required communication.

(3) **"Approved investment adviser continuing education content"** means the materials, written, oral, or otherwise that have been approved by NASAA or its designee and which make up the educational program provided to an investment adviser representative in compliance with WAC 460-24A-056.

(4) **"Assignment"** means any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, no assignment of an investment advisory contract will be deemed to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after such admission, will be only a minority of the members and will have only a minority interest in the business. An "assignment" does not include a transaction which does not result in a change of actual control or management of the investment adviser.

((~~(3)~~)) (5) **"Authorized provider"** means a person that NASAA or its designee has authorized to provide continuing education content.

(6) **"Beneficial ownership"** is interpreted in a manner consistent with 17 C.F.R. 240.16a-1 (as amended effective November 21, 2011) for purposes of determining whether a person has beneficial ownership of a security under section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) and the rules and regulations thereunder. Any report required by 17 C.F.R. 275.204A-1(b) (as amended effective May 22, 2017) may contain a statement that the report will not be construed as an admission that the person making the report has any direct or indirect beneficial ownership in the security for which the report relates.

(7) **"Branch office"** means any location identified by any means to the public or clients as a location at which one or more investment adviser representatives conduct business for the investment adviser.

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

((~~(4)~~)) (9) **"Chief compliance officer"** means a supervised person with the authority and resources to develop and enforce the investment adviser's policies and procedures. The individual designated to serve as chief compliance officer must be registered as an investment adviser representative and must have the background and skills appropriate for fulfilling the responsibilities of the position.

((~~(5)~~)) (10) **"Complaint"** means any grievance regarding the activities of the investment adviser or supervised person of the investment adviser in connection with the provision of investment advice.

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

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

(b) A person who:

(i) Directly or indirectly has the right to vote ((~~twenty-five~~)) 25 percent or more of a class of the voting securities of a corporation or limited liability company;

(ii) Has the power to sell or direct the sale of ((~~twenty-five~~)) 25 percent or more of a class of the voting securities of a corporation or limited liability company;

(iii) Has the right to receive, upon dissolution, or that has contributed, ((~~twenty-five~~)) 25 percent or more of the capital of a partnership or limited liability company; or

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

((~~(6)~~)) (12) **"Credit"** means a unit that has been designated by NASAA or its designee as at least 50 minutes of educational instruction.

(13) **"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. An investment adviser has custody if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services the investment adviser provides to clients.

(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;

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

(iv) Any arrangement where the investment adviser requires the payment of advisory fees six months or more in advance and in excess of ((~~five hundred dollars~~)) $500 per client.

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

((~~(7)~~)) (14) **"De minimis compensation"** means compensation paid to a person for providing a testimonial or endorsement of a total of $1,000 or less (or the equivalent value in noncash compensation) during the preceding 12 months.

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

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

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

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

((~~(8)~~)) (16) **"Disqualifying action"** means an order of the director, the securities administrator of any state, the U.S. Securities and Exchange Commission, or any self-regulatory organization entered after notice and opportunity for hearing if such order bars, denies, suspends, or revokes the person's registration as a broker-dealer, securities salesperson, investment adviser, or investment adviser representative, or bars the person from acting in any capacity within the securities industry or investment advisory industry.

(17) **"Disqualifying event"** means:

(a) Any of the following events that occurred within 10 years prior to the person disseminating an endorsement or testimonial:

(i) A conviction by a court of competent jurisdiction within the United States of any felony or misdemeanor involving conduct described in section 203 (e)(2)(A) through (D) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3 (e)(2)(A) through (D));

(ii) A conviction by a court of competent jurisdiction within the United States of engaging in any of the conduct specified in section 203 (e)(1), (5), or (6) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3 (e)(1), (5), or (6));

(iii) The entry of any final order by any entity described in section 203 (e)(9) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3 (e)(9)), or by the U.S. Commodity Futures Trading Commission or a self-regulatory organization, of the type described in section 203 (e)(9) of the Investment Advisers Act of 1940;

(iv) The entry of an order, judgment, or decree described in section 203 (e)(4) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3 (e)(4), and still in effect, by any court of competent jurisdiction within the United States;

(v) An order by the U.S. Securities and Exchange Commission or the securities or other financial services regulator of any state that requires a person to cease and desist from committing or causing a violation or future violation of:

(A) Any scienter based anti-fraud provision of federal securities laws, including without limitation section 17 (a)(1) of the Securities Act of 1933 (15 U.S.C. 77q (a)(1)), section 10(b) of the Securities Exchange Act of 1934 (15 U.S.S. 78j(b)) and SEC Rule 10b-5 (17 C.F.R. 240.10b-5) adopted thereunder as amended August 11, 1951, section 15 (c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o (c)(1)), and section 206(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-6(1)), or any other rule or regulation thereunder;

(B) Section 5 of the Securities Act of 1933 (15 U.S.C. 77e); or

(C) Any anti-fraud or securities registration provision under state securities laws.

(b) A "disqualifying event" does not include an event described in (a)(i) through (v) of this subsection with respect to a person that is also subject to (1) an order pursuant to section 9(c) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(c)) with respect to such event, or (2) an opinion or order of the U.S. Securities and Exchange Commission with respect to such event that is not a disqualifying ac-

tion; provided that for each applicable action described in this subsection (17)(b):

(i) The person is in compliance with the terms of the order or opinion including, but not limited to, the payment of disgorgement, prejudgment interest, civil or administrative penalties, or fines; and

(ii) For a period of 10 years following the date of each order or opinion, the advertisement containing the testimonial or endorsement must include a statement that the person providing the testimonial or endorsement is subject to an order or opinion regarding one or more disciplinary action(s), and include the order or opinion or a link to the order or opinion on the U.S. Securities and Exchange Commission's website.

(18) **"Endorsement"** means any statement by a person other than a current client, including a client in a private fund advised by the investment adviser, that:

(a) Indicates approval, support, or recommendation of the investment adviser or its supervised persons or describes that person's experience with the investment adviser or its supervised persons;

(b) Directly or indirectly solicits any current or prospective client of the investment adviser, including a current or prospective investor in a private fund advised by the investment adviser; or

(c) Refers any current or prospective client or investor to be a client of the investment adviser (which includes being an investor in a private fund advised by the investment adviser).

(19) **"Extracted performance"** means the performance results of a subset of investments extracted from a portfolio.

(20) **"FINRA"** means the Financial Industry Regulatory Authority, Inc., the self-regulatory organization for broker-dealers and broker-dealer representatives that is registered as a national securities association with the U.S. Securities and Exchange Commission under Section 15A of the Securities Exchange Act of 1934, 15 U.S.C. Sec. 78o-3.

((~~(9)~~)) (21) **"Gross performance"** means the performance results of a portfolio (or portions of a portfolio that are included in extracted performance, if applicable) before the deduction of all fees and expenses that a client or investor has paid or would have paid in connection with the investment adviser's investment advisory services to the relevant portfolio.

(22) **"Home state"** means the state in which the investment adviser representative has its principal officer and place of business.

(23) **"Hypothetical performance"** means the performance results that were not actually achieved by any portfolio of the investment adviser.

(a) Hypothetical performance includes, but is not limited to:

(i) Performance derived from model portfolios;

(ii) Performance that is backtested by the application of a strategy to data from prior time periods when the strategy was not actually used during those time periods; and

(iii) Targeted or projected performance returns with respect to any portfolio or to the investment advisory services with regard to securities offered in the advertisement;

(b) Notwithstanding (a) of this subsection, hypothetical performance does not include:

(i) An interactive tool where a client or investor, or prospective client or investor, uses the tool to produce simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken, thereby serving as an additional re-

source to investors in the evaluation of the potential risks and returns of investment choices; provided that the investment adviser:

(A) Provides a description of the criteria and methodology used, including the investment analysis tool's limitations and key assumptions;

(B) Explains that the results may vary with each use and over time;

(C) If applicable, describes the universe of investments considered in the analysis, explains how the tool determines which investments to select, discloses if the tool favors certain investments and, if so, explains the reason for the selectivity, and states that other investments not considered may have characteristics similar or superior to those being analyzed; and

(D) Discloses that the tool generates outcomes that are hypothetical in nature; or

(ii) Predecessor performance that is displayed in compliance with WAC 460-24A-100(4).

(24) **"IAR ethics and professional responsibility content"** means approved investment adviser continuing education content that addresses an investment adviser representative's ethical and regulatory obligations.

(25) **"IAR products and practice content"** means approved investment adviser continuing education content that addresses an investment adviser representative's continuing skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry.

(26) **"Independent certified public accountant"** means a certified public accountant that meets the standards of independence described in Securities and Exchange Commission Rule 2-01 (b) and (c) of Regulation S-X, 17 C.F.R. 210.2-01 (b) and (c), as amended effective ((~~March 8, 2005~~)) June 9, 2021.

((~~(10)~~)) (27) **"Independent party"** means a person who:

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

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

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

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

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

((~~(11)~~)) (28) **"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, including acting as an independent party, with the investment adviser.

((~~(12)~~)) (29) **"Ineligible person"** means a person who is subject to a disqualifying event as defined in subsection (17) of this section, and the following persons with respect to the ineligible person:

(a) Any employee, officer, or director of the ineligible person and any other individuals with similar status or functions within the scope of association with the ineligible person;

(b) If the ineligible person is a partnership, all general partners; and

(c) If the ineligible person is a limited liability company managed by elected managers, all elected managers.

(30) **"Initial public offering"** means an offering of securities registered under the Securities Act of 1933 (15 U.S.C. 77a et seq.), the issuer of which, immediately before the registration, was not subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)).

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

((~~(13) **"Private fund adviser"** means an investment adviser who provides advice solely to one or more qualifying private funds.~~

~~(14)~~)) (32) **"Limited offering"** means an offering that is exempt from registration under the Securities Act of 1933 pursuant to section 4 (a)(2) or 4 (a)(5) (15 U.S.C. 77d (a)(2) or 77d(a)(5)) or pursuant to 17 C.F.R. 230.504, as amended effective March 15, 2021, or 17 C.F.R. 230.506, as amended effective January 14, 2021.

(33) **"NASAA"** means the North American Securities Administrators Association or a committee designated by its board of directors.

(34) **"Net performance"** means the performance results of a portfolio (or portions of a portfolio that are included in extracted performance, if applicable) after the deduction of all fees and expenses that a client or investor has paid or would have paid in connection with the investment adviser's investment advisory services to the relevant portfolio including, if applicable, advisory fees, advisory fees paid to the underlying investment vehicles, and payments by the investment adviser for which the client or investor reimburses the investment adviser. For purposes of WAC 460-24A-100, net performance:

(a) May reflect the exclusion of custodian fees paid to a bank or other third-party organization for safekeeping funds and securities; and

(b) If using a model fee, must reflect one of the following:

(i) The deduction of a model fee when doing so would result in performance figures that are no higher than if the actual fee had been deducted; or

(ii) The deduction of a model fee that is equal to the highest fee charged to the intended audience to whom the advertisement is disseminated.

(35) **"Portfolio"** means a group of investments managed by the investment adviser. A portfolio may be an account or a private fund and includes, but is not limited to, a portfolio for the account of the investment adviser or its affiliate.

(36) **"Predecessor performance"** means investment performance achieved by a group of investments consisting of an account or a private

fund that was not advised at all times during the period shown by the investment adviser advertising the performance.

(37) **"Private fund"** means an issuer that would be an investment company as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), but for section 3 (c)(1) or 3 (c)(7) of that act.

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

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

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

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

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

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

((~~(15) **"Qualifying private fund"** means a private fund that:~~

~~(a) Qualifies for the exclusion from the definition of "investment company" provided in section 3 (c)(7) of the Investment Company Act of 1940, 15 U.S.C. 80a-3 (c)(7);~~

~~(b) Is not registered under section 8 of the Investment Company Act of 1940, 15 U.S.C. 80a-8; and~~

~~(c) Has not elected to be treated as a business development company pursuant to section 54 of Investment Company Act of 1940, 15 U.S.C. 80a-53.~~

~~(16)~~)) (39) **"Related performance"** means the performance results of one or more related portfolios, either on a portfolio-by-portfolio basis or as a composite aggregation of all portfolios falling within stated criteria.

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

((~~(17)~~)) (41) **"Related portfolio"** means a portfolio with substantially similar investment policies, objectives, and strategies as those of the services being offered in the advertisement.

(42) **"Reportable fund"** means:

(a) Any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 to 80a-64) and advised by the investment adviser; or

(b) Any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 to 80a-64) whose investment adviser or principal underwriter controls, is controlled by, or is under common control with the investment adviser.

(43) **"Reportable security"** means a security as defined in RCW 21.20.005(17) or section 202 (a)(18) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2 (a)(18)), except that it does not include:

(a) Direct obligations of the government of the United States;

(b) Bankers' acceptances, bank certificates of deposit, commercial paper, and high-quality short-term debt instruments, including repurchase agreements;

(c) Shares issued by money market funds;

(d) Shares issued by open-end funds other than reportable funds; and

(e) Shares issued by unit investment trusts that are invested exclusively in one or more open-end funds, none of which are reportable funds.

(44) **"Reporting period"** means one calendar year starting on January 1st and ending on December 31st. An investment adviser representative's initial reporting period in this state will commence on January 1st of the year after the investment adviser representative is registered or required to be registered in this state, except that the initial reporting period will begin on January 1, 2027, and end on December 31, 2027, for any investment adviser representative who is registered in this state on January 1, 2027.

(45) **"Supervised person"** means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser. The definition includes investment adviser representatives, employees, independent contractors, or other associated persons and supervised personnel, or other persons acting on behalf of the investment adviser.

(46) **"Testimonial"** means any statement by a current client, including an investor in a private fund advised by the investment adviser:

(a) About the client's experience with the investment adviser or its supervised persons;

(b) That directly or indirectly solicits any current or prospective client or investor to be a client of the investment adviser (which includes being an investor in a private fund advised by the investment adviser); or

(c) That refers any current or prospective client or investor to be a client of the investment adviser (which includes being an investor in a private fund advised by the investment adviser).

(47) **"Third-party rating"** means a rating or ranking of an investment adviser provided by a person who is not an affiliate of the investment adviser nor a person that is under common control with the investment adviser, and such person provides such rating or rankings in the ordinary course of its business.

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-020 Investment adviser representatives employed by federal covered advisers. If you are an individual employed by or associated with a federal covered adviser you are an "investment adviser representative," as defined under RCW 21.20.005, if you have a "place

of business" in this state, as that term is defined under section 203A of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3a), and:

(1) You are an "investment adviser representative" as that term is defined in rules or regulations promulgated under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) by the U.S. Securities and Exchange Commission; or

(2) You solicit, offer, or negotiate for the sale of or sell investment advisory services on behalf of a federal covered adviser, but are not a "supervised person" as that term is defined under section 202 (a)(25) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2 (a)(25)).

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-030 Use of the term "investment counsel" is prohibited. If you are an investment adviser or investment adviser representative, you must not use the title "investment counsel" in the conduct of your business nor represent that you are an "investment counsel" nor use the term "investment counsel" as descriptive of your business where such use is prohibited under the provisions of the ((~~Federal~~)) Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.), as amended.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

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

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

(a) Financial consultant;

(b) Investment consultant;

(c) Money manager;

(d) Investment manager;

(e) Wealth manager;

(f) Investment planner;

((~~(f)~~)) (g) Chartered financial consultant or its abbreviation ChFC;

((~~(g)~~)) (h) Certified financial planner or its abbreviation CFP®; or

((~~(h)~~)) (i) Any combination of terms similar to the above if used in a manner that implies to the general public that the individual or entity using the terms is in the business of providing investment advisory or financial planning services.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

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

(2) Use of IARD and CRD. 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, must be filed electronically with and transmitted to IARD or CRD. 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 or CRD, a duly authorized officer of the applicant or the applicant him or herself, as required, must affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to IARD or CRD. Submission of a filing in this manner will 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 or CRD, a document is considered filed with the director when all fees are received and the filing is accepted by IARD or CRD on behalf of the state.

(3) Electronic filing. Notwithstanding subsection (2) of this section, you are not required to file any particular document or pay processing fees using the IARD or CRD system until such time as IARD or CRD provides for receipt of such filings and fees and ((~~thirty~~)) 30 days' notice is provided by the director. Any documents or fees required to be filed with the director that are not permitted to be filed with or cannot be accepted electronically by IARD or CRD must be filed directly with the director((~~. The director may establish a proprietary online filing system~~)) by email or through the electronic financial information filing system (eFin) established by the director for the purpose of accepting such filings electronically.

(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 or CRD, 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 or CRD, the investment adviser should

file the Form ADV-H with the appropriate regulatory authority in the first state that mandates the use of IARD or CRD by the investment adviser; and

(B) Submit the filing that is the subject of the Form ADV-H in electronic format to IARD or CRD 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~~)) 20 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 or CRD, the investment adviser should file the Form ADV-H with the appropriate regulatory authority in the first state that mandates the use of IARD or CRD by the investment adviser. Any applications received by the director will be granted or denied within ((~~ten~~)) 10 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 or CRD, 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 or CRD by the investment adviser. The decision will be followed by the director if the investment adviser is registered in this state.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-050 Registration and examination requirements. (1) **Examination requirements.** If you are applying to be registered as an

investment adviser or investment adviser representative under RCW 21.20.040, you must provide the director with proof that you have obtained a passing score within the two-year period immediately preceding the date of your application on the following examinations:

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

(b) If you apply prior to October 1, 2018, the General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination); or

(c) If you apply on or after October 1, 2018, the Securities Industry Essentials Examination (SIE examination), the General Securities Representative Examination (Series 7 examination), and the Uniform Combined State Law Examination (Series 66 examination).

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

(a) If you were registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on January 1, 2000, and there has been no period longer than two years since that date in which you were not registered as an investment adviser or investment adviser representative, the director will not require you to satisfy the examination requirements for initial or continued registration, provided that the director may require additional examinations if you are found to have violated the Securities Act of Washington, chapter 21.20 RCW, or ((~~the Uniform Securities Act~~)) state or federal securities laws.

(b) If you were registered as an investment adviser or investment adviser representative in any state requiring the licensing, registration, or qualification of investment advisers or investment adviser representatives within the two-year period immediately preceding the date of filing of an application, the director will not require you to comply with the examination requirement set forth in subsection (1) of this section provided that you previously met the examination requirement in subsection (1) of this section.

(c) If you passed the Uniform Investment Adviser State Law Examination (Series 65 examination) within two years prior to the date you filed your application with the director, the director will not require you to take and pass the Uniform Investment Adviser State Law Examination (Series 65 examination) again.

(d) If you are an applicant who is an agent for a broker-dealer/investment adviser and your home jurisdiction does not require you to make a separate filing on CRD as an investment adviser representative, and you previously met the examination requirement in subsection (1) of this section, the director will not require you to take and pass the Uniform Investment Adviser State Law Examination (Series 65 examination) or the Uniform Combined State Law Examination (Series 66 examination) again.

(e) If you passed the General Securities Representative Examination (Series 7 examination) prior to October 1, 2018, the director will not require you to take and pass the Securities Industry Essentials Examination (SIE examination) if:

(i) You are currently registered as an investment adviser or investment adviser representative in at least one state that requires the registration of investment advisers or investment adviser representatives; or

(ii) You were registered in a state that requires the registration of investment advisers or investment adviser representatives within the two-year period immediately preceding the date you filed

your application for registration as an investment adviser or investment adviser representative with the director.

(f) If you passed the Securities Industry Essentials Examination (SIE examination) within the four-year period immediately preceding the date you filed your application with the director for registration as an investment adviser or investment adviser representative, the director will not require you to take and pass the SIE examination again.

(g) If you were previously registered as an investment adviser representative in any state but have not been registered as an investment adviser representative in any state for more than two years but fewer than five years, and you have elected to participate in the FINRA Maintaining Qualifications Program pursuant to FINRA Rule 1240(c), and your appropriate FINRA qualifying examinations remain valid pursuant to effective participation in the FINRA Maintaining Qualifications Program, the director will not require you to retake the appropriate FINRA qualifying examinations to comply with the examination requirements of subsection (1) of this section; provided, however, that successful participation in the FINRA Maintaining Qualifications Program does not extend to the Uniform Investment Adviser Law Examination (Series 65) or the Uniform Combined State Law Examination (Series 66) for purposes of investment adviser representative registration.

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

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

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

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

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

(e) ((~~Chartered Investment Counselor (CIC) granted by the Investment Adviser Association~~)) Certified Investment Management Analyst (CIMA) awarded by the Investment and Wealth Institute; or

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

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

(5) **Examination validity extension program.** Notwithstanding subsection (1) of this section, if you terminate your registration as an investment adviser representative, you may maintain the validity of your Uniform Investment Adviser Law Examination (Series 65) or the investment adviser representative portion of the Uniform Combined State Law Examination (Series 66) without being employed by or associated with an investment adviser or federal covered adviser for a maximum of five years following the termination of the effectiveness of the in-

vestment adviser representative registration if you meet all of the following requirements:

(a) You previously took and passed the examination for which you seek to maintain validity under this subsection;

(b) You were registered as an investment adviser representative for at least one year immediately preceding the termination of your investment adviser representative registration;

(c) You were not subject to a statutory disqualification as defined in section 3 (a)(39) of the Securities Exchange Act of 1934 (15 U.S.C. 78c (a)(39)) while registered as an investment adviser representative or at any period after termination of the registration;

(d) You elect to participate in the exam validity extension program under this subsection (5) within two years from the effective date of the termination of the investment adviser representative registration;

(e) You do not have a deficiency under the investment adviser representative continuing education program under WAC 460-24A-056 at the time your investment adviser representative registration becomes ineffective;

(f) You complete annually on or before December 31st of each calendar year in which you participate in the exam validity extension program:

(i) Six credits of IAR ethics and professional responsibility content offered by an authorized provider, including at least three hours covering the topic of ethics; and

(ii) Six credits of IAR products and practice content offered by an authorized provider.

(g) If you elect to participate in the exam validity extension program, you are required to complete credits required by (f) of this subsection for each calendar year that elapses after your investment adviser representative registration became ineffective regardless of when you elect to participate in the exam validity extension program; and

(h) If you comply with the FINRA Maintaining Qualification Program under FINRA Rule 1240(c), you will be considered in compliance with (f)(ii) of this subsection.

(6) **Registration requirements.**

(a) To apply for initial registration as an investment adviser, you must file the following in the manner specified:

(i) You must file the following through IARD or CRD:

(A) A completed Form ADV;

(B) Proof of complying with the examination or waiver requirements specified in subsections (1) through (4) of this section;

(C) The application fee specified in RCW 21.20.340;

(D) A completed Form BR; and

(E) Such other documents as the director may require that are accepted for filing through IARD or CRD.

(ii) You must file the following directly with the director by email or through ((~~a proprietary~~)) the electronic financial information filing system (eFin) established by the director for the purpose of accepting such filings:

(A) Such financial statements as are set forth in WAC 460-24A-060, including a copy of the balance sheet for the last fiscal year, and if such balance sheet is a date more than ((~~ninety~~)) 90 days from the date of filing the application, an unaudited balance sheet prepared as set forth in WAC 460-24A-060, if necessary. The financial

statements must be prepared in accordance with generally accepted accounting principles in the United States;

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

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

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

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

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

(IV) Subscription agreement for each pooled investment vehicle;

(V) Limited partnership agreement or other operating agreement for each pooled investment vehicle; ((~~and~~))

(D) If you provide supervisory or management services to securities portfolios, then you must submit a list of the custodians that hold the client funds or securities that you supervise or manage. You may satisfy this requirement by disclosing these custodians in Schedule D to Form ADV Part 1A, regardless of the percentage of your regulatory assets under management held with the custodian;

(E) A copy of a current business continuity and succession plan that meets the requirements of WAC 460-24A-126;

(F) Prior to the date of registration, proof that you maintain an errors and omissions insurance policy in accordance with WAC 460-24A-051. You may demonstrate proof of insurance by submitting a policy declaration page or a certificate of liability coverage specifying errors and omissions coverage; and

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

(b) To apply for initial registration as an investment adviser representative, you must file a completed Form U4 with CRD 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.

NEW SECTION

WAC 460-24A-051 Errors and omissions coverage. If you are an investment adviser registered or required to be registered under RCW 21.20.040, you must maintain an errors and omissions insurance policy that meets the requirements of this section:

(1) Your errors and omissions insurance policy must be in the amount of at least $1,000,000 per claim from an insurer authorized to transact insurance in this state or from any other insurer approved by the director in accordance with the requirements in this section;

(2) Your errors and omissions insurance policy may not contain exclusions for investment management and advisory services performed in this state by you or your investment adviser representatives unless you and your investment adviser representatives refrain from perform-

ing the excluded investment management and advisory services in this state and disclose these limitations in your Form ADV Part 2A;

(3) You may fulfill the requirements of this section by maintaining a policy provided through membership in a professional association so long as the requirements are otherwise met, or at the discretion of the administrator;

(4) You may fulfill the requirements of subsection (1) of this section by maintaining the policies of one or more insurance carriers which policies together meet such requirements;

(5) For purposes of this section, policies written by admitted or authorized insurers, registered surplus lines insurers, and registered risk retention and purchasing groups will satisfy the errors and omissions insurance policy requirement of this section; and

(6) You must comply with this section by January 1, 2027.

NEW SECTION

WAC 460-24A-056 Investment adviser representative continuing education. (1) **Investment adviser representative continuing education.** If you are an investment adviser representative registered or required to be registered under RCW 21.20.040, you must complete the following continuing education requirements each reporting period as defined in WAC 460-24A-005:

(a) **Ethics and professional responsibility requirement.** You must complete six credits of IAR ethics and professional responsibility content offered by an authorized provider, with at least three hours covering the topic of ethics; and

(b) **Products and practice requirement.** You must complete six credits of IAR products and practice content offered by an authorized provider.

(2) **Salesperson of FINRA-member broker-dealer compliance.** If you are registered as a salesperson of a FINRA-member broker-dealer in addition to being registered as an investment adviser representative under RCW 21.20.040, and you comply with FINRA's continuing education requirements, you are considered to be in compliance with the products and practice requirement under subsection (1)(b) of this section for each applicable reporting period so long as FINRA continuing education content meets all of the following baseline criteria as determined by NASAA:

(a) The continuing education content focuses on compliance, regulatory, ethical, and sales practices standards;

(b) The continuing education content is derived from state and federal investment advisory statutes, rules, and regulations; securities industry rules and regulations; and accepted standards and practices in the financial services industry; and

(c) The continuing education content requires that its participants demonstrate proficiency in the subject matter of the educational materials.

(3) **Credentialing organization continuing education compliance.** If you are an investment adviser representative registered or required to be registered under RCW 21.20.040, and you were awarded and currently hold a credential that qualifies for an examination waiver under WAC 460-24A-050(3), the credits of continuing education that you complete will comply with subsection (1)(a) and (b) of this section provided that all of the following are true:

(a) You complete the credits of continuing education as a condition of maintaining the credential for the relevant reporting period;

(b) The credits of continuing education you completed during the relevant reporting period are mandatory to maintain the credential; and

(c) The continuing education content provided by the credentialing organization during the relevant reporting period is approved investment adviser representative continuing education content as defined in WAC 460-24A-005.

(4) **Investment adviser representative continuing education reporting.** If you are an investment adviser representative registered or required to be registered under RCW 21.20.040, you are responsible for ensuring that authorized providers report your completion of the applicable investment adviser representative continuing education requirements.

(5) **No carry-forward.** If you are an investment adviser representative registered or required to be registered under RCW 21.20.040 and you complete credits of continuing education in excess of the amount required for the reporting period, you may not carry forward excess credits to a subsequent reporting period.

(6) **Failure to complete or report.** If you are an investment adviser representative registered or required to be registered under RCW 21.20.040 and you fail to comply with the continuing education requirement in subsection (1) of this section by the end of a reporting period, the director will renew your registration as "CE inactive" at the close of the calendar year in this state until you complete and report all required investment adviser representative continuing education credits for all reporting periods as required by this section. If you are CE inactive at the close of the next calendar year, you are not eligible for investment adviser representative registration or renewal under RCW 21.20.040(3).

(7) **Home state.** If you are an investment adviser representative registered or required to be registered under RCW 21.20.040 and you are registered as an investment adviser representative in your home state, you are considered to be in compliance with this section provided that both of the following are true:

(a) Your home state has continuing education requirements that are the same as the requirements in subsection (1) of this section; and

(b) You are in compliance with your home state's investment adviser continuing education requirements.

(8) **Unregistered periods.** If you were previously registered as an investment adviser representative under RCW 21.20.040(3) and became unregistered, you must complete investment adviser continuing education for all reporting periods that occurred between the time that you became unregistered and when you became registered again under RCW 21.20.040(3), unless you take and pass the examination(s) required by WAC 460-24A-050(1) or receive an examination waiver under WAC 460-24A-050(3) in connection with your subsequent application for registration.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-057 Renewal of investment adviser and investment adviser representative registration—Delinquency fees. (1) **Application for renewal.** You may renew your registration as an investment adviser or investment adviser representative by filing the following with IARD or CRD no later than the renewal application deadline set by FINRA:

(a) Any renewal application required by IARD;

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

(c) An electronically submitted Form U4, unless:

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

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

(2) **Delinquency fees.** For any renewal application received by IARD or CRD after the expiration date set forth in WAC 460-24A-055, but on or before March 1st of the following year, the registrant must pay a delinquency fee in addition to the renewal fee. The delinquency fee for investment advisers is ((~~one hundred dollars~~)) $100. The delinquency fee for investment adviser representatives is ((~~fifty dollars~~)) $100.

The director will not accept renewal applications after March 1st. After March 1st, an investment adviser or investment adviser representative must reapply for initial registration by complying with WAC 460-24A-050.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-060 Financial reporting requirements for investment advisers. (1) If you are an investment adviser registered or required to be registered under RCW 21.20.040 who has custody of client funds or securities, you must file with the director an audited balance sheet as of the end of your fiscal year. You must file the audited balance sheet in electronic format by email or through ((~~a proprietary~~)) the electronic financial information filing system ((~~to be~~)) (eFin) established by the director for the purposes of accepting such filings. Each balance sheet filed pursuant to this subsection must be:

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

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

(2) If you are an investment adviser registered or required to be registered under RCW 21.20.040 that has custody as defined in WAC 460-24A-005 ((~~(6)~~)) (13)(a)(iii) and you have notified the director on Form ADV that you will comply with the requirements in WAC 460-24A-107 (1)(b), you must file with the director a copy of the audited financial statements of each pooled investment vehicle for which you are a general partner (or managing member, trustee, or other comparable position).

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

(4) The financial statements required by this section must be filed with the director within ((~~one hundred twenty~~)) 120 days following the end of your fiscal year, except for the audited financial statements of pooled investment vehicles you obtain and distribute pursuant to WAC 460-24A-107(1), which must be filed with the director within ((~~one hundred twenty~~)) 120 days following the end of each pooled investment vehicle's fiscal year.

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

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-071 Registration exemption for investment advisers to certain private funds. (1) **Exemption for investment adviser to certain private funds ((~~advisers~~)).** Except as provided in subsection (2) of this section, you are exempt from the registration requirements for investment advisers in RCW 21.20.040 if ((~~you are a private fund adviser as defined in WAC 460-24A-005 and~~)) you satisfy each of the following conditions:

(a) You provide advice solely to one or more funds that:

(i) Qualifies for the exclusion from the definition of "investment company" provided in section 3 (c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a-3 (c)(7));

(ii) Is not registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8); and

(iii) Has not elected to be treated as a business development company pursuant to section 53 of Investment Company Act of 1940 (15 U.S.C. 80a-53); and

(b) Neither you nor any of your advisory affiliates are subject to a disqualification as described in Securities and Exchange Commission Rule 506(d), 17 C.F.R. Sec. 230.506(d), as amended effective ((~~September 23, 2013~~)) January 14, 2021; and

((~~(b)~~)) (c) You file with the director each report and amendment thereto that an exempt reporting adviser is required to file with the U.S. Securities and Exchange Commission pursuant to Securities and Exchange Commission Rule 204-4, 17 C.F.R. 275.204-4, as amended effective September 19, 2011.

(2) **Federal covered investment advisers.** If you are ((~~a private fund~~)) an investment adviser that is registered with the U.S. Securities and Exchange Commission, you are not eligible for the exemption provided in subsection (1) of this section and you must comply with

the state notice filing requirements applicable to federal covered investment advisers in WAC 460-24A-070.

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

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

(5) **Transition.** If you become ineligible for the exemption provided in subsection (1) of this section, you must comply with all applicable laws and rules requiring registration or notice filing within ((~~ninety~~)) 90 days from the date your eligibility for this exemption ceases.

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

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-072 Registration exemption for investment advisers to venture capital funds. (1) **Exemption for venture capital fund advisers.** You are exempt from the registration requirements for investment advisers in RCW 21.20.040 if you are exempt from registration under Section 203(l) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-3(l), and Securities and Exchange Commission Rule 203 (l)-1, 17 C.F.R. 275.203 (l)-1, as adopted effective ((~~July 21, 2011~~)) March 12, 2018, provided you satisfy each of the following conditions:

(a) Neither you nor any of your advisory affiliates are subject to a disqualification as described in Securities and Exchange Commission Rule 506(d), 17 C.F.R. Sec. 230.506(d), as amended effective ((~~September 23, 2013~~)) January 14, 2021; ((~~and~~))

(b) You file with the director each report and amendment thereto that an exempt reporting adviser is required to file with the U.S. Securities and Exchange Commission pursuant to Securities and Exchange Commission Rule 204-4, 17 C.F.R. 275.204-4, as adopted effective September 19, 2011.

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

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

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

(5) **Transition.** If you become ineligible for the exemption provided in subsection (1) of this section, you must comply with all applicable laws and rules requiring registration or notice filing within ((~~ninety~~)) 90 days from the date your eligibility for this exemption ceases.

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

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-100 Advertisements and written client communications by investment advisers. If you are an investment adviser or investment adviser representative, it is an "act, practice, or course of business" which operates or would operate as a fraud within the meaning of RCW 21.20.020 for you, directly or indirectly, to ((~~publish, circulate or distribute~~)) disseminate any advertisement or written client communication (including advertisements and written communications directed to prospective clients) ((~~if the advertisement or written client communication~~)), as applicable, that violates any of the following:

(1) ((~~Refers, directly or indirectly, to any testimonial of any kind concerning you or concerning any advice, analysis, report or other service rendered by you;~~

~~(2) Refers, directly or indirectly, to any past specific recommendations you made which were or would have been profitable to any person: Provided, however, That this clause under this subsection (2) does not prohibit you from setting out or offering to furnish a list of all recommendations you made within the immediately preceding period of not less than one year if such advertisement or written client communication, and such list if it is furnished separately:~~

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

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

~~(3) 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 ad-~~

~~vertisement or written client communication the limitations thereof and the difficulties with respect to its use;~~

~~(4) 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;~~

~~(5) Contains past performance data, unless the advertisement or written client communication is accurate and discloses all material facts necessary to ensure that the advertisement or written client communication is not misleading. An advertisement or written client communication containing past performance data must adhere to the following standards:~~

~~(a) The advertisement or written client communication must disclose the following:~~

~~(i) The effect of material market or economic conditions on portrayed results;~~

~~(ii) The effect on performance of fees, commissions, or other client paid expenses;~~

~~(iii) The effect of dividends and earnings on the results portrayed;~~

~~(iv) The potential for both profit and loss;~~

~~(v) Any material conditions, objectives, or investment strategies used to obtain the performance result; and~~

~~(vi) Any additional information reasonably necessary to ensure that the data is not misleading;~~

~~(b) The advertisement or written client communication must include the most recently available results computed using an appropriate time frame;~~

~~(c) Where the performance results are only for a selected group of clients, the advertisement or written communication must disclose the basis on which an objective selection was made; and~~

~~(d) This subsection (5) does not apply to client-specific account past performance data in an account statement that an unaffiliated qualified custodian generates and sends directly to the client;~~

~~(6) Compares past performance results to an index or other portfolio, unless the comparison index or other portfolio is a relevant comparison and the advertisement or written client communication includes full disclosure of the material facts regarding the comparison;~~

~~(7) Contains "backtested" or "hypothetical model" performance figures. Backtesting involves developing a strategy or model then applying the strategy or model to past historical performance. Hypothetical modeling involves creating a hypothetical portfolio and then monitoring it based upon forward-looking strategies and measuring it as if it constitutes a real portfolio;~~

~~(8) Fails to include the full legal name of the investment adviser;~~

~~(9) Includes~~)) **General prohibitions.** An advertisement or written client communication may not:

(a) Include any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not misleading;

(b) Include a material statement of fact that the adviser does not have a reasonable basis for believing it will be able to substantiate upon demand by the director;

(c) Include information that would reasonably be likely to cause an untrue or misleading implication or inference to be drawn concerning a material fact relating to the investment adviser;

(d) Discuss any potential benefits to clients or investors connected with or resulting from the investment adviser's services or methods of operation without providing fair and balanced treatment of any material risks or material limitations associated with the potential benefits;

(e) Include a reference to specific investment advice provided by the investment adviser where such investment advice is not presented in a manner that is fair and balanced;

(f) Include or exclude performance results, or present performance time periods, in a manner that is not fair and balanced; or

(g) Otherwise be materially misleading.

(2) **Testimonials and endorsements.** An advertisement may not include any testimonial or endorsement, and an investment adviser may not provide compensation, directly or indirectly, for a testimonial or endorsement, unless the investment adviser complies with the conditions in (a) through (c) of this subsection, subject to the exemptions in (d) of this subsection.

(a) **Required disclosures.** At the time the testimonial or endorsement is disseminated, the investment adviser must disclose, or reasonably believe that the person giving the testimonial or endorsement has disclosed, the following:

(i) Clearly and prominently:

(A) That the testimonial was given by a current client or investor, and the endorsement was given by a person other than a current client or investor, as applicable;

(B) That cash or noncash compensation was provided for the testimonial or endorsement, if applicable; and

(C) A brief statement of any material conflicts of interest on the part of the person giving the testimonial or endorsement resulting from the investment adviser's relationship with such person;

(ii) The material terms of any compensation arrangement, including a description of the compensation provided or to be provided, directly or indirectly, to the person for the testimonial or endorsement; and

(iii) A description of any material conflicts of interest on the part of the person giving the testimonial or endorsement resulting from the investment adviser's relationship with such person and/or any compensation arrangement.

(b) **Adviser oversight and compliance.** The investment adviser must have:

(i) A reasonable basis for believing that the testimonial or endorsement complies with the requirements of this section; and

(ii) A written agreement with any person giving a testimonial or endorsement that describes the scope of the agreed-upon activities and the terms of compensation for those activities.

(c) **Disqualification.** An investment adviser may not compensate a person, directly or indirectly, for a testimonial or endorsement if the adviser knows, or in the exercise of reasonable care should know, that the person giving the testimonial or endorsement is an ineligible person at the time the testimonial or endorsement is disseminated.

(d) **Exemptions.**

(i) A testimonial or endorsement disseminated for no compensation or de minimis compensation is not required to comply with (b)(ii) and (c) of this subsection;

(ii) A testimonial or endorsement by the investment adviser's partners, officers, directors, or employees, or a person who controls, is controlled by, or is under common control with the investment adviser, or is a partner, officer, director, or supervised person of such person is not required to comply with (a) and (b)(ii) of this subsection, provided that the affiliation between the investment adviser and such person is readily apparent to or is disclosed to the client or investor at the time the testimonial or endorsement is disseminated and the investment adviser documents such person's status at the time the testimonial or endorsement is disseminated;

(iii) A testimonial or endorsement by a broker or dealer registered with the U.S. Securities and Exchange Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is not required to comply with:

(A) Subsection (2)(a) of this section if the testimonial or endorsement is a recommendation subject to Regulation Best Interest, 17 C.F.R. 240.15l-1, effective September 10, 2019;

(B) Subsection (2)(a)(ii) and (iii) of this section if the testimonial or endorsement is provided to a person that is not a retail customer (as that term is defined in Regulation Best Interest, 17 C.F.R. 240.15l-1, effective September 10, 2019; or

(C) Subsection (2)(c) of this section if the broker-dealer is not subject to statutory disqualification, as defined under section 3(a)(39) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(39)).

(iv) A testimonial or endorsement by a person that is covered by Securities and Exchange Commission Rule 506(d) of Regulation D under the Securities Act of 1933 (17 C.F.R. 230.506(d) effective March 15, 2021) with respect to a Rule 506 securities offering, and whose involvement would not disqualify the offering under Rule 506, is not required to comply with (c) of this subsection.

(3) **Third party ratings.** An advertisement may not include any third-party rating, unless the investment adviser:

(a) Has a reasonable basis for believing that any questionnaire or survey used in the preparation of the third-party rating is structured to make it equally easy for a participant to provide favorable and unfavorable responses, and is not designed or prepared to produce any predetermined result; and

(b) Clearly and prominently discloses, or the investment adviser reasonably believes that the third-party rating clearly and prominently discloses:

(i) The date on which the rating was given and the period of time upon which the rating was based;

(ii) The identity of the third party that created and tabulated the rating; and

(iii) If applicable, that compensation has been provided directly or indirectly by the adviser in connection with obtaining or using the third-party rating.

(4) **Performance.** An investment adviser may not include in any advertisement:

(a) Any presentation of gross performance, unless the advertisement also presents net performance:

(i) With at least equal prominence to, and in a format designed to facilitate comparison with, the gross performance; and

(ii) Calculated over the same time period, and using the same type of return and methodology, as the gross performance.

(b) Any performance results, of any portfolio or any composite aggregation of related portfolios, in each case other than any private fund, unless the advertisement includes performance results of the same portfolio or composite aggregation for one-, five-, and 10-year periods, each presented with equal prominence and ending on a date that is no less recent than the most recent calendar year-end; except that if the relevant portfolio did not exist for a particular prescribed period, then the life of the portfolio must be substituted for that period.

(c) Any statement, express or implied, that the calculation or presentation of performance results in the advertisement has been approved or reviewed by the director.

(d) Any related performance, unless it includes all related portfolios; provided that related performance may exclude any related portfolios if:

(i) The advertised performance results are not materially higher than if all related portfolios had been included; and

(ii) The exclusion of any related portfolio does not alter the presentation of any applicable time periods prescribed by (b) of this subsection.

(e) Any extracted performance, unless the advertisement provides, or offers to provide promptly, the performance results of the total portfolio from which the performance was extracted.

(f) Any hypothetical performance unless the investment adviser:

(i) Adopts and implements policies and procedures reasonably designed to ensure that the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience of the advertisement;

(ii) Provides sufficient information to enable the intended audience to understand the criteria used and assumptions made in calculating such hypothetical performance; and

(iii) Provides (or, if the intended audience is an investor in a private fund, provides, or offers to provide promptly) sufficient information to enable the intended audience to understand the risks and limitations of using such hypothetical performance in making investment decisions; provided that the investment adviser need not comply with the other condition on performance in (b), (d), and (e) of this subsection.

(g) Any predecessor performance unless:

(i) The person or persons who were primarily responsible for achieving the prior performance results manage accounts at the advertising adviser;

(ii) The accounts managed at the predecessor investment adviser are sufficiently similar to the accounts managed at the advertising investment adviser that the performance results would provide relevant information to clients or investors;

(iii) All accounts that were managed in a substantially similar manner are advertised unless the exclusion of any such account would not result in materially higher performance and the exclusion of any account does not alter the presentation of any applicable time periods prescribed in (b) of this subsection; and

(iv) The advertisement clearly and prominently includes all relevant disclosures, including that the performance results were from accounts managed at another entity.

(5) An advertisement or written client communication may not include information inconsistent with the information disclosed by an

investment adviser on Form ADV or by an investment adviser representative on Form U4;

((~~(10) Uses the acronyms "IA," "IAR," or "RIA" unless they are defined;~~

~~(11) Uses~~)) (6) An advertisement or written client communication may not use senior-specific certifications or professional designations in a manner inconsistent with chapter 460-25A WAC; or

((~~(12) Fails to~~)) (7) An advertisement or written client communication must provide a citation or attribution for any data or other information presented from outside sources((~~; or~~

~~(13) Contains any omission or untrue statement of a material fact, or which is otherwise false or misleading~~)).

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

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((~~(6)~~)) because you have the authority to directly deduct fees from client accounts, you must comply with the 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 (in either a textual expression or sample mathematical equation), the fee calculation itself, the amount of assets under management the fee is based on, the time period covered by the fee, and if you charge performance compensation, the client's cumulative net investment gain (or loss), and the amount of cumulative net investment gain above which you will receive performance compensation. You must include the name of the custodian(s) on the fee invoice.

(c) **You must notify the director that you will comply with these requirements.** You must notify the director on Form ADV that you will comply with the 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((~~(6)~~)) solely because you have the authority to have fees directly deducted from client accounts and you comply with the requirements set forth in this section, you are not required to comply with the net worth and bonding requirements for an investment adviser that has custody set forth in WAC 460-24A-170.

(3) **Waiver of audited balance sheet requirement.** If you have custody as defined in WAC 460-24A-005((~~(6)~~)) solely because you have the authority to directly deduct fees from client accounts, you are not required to comply with the requirement to file an audited balance sheet as set forth in WAC 460-24A-060(1) if you comply with WAC

460-24A-060(3), requirements in WAC 460-24A-105, and subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-107 Additional custody requirements for an investment adviser that manages a pooled investment vehicle or trust. (1) If you are an investment adviser registered or required to be registered under RCW 21.20.040 that has custody as defined in WAC 460-24A-005 ((~~(6)~~)) (13)(a)(iii), you must, in addition to complying with the requirements set forth in WAC 460-24A-105, either:

(a) **Engage an independent party to authorize withdrawals from the ((~~pooled~~)) accounts of the pooled investment vehicle or trust.**

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

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

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

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

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

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

(i) You must cause the financial statements of the limited partnership (or limited liability company, trust or another type of pooled investment vehicle) for which you are a general partner (or managing member, trustee, 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. The financial statements must be prepared in accordance with generally accepted accounting principles in the Unites States;

(ii) You must distribute the audited financial statements to all limited partners (or members or other beneficial owners), or the independent representative where one has been designated, within ((~~one hundred twenty~~)) 120 days of the end of the pooled investment vehicle's fiscal year. If the limited partners (or members or other beneficial owners) are themselves limited partnerships (or limited liability companies, or another type of pooled investment vehicle) that are related persons to you, you must distribute the audited financial statements to each beneficial owner that is unrelated to you;

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

(iv) You must enter into a written agreement with the independent certified public accountant who will audit the financial statements of

the pooled investment vehicle or trust. The written agreement with the independent certified public accountant must require the independent certified public accountant to, upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, notify the director within four business days accompanied by a statement that includes:

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

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

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

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

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

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

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

(ii) A listing of the ((~~fund's~~)) pooled investment vehicle's or trust's long and short positions, including cash equivalent positions, on the closing date of the statement in a form and to the extent required by FASB Rule ASC 946-210-50; and

(iii) The total amount of additions to and withdrawals from the ((~~fund~~)) pooled investment vehicle or trust by the investor or beneficial owner as well as the total value of the investor's or beneficial owner's interest in the ((~~fund~~)) pooled investment vehicle or trust at the end of the quarter.

(3) **If you engage an independent party, you are not required to comply with the net worth and bonding requirements for an investment adviser that has custody.** If you have custody solely as defined in WAC 460-24A-005 ((~~(6)~~)) (13)(a)(iii) and you comply with the safekeeping requirements in WAC 460-24A-105 and subsection (1)(a) of this section, you are not required to comply with the net worth and bonding requirements for an investment adviser that has custody set forth in WAC 460-24A-170.

(4) **If you distribute audited financial statements of the pooled investment vehicle or trust to all beneficial owners, you are not required to comply with the surprise examination requirements.** You are not required to comply with the surprise examination requirements set forth in WAC 460-24A-105 (4)(b)(ii) with respect to the account of a

limited partnership (or limited liability company, or another type of pooled investment vehicle or trust) that is subject to audit if you otherwise comply with the safekeeping requirements in WAC 460-24A-105 and subsection (1)(b) of this section.

(5) **If you distribute audited financial statements of the pooled investment vehicle or trust to all beneficial owners, you are not required to file an audited balance sheet.** If you have custody solely as defined in WAC 460-24A-005 ((~~(6)~~)) (13)(a)(iii), you are not required to comply with the requirement to file an audited balance sheet as set forth in WAC 460-24A-060(1) if you comply with WAC 460-24A-060(3), the safekeeping requirements in WAC 460-24A-105, and subsections (1)(b) and (2) of this section.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

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

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

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

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

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

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

(2) **You are not required to comply with the custody requirements with respect to the account of a registered investment company.** You are not required to comply with WAC 460-24A-105 through ((~~460-24A-108~~)) 460-24A-107 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~~)) a relative.** You are not required to comply with the requirements of WAC 460-24A-105 through ((~~460-24A-108~~)) 460-24A-107 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~~)) supervised persons, 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~~)) a parent, a grandparent, a spouse or domestic partner, a sibling, a child, a grandchild, an aunt, an uncle, a niece, a nephew, or a first cousin of the person serving as trustee. These relationships 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~~)) 460-24A-107 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.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-120 Compliance and supervisory policies, procedures, and practices. If you are an investment adviser registered or required to be registered under RCW 21.20.040, and have more than one ((~~employee~~)) supervised person, it is unlawful under RCW 21.20.020 for you to provide investment advice to clients unless you comply with the following requirements:

(1) **Policies and procedures.** You must establish, maintain, and enforce written compliance policies and procedures and written supervisory policies and procedures reasonably designed to prevent violation, by you and your supervised persons, of the Securities Act of Washington, chapter 21.20 RCW, and the rules adopted thereunder, and ((~~the~~)) federal securities laws;

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

(3) **Chief compliance officer.** You must designate an individual responsible for administering the policies and procedures that you adopt under subsection (1) of this section and under WAC 460-24A-121, 460-24A-122, 460-24A-123, 460-24A-125, and 460-24A-126((~~, 460-24A-200 (1)(t), (aa), and (bb)~~)); and

(4) You must tailor the policies and procedures required by this section to the facts and circumstances of your business model, taking into account the size of your firm, the type(s) of services you provide, and the number of locations that you have.

NEW SECTION

WAC 460-24A-121 Physical security and cyber security policies and procedures. If you are an investment adviser registered or required to be registered under RCW 21.20.040, it is unlawful under RCW 21.20.020 for you to provide investment advice to clients unless you establish, implement, update, and enforce written physical security and cyber security policies and procedures reasonably designed to ensure the confidentiality, integrity, and availability of physical and electronic records. You must comply with the following requirements:

(1) You must tailor the physical security and cyber security policies and procedures to your business model, taking into account the size of your firm, type(s) of services you provide, and the number of locations you have.

(2) Your physical security and cyber security policies and procedures must:

(a) Protect against reasonably anticipated threats or hazards to the security or integrity of client records or information;

(b) Ensure the safeguarding of confidential client records and information;

(c) Protect any records and information the release of which could result in harm or inconvenience to any client; and

(d) Cover at least the following five functions:

(i) Identify. Develop the organizational understanding to manage information security risk to systems, assets, data, and capabilities;

(ii) Protect. Develop and implement the appropriate safeguards to ensure delivery of critical infrastructure services;

(iii) Detect. Develop and implement the appropriate activities to take action regarding a detected information security event;

(iv) Respond. Develop and implement the appropriate activities to maintain plans for resilience and to restore any capabilities or services that were impaired due to an information security event; and

(v) Recover. Develop and implement the appropriate activities to maintain plans for resilience and to restore any capabilities or services that were impaired due to an information security event.

(3) You must review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-122 Material nonpublic information policies and procedures. If you are an investment adviser registered or required to be registered under RCW 21.20.040, it is unlawful under RCW 21.20.020 for you to provide investment advice to clients unless you comply with the following requirements:

(1) You must establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by you or any person associated with you;

(2) You must review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of its implementation; ((~~and~~))

(3) You must tailor the policies and procedures required by this section to the facts and circumstances of your business model, taking into account the size of your firm, the type(s) of services you provide, and the number of locations that you have; and

(4) You must deliver a privacy policy to each client upon your engagement by the client and on an annual basis thereafter. The privacy policy must be reasonably designed to aid in the client's understanding of how you collect and share, to the extent permitted by state and federal law, nonpublic personal information. You must promptly update and deliver to each client an amended privacy policy if any of the information in the policy becomes inaccurate.

NEW SECTION

WAC 460-24A-123 Code of ethics. If you are an investment adviser registered or required to be registered under RCW 21.20.040, it is unlawful under RCW 21.20.020 for you to provide investment advice to clients unless you comply with the following requirements:

(1) You must establish, maintain, and enforce a written code of ethics that, at a minimum, includes the following:

(a) A standard (or standards) of business conduct that you require of your supervised persons, which must reflect your fiduciary obligations and those of your supervised persons;

(b) Provisions requiring your supervised persons to comply with applicable state and federal securities laws;

(c) Provisions requiring all your access persons to report, and you to review, their personal securities transactions periodically as provided in subsection (2) of this section;

(d) Provisions requiring your supervised persons to report any violations of the code of ethics promptly to your chief compliance officer or, provided that your chief compliance officer also receives reports of all violations, to other persons designated in the code of ethics; and

(e) Provisions requiring you to provide each of your supervised persons with a copy of your code of ethics and any amendments, and requiring your supervised persons to provide you with a written acknowledgment of their receipt of the code of ethics and any amendments.

(2) Reporting requirements.

(a) Holdings reports. Your code of ethics must require your access persons to submit to your chief compliance officer or other person designated in the code of ethics a report of the access person's current securities holdings that meets the following requirements:

(i) Content of holdings reports. Each holdings report must contain, at a minimum, the following:

(A) The title and type of security, and as applicable, the exchange ticker symbol or CUSIP number, number of shares, and principal amount of each reportable security in which the access person has any direct or indirect beneficial ownership;

(B) The name of any broker-dealer or bank with which the access person maintains an account in which any securities are held for the access person's direct or indirect benefit; and

(C) The date the access person submits the report.

(ii) Timing of holdings reports. Your access persons must each submit a holdings report as follows:

(A) No later than 10 days after the person becomes an access person. The information must be current as of a date no more than 45 days prior to the date the person becomes an access person; and

(B) At least once each 12-month period thereafter on a date selected by you. The information must be current as of a date no more than 45 days prior to the date the report was submitted.

(b) Transactions reports. Your code of ethics must require your access persons to submit to your chief compliance officer or other persons designated in your code of ethics quarterly securities transactions reports that meet the following requirements:

(i) Content of transaction reports. Each transaction report must contain, at minimum, the following information about each transaction involving a reportable security in which the access person had, or as a result of the transaction acquired, any direct or indirect beneficial ownership:

(A) The date of the transaction, the title, and as applicable, the exchange ticker symbol or CUSIP number, interest rate and maturity date, number of shares, and principal amount of each reportable security involved;

(B) The nature of the transaction (i.e., purchase, sale, or any other type of acquisition or disposition);

(C) The price of the security at which the transaction was effected;

(D) The name of the broker-dealer or bank with or through which the transaction was effected; and

(E) The date the access person submits the report.

(ii) Timing of transaction reports. Each access person must submit a transaction report no later than 30 days after the end of each calendar quarter, which report must cover, at a minimum, all transactions during the quarter.

(c) Exceptions from reporting requirements. Your code of ethics does not need to require an access person to submit the following:

(i) Any report with respect to securities held in accounts over which the access person has no direct or indirect influence or control;

(ii) A transaction report with respect to transactions effected pursuant to an automatic investment plan in which regular periodic purchases or withdrawals are made automatically in or from investment accounts in accordance with a predetermined schedule and allocation, including a dividend reinvestment plan;

(iii) A transaction report if the report would duplicate information contained in broker trade confirmations or account statements no later than 30 days after the end of the applicable calendar quarter.

(d) Preapproval of certain investments. Your code of ethics must require your access persons to obtain your approval before they directly or indirectly acquire beneficial ownership in any security in an initial public offering or in a limited offering.

(e) Small advisers. If you are an investment adviser with only one access person, the access person is not required to submit reports or to obtain approval for investments in any security in an initial public offering or in a limited offering, provided the access person maintains records of all of the access person's holdings and transactions that this section would otherwise require the access person to report.

(3) You must tailor the code of ethics required by this section to the facts and circumstances of your business model, taking into account the size of your firm, the type(s) of services you provide, and the number of locations you have.

(4) You must review, no less frequently than annually, the adequacy of the code of ethics established pursuant to this section and the effectiveness of its implementation.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

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

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

(2) You must disclose to clients how they may obtain information from you about how you voted with respect to their securities. If you do not have the authority to vote client securities, you must disclose your lack of voting authority to clients; ((~~and~~))

(3) You must describe to clients your proxy voting policies and procedures and, upon request, furnish a copy of the policies and procedures to the requesting client; and

(4) You must review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-126 Business continuity and succession plan. If you are an investment adviser registered or required to be registered pursuant to RCW 21.20.040, it is unlawful under RCW 21.20.020 for you to provide investment advice to clients unless you comply with the following requirements:

(1) You must establish, maintain, and enforce written procedures relating to a business continuity and succession plan. The business continuity and succession plan must provide for at least the following:

(a) The protection, backup, and recovery of books and records;

(b) Alternate means of communications with customers, key personnel, ((~~employees~~)) supervised persons, vendors, service providers (including third-party custodians), and regulators including, but not limited to, providing notice of a significant business interruption or the death or unavailability of key personnel or other disruptions or cessation of business activities;

(c) Office relocation in the event of temporary or permanent loss of a principal place of business;

(d) Assignment of duties to qualified responsible persons in the event of the death or unavailability of key personnel; and

(e) Otherwise minimizing service disruption and client harm that could result from a sudden, significant business interruption.

(2) You must review, no less frequently than annually, the adequacy of the business continuity and succession plan established pursuant to this section and the effectiveness of its implementation.

(3) You must tailor the business continuity and succession plan required by this section to the facts and circumstances of your business model, taking into account the size of your firm, the type(s) of services you provide, and the number of locations that you have.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

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

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

(2) A statement that you will make no direct or indirect assignment or transfer of the contract without the written consent of the client or other party to the contract. You may not assign a contract through implied or negative consent;

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

(4) A statement that if you are a partnership, you must notify the client or other party to the investment contract of any change in the membership of the partnership within a reasonable time after the change;

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

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

(7) The terms for termination of the contract;

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

(9) A statement that you must deliver the brochure required by WAC ((~~460-24A-150~~)) 460-24A-145 to an advisory client or prospective advisory client not less than ((~~forty-eight~~)) 48 hours prior to entering into any investment advisory contract with such client or prospective client. Alternately, if you will provide the brochure at the time of entering into any such contract, the investment advisory contract must provide that the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract;

(10) A statement that the investment adviser must obtain the client's written consent in order to revise any material terms of the investment advisory contract;

(11) The full legal name of the investment adviser, the contact information for the investment adviser, and an indication of the preferred method for clients to contact the investment adviser;

(12) A statement that the investment adviser owes the client a fiduciary duty; and if the investment adviser manages a pooled investment vehicle, a statement that each investor in the pooled investment vehicle is a client of the investment adviser; and

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

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-135 Dissemination of advisory fee billing information for advisers who do not directly deduct fees. (1) If you are an investment adviser registered or required to be registered pursuant to RCW 21.20.040, it is unlawful under RCW 21.20.020 for you to provide investment advice to clients unless you deliver written billing information to your advisory clients each time you charge an advisory fee. The written billing information must include the fee(s) charged, the formula used to calculate the fee(s) (in either a verbal expression or sample mathematical equation), the fee calculation itself, the amount of assets under management the fee is based on, ((~~and~~)) the time period covered by the fee(s), and a statement of the services provided to the client during the billing period. If you charge performance compensation, the written billing information must also include the client's cumulative net investment gain (or loss) and the amount of cumulative net investment gain over which you will receive performance compensation. You must include the name of the custodian(s) on the fee invoice.

(2) The provision of invoices in accordance with WAC 460-24A-106 (1)(b) will satisfy the requirements of this section.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

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

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

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

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

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

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

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

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

(2) **Delivery.**

(a) **Initial delivery.** Except as provided in (c) of this subsection, you must deliver the materials required by this section to an advisory client or prospective advisory client (i) not less than ((~~forty-eight~~)) 48 hours prior to entering into any investment advisory contract with such client or prospective client, or (ii) at the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

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

(i) Deliver within ((~~one hundred twenty~~)) 120 days of the end of your fiscal year a free, updated brochure and related brochure supplements which include or are accompanied by a summary of the material changes; or

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

(c) **Other-than-annual delivery.** If the instructions to Form ADV require you to file an other-than-annual amendment, and if the amendment adds disclosure of an event or materially revises information already disclosed about an event in response to Item 9 of Part 2A of Form ADV, or Item 3 of Part 2B of Form ADV, you must promptly deliver the following to each client:

(i) The amended brochure or brochure supplement, along with a statement describing the material change in disciplinary information; or

(ii) A statement describing the material change in disciplinary information and an offer to deliver the amended brochure.

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

(i) Clients receiving advisory services solely pursuant to a contract for impersonal advisory services requiring a payment of less than ((~~two hundred dollars~~)) $200;

(ii) An investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 to 80a-64); or

(iii) A business development company as defined in the Investment Company Act of 1940 and whose advisory contract meets the requirements of section 15(c) of that act (15 U.S.C. 80a-15(c)).

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

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

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

(c) In the case of deliveries through a passive delivery system such as a website or portal, you notify the client when the materials become available on the system;

(d) Prepare the electronically delivered materials in the format prescribed in subsection (1) of this section and the instructions to Form ADV Part 2;

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

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

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

(5) **Omission of inapplicable information.** If you render substantially different types of investment advisory services to different advisory clients, you may provide them with different disclosure materials, provided that each client receives all applicable information about services and fees. The disclosure delivered to a client may omit any information required by Part 2 of Form ADV if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

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

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

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

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

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

(iii) Any combination of the foregoing services.

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

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

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

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

(b) The client is a "qualified client" as defined in subsection (2) of this section (subject to periodic inflation adjustments pursuant to subsection (10) of this section), and the conditions of subsections (3) through (8) of this section are met.

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

(a) The term "qualified client" means:

(i) A natural person who, or a company that, immediately after entering into the contract has at least ((~~one million dollars~~)) $1,400,000 under the management of the investment adviser;

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

(A) Has a net worth (together, in the case of a natural person, with assets held jointly with a spouse) of more than ((~~2.1 million dollars~~)) $2,700,000. For purposes of calculating a natural person's net worth:

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

(II) Indebtedness secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time the investment advisory contract is entered into may not be included as a liability (except that if the amount of such indebtedness outstanding at the time of calculation exceeds the amount outstanding ((~~sixty~~)) 60 days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess must be included as a liability); and

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

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

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

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

(B) An employee of the investment adviser (other than an employee performing solely clerical, secretarial, or administrative functions with regard to the investment adviser) who, in connection with his or her regular functions or duties, participates in the investment activities of such investment adviser, provided that such employee has been performing such functions and duties for or on behalf of the investment adviser, or substantially similar functions or duties for or on behalf of another company for at least ((~~twelve~~)) 12 months.

(b) The term "company" has the same meaning as in section 202 (a)(5) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2 (a)(5)), but does not include a company that is required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 to 80a-64) but is not registered.

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

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

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

(a) In the case of securities for which market quotations are readily available within the meaning of Securities and Exchange Commission Rule 2a-4 (a)(1) under the Investment Company Act of 1940 (Definition of "Current Net Asset Value" for Use in Computing Periodically the Current Price of Redeemable Security), 17 C.F.R. 270.2a-4 (a)(1), as amended effective ((~~February 7, 2014~~)) June 27, 2024, the formula must include the realized capital losses and unrealized capital depreciation of the securities over the period;

(b) In the case of securities for which market quotations are not readily available within the meaning of Securities and Exchange Commission Rule 2a-4 (a)(1) under the Investment Company Act of 1940, 17 C.F.R. 270.2a-4 (a)(1), as amended effective ((~~February 7, 2014~~)) June 27, 2024, the formula must include:

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

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

(c) The formula must provide that any compensation paid to you under this section is based on the gains less the losses (computed in accordance with (a) and (b) of this subsection) in the client's account over a specified period. The formula must not calculate the compensation more frequently than once per calendar quarter. However, if your client invests mid-period in a private fund that you manage, you may apply the compensation formula to that client for the partial period in order to keep the client on the same schedule as the other clients who invest in the private fund; and

(d) The formula must reflect that you will only receive performance compensation on the client's cumulative net investment gain, and only upon the amount of the client's cumulative net investment gain for which you have not previously received a performance fee.

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

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

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

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

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

(e) Where your compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily

available within the meaning of Securities and Exchange Commission Rule 2a-4 (a)(1) under the Investment Company Act of 1940, 17 C.F.R. 270.2a-4 (a)(1), as amended effective ((~~February 7, 2014~~)) June 27, 2024, how the securities will be valued and the extent to which the valuation will be independently determined.

(5) **Equity owners.** In the case of a private investment company, as defined in subsection (2)(c) of this rule, an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 to 80a-64), or a business development company, as defined in section 202 (a)(22) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2 (a)(22)), each equity owner of any such company (except for the investment adviser entering into the contract and any other equity owners not charged a fee on the basis of a share of capital gains or capital appreciation) will be considered a client for the purposes of subsection (1) of this ((~~rule~~)) section.

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

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

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

(9) **Transition rules.**

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

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

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

(10) The director may issue an order pursuant to RCW 21.20.450 to update the definition of "qualified client" in subsection (2)(a) of this section to conform to the periodic inflation adjustments of the dollar amount thresholds established by the U.S. Securities and Ex-

change Commission, as described in Securities and Exchange Commission Rule 205-3(e), 17 C.F.R. 275.205-3(e), as amended effective November 10, 2021.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

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

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

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

(c) A memorandum of each order given by you for the purchase or sale of any security, of any instruction received by you from a client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda must show the terms and conditions of the order, instruction, modification or cancellation; must identify the person connected with you who recommended the transaction to the client and the person who placed the order; and must 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 must be so designated.

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

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

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

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

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

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

(iii) The placing or execution of any order to purchase or sell any security((~~.~~)); and

(iv) Predecessor performance (as defined in WAC 460-24A-005) and the performance or rate of return of any or all managed accounts, portfolios (as defined in WAC 460-24A-005), or securities recommendations.

Provided, however, That you will not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for you: And provided, That if

you send any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than ((~~ten~~)) 10 persons, you will not be required to keep a record of the names and addresses of the persons to whom it was sent, except that if such notice, circular or advertisement is distributed to persons named on any list, you must retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.

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

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

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

(k)(i) A file containing a copy of each:

(A) Advertisement (as defined in WAC 460-24A-005) that the investment adviser disseminates, directly or indirectly, except:

(I) For oral advertisements, you may instead retain a copy of any written or recorded materials used by you in connection with the oral advertisement; and

(II) For compensated oral testimonials and endorsements (as defined in WAC 460-24A-005), you may instead make and keep a record of the disclosures provided to clients or investors pursuant to WAC 460-24A-100 (2)(a);

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

(ii) A copy of any questionnaire or survey used in the preparation of a third-party rating included or appearing in any advertisement, in the event you obtain a copy of the questionnaire or survey.

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

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

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

The record must 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 will not be construed as an admission that you or your advisory representative has any direct or indirect beneficial ownership in the security. You must record each transaction not later than ((~~ten~~)) 10 days after the end of the calendar quarter in which the transaction was effected.

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

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

(I) Any person in a control relationship to you;

(II) Any affiliated person of a controlling person; and

(III) Any affiliated person of an affiliated person.

(B) "Control" means 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~~)) 25 percent of the voting securities of a company will be presumed to control such company.

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

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

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

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

The record must state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that you or any of your advisory representatives has any direct or indirect beneficial ownership in the security. You must record a transaction not later than ((~~ten~~)) 10 days after the end of the calendar quarter in which the transaction was effected.

(ii) You are "primarily engaged in a business or businesses other than advising investment advisory clients" if, for each of your most recent three fiscal years or for the period of time since organization, whichever is lesser, you derived, on an unconsolidated basis, more than ((~~fifty~~)) 50 percent of:

(A) Your total sales and revenues; and

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

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

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

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

(II) Any affiliated person of a controlling person; and

(III) Any affiliated person of an affiliated person.

(B) "Control" means 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~~)) 25 percent of the voting securities of a company will be presumed to control such company.

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

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

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

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

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

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

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

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

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

~~For purposes of this subsection, the term "solicitor" means any person or entity who, for compensation, acts as an agent of an investment adviser in referring potential clients.~~)) (i) If not included in the advertisement, a record of the disclosures provided to clients or investors pursuant to WAC 460-24A-100 (2)(a) and (3)(b);

(ii) Documentation substantiating your reasonable basis for believing that a testimonial or endorsement (as defined in WAC 460-24A-005) complies with WAC 460-24A-100(2) and that the third-party rating (as defined in WAC 460-24A-005) complies with WAC 460-24A-100(3); and

(iii) A record of the names of all persons who are your partners, officers, directors, or employees, or a person that controls, is controlled by, or is under common control with you, or is a partner, officer, director, or employee of such a person, as needed for the purpose of documenting compliance with the exemption in WAC 460-24A-100 (2)(d)(ii).

(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, portfolios (as defined in WAC 460-24A-005), or securities recommendations in any notice, circular, advertisement (as defined in WAC 460-24A-100), newspaper article, investment letter, bulletin, or other communication including, but not limited to, electronic media that you circulate or distribute, directly or indirectly, to two or more persons (other than persons connected with you), including copies of all information provided or offered pursuant to WAC 460-24A-100 (4)(d); 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 will be deemed to satisfy the requirements of this subsection.

(q) A file containing a copy of all written communications received or sent regarding any litigation involving you or any investment adviser representative or ((~~employee~~)) supervised person, 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. The written information about the investment advisory client must include, but is not limited to, the client's age, other investments, financial situation and needs, net worth, liquid net worth, annual income, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the client may disclose to the investment adviser in connection with such recommendation or investment advice. On an annual basis, the investment adviser must ((~~make~~)) document a reasonable effort to confirm or update the written information about each investment advisory client.

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

(t) Written procedures to supervise the activities of ((~~employees and investment adviser representatives~~)) your supervised persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, as required by WAC 460-24A-120.

(u) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self regulatory organization and that pertains to you or your advisory representatives as that term is defined in (m)(iii)(A) of this subsection, which file should contain,

but is not limited to, all applications, amendments, renewal filings, and correspondence.

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

(i) Issuer;

(ii) Type of security and series;

(iii) Date of issue;

(iv) For debt instruments, the denomination, interest rate and maturity date;

(v) Certificate number, including alphabetical prefix or suffix;

(vi) Name in which registered;

(vii) Date given to the adviser;

(viii) Date sent to client or sender;

(ix) Form of delivery to client or sender, or copy of the form of delivery to client or sender; and

(x) Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

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

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

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

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

(y) A copy of a current written business continuity and succession plan adopted in accordance with WAC 460-24A-126, and evidence of the annual review of the business continuity and succession plan.

(z) Written policies and procedures required to be established pursuant to WAC 460-24A-120, 460-24A-121, 460-24A-122, 460-24A-123, and 460-24A-125, and any records required to be created or maintained thereunder including, but not limited to, evidence of the annual review of policies and procedures, and a record of any violation of the provisions of the policies and procedures and any action taken as a result of the violation.

(aa) A copy of a written code of ethics as required by WAC 460-24A-123 that establishes standards of business conduct which reflect your fiduciary obligations and those of your supervised persons.

(bb) Written physical and cyber security policies and procedures as required by WAC 460-24A-121 that are reasonably designed to ensure the security and integrity of your physical and electronic records. In addition to the recordkeeping requirements pursuant to subsections (5) and (7) of this section, you must maintain a current copy of the physical and cyber security policies and procedures either in hard copy in a separate location or stored on electronic storage media that is separate from and not dependent upon access to your computers or network.

(cc) A copy of the written advisory fee billing information provided clients in accordance with WAC 460-24A-135, and a written record of the services provided to each client during the billing period.

(dd) Documentation of client's authorization for each nondiscretionary securities transaction within 10 business days of the transaction.

(ee) A record of who the "intended audience" is for an advertisement pursuant to WAC 460-24A-100(4).

(ff) Documentation of the due diligence you have conducted regarding the ability of your third-party vendors to perform the activities and functions that you have outsourced to them.

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

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

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

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

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

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

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

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

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

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

(b) If you have custody because you advise a pooled investment vehicle, as defined in WAC 460-24A-005 ((~~(6)~~)) (13)(a)(iii), you must also keep the following records:

(i) True, accurate and current account statements;

(ii) Where you comply with WAC 460-24A-107 (1)(b) the records required to be made and kept must include:

(A) The date of the audit;

(B) A copy of the audited financial statements; and

(C) Evidence of the mailing of the audited financial statements to all limited partners, members or other beneficial owners within ((~~one hundred twenty~~)) 120 days of the end of its fiscal year.

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

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

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

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

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

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

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

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

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

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

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

(a) All books and records required to be made under the provisions of subsections (1) to (3), inclusive, of this section except for books and records required to be made pursuant to subsection (1)(k) and (p) of this section must be maintained and preserved in an easily accessible place for at least six years from the date the last entry was made on the record, the first two years in your principal office.

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

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

(d) Notwithstanding other record preservation requirements of this section, you must maintain the following records or copies at

your business location from which the customer or client is being provided or has been provided with investment advisory services:

(i) Records required to be preserved under subsections (1)(c), (g) through (j), (l), (m), (n), (o), and (q) through (dd), (2), and (3) of this section must 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 must be maintained for the period prescribed in (c) of this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) As used in this section, "investment supervisory services" means the giving of continuous advice as to the investment of funds on

the basis of the individual needs of each client; and "discretionary authority" does 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, will be deemed to be made, kept, maintained, and preserved in compliance with this section.

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

(11) If you are an investment adviser registered or required to be registered under RCW 21.20.040, you must make the records required to be maintained under this section easily accessible for inspection by the director or the director's representatives. In the conduct of an examination authorized by RCW 21.20.100(4), you must honor all requests by the director or the director's representatives to have physical access to all areas of the office that is the subject of the examination. Upon request, you must permit the director or the director's representatives to access, copy, scan, image, and examine all records and electronic data that you are required to retain under this section.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

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

(a) Promptly file with IARD, in accordance with the instructions to Form ADV, any amendments to your Form ADV. An amendment will be considered promptly filed if it is filed within ((~~thirty~~)) 30 days of the event that requires the filing of the amendment;

(b) File an annual updating amendment to the Form ADV with IARD within ((~~ninety~~)) 90 days after the end of your fiscal year;

(c) File with the director by email ((~~thirty~~)) 30 days prior to intended use any amendments to your advisory contracts or offering materials for any pooled investment vehicles that you advise. This includes the advisory contracts or offering materials that you intend to use in connection with any newly formed pooled investment vehicles to which you will provide investment advice. You may not use the new or amended advisory contracts or offering materials until the director has cleared them for use; ((~~and~~))

(d) Promptly file with the director by email any amendment to your list of the custodians that hold the client funds or securities that you supervise or manage. If you disclose this information on Schedule D of Form ADV Part 1A, and you file an amendment to Form ADV

pursuant to (a) of this subsection, you will have satisfied this requirement. The director will consider an amendment to be filed promptly if it is filed within ((~~thirty~~)) 30 days of the event that requires the filing of the amendment; and

(e) Promptly file an amendment to Form BR with IARD to correct any information contained on the Form BR that has become inaccurate or incomplete. You must promptly notify the director on Form BR if you open a branch office in Washington, engage a new person in charge at a branch office in Washington, acquire a branch office of another investment adviser in Washington, or relocate or close a branch office to Washington;

(f) Promptly notify the director by email if the errors and omissions insurance policy that you maintain to comply with WAC 460-24A-051 is canceled, terminated, or substantially modified;

(g) File with the director by email proof of the annual renewal of the errors and omissions insurance policy that you maintain to comply with WAC 460-24A-051 no later than 30 days after the renewal of the policy; and

(h) Promptly file with the director by email any material amendments to your business continuity plan.

(2) If you are an investment adviser representative registered or required to be registered pursuant to RCW 21.20.040, you have a continuing obligation to update the information required by Form U4 as changes occur and you must promptly file with IARD any amendments to your Form U4. An amendment will be considered promptly filed if it is filed within ((~~thirty~~)) 30 days of the event that requires the filing of the amendment.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

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

(1) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser, investment adviser representative, or federal covered investment adviser.

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

discretionary authority from the client within ((~~ten~~)) 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretion relates solely to the price at which, or the time when, an order involving a definite amount of a specified security must be executed, or both.

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

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

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

(6) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, ((~~or~~)) a financial institution engaged in the business of loaning funds, or a relative as defined in RCW 21.20.005.

(7) Loaning money or securities to a client unless you are a financial institution engaged in the business of loaning funds ((~~or~~)), the client is an affiliate of the investment adviser, or the client is a relative as defined in RCW 21.20.005.

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

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

(10) Charging a client an unreasonable advisory fee.

(11) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser, investment adviser representative, federal covered adviser, or any employees or affiliated persons thereof which could reasonably be expected to impair the rendering of unbiased and objective advice including, but not limited to:

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

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

(c) Serving as an officer, director, or similar capacity of any outside company or other entity.

(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~~)) WAC 260-24A-100.

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

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

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

(17) Failing to establish, maintain, and enforce written policies and procedures pursuant to WAC 460-24A-120, 460-24A-121, 460-24A-122, 460-24A-123, 460-24A-125, or 460-24A-126((~~, 460-24A-200 (1)(t), (aa), or (bb)~~)).

(18) Entering into, extending, or renewing any advisory contract contrary to the provisions of section 205 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-5). This provision will apply to all advisers and investment adviser representatives registered or required to be registered under the Securities Act of Washington, chapter 21.20 RCW, notwithstanding whether you would be exempt from federal registration pursuant to section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(b)).

(19) To indicate or require by contract or otherwise, any condition, stipulation, or provisions binding any person to waive or limit compliance with, or require indemnification for any violations of, any provision of the Securities Act of Washington, chapter 21.20 RCW, or the rules adopted thereunder, or of the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.), or any other practice contrary to the provisions of section 215 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-15).

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

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

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

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

(24) Failing to provide advisory fee billing information to advisory clients pursuant to WAC 460-24A-135.

(25) Failing to provide training regarding the financial exploitation of vulnerable adults pursuant to WAC 460-24A-190.

(26) Accessing a client's account by using the client's own unique identifying information (such as username and password).

(27) Failing to pay and fully satisfy any final judgment or arbitration award resulting from an investment-related, client- initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the client and the investment adviser or investment adviser representative, in writing, and the investment adviser or investment adviser representative complies with the terms of the alternative payment arrangement.

(28) Attempting to avoid payment of any final judgment or arbitration award resulting from an investment-related, client-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the client and the investment adviser or the investment adviser representative, in writing, and the investment adviser or investment adviser representative complies with the terms of the alternative payment arrangements.

(29) Failing to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the investment adviser or investment adviser representative by the Securities and Exchange Commission, the securities or other financial services regulator of any state or province, or any self-regulatory organization.

The conduct set forth above is not ((~~inclusive~~)) exclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices will be deemed an unethical business practice. The federal statutory and regulatory provisions referenced herein will apply to investment advisers, investment adviser representatives, and federal covered advisers, to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 460-24A-108	Additional custody requirements for an investment adviser that acts as trustee and investment adviser to a trust.