

**Proposed Rules:**  
**Broker-Dealer and Salespersons of Broker-Dealers**  
Section-by-Section Analysis

The Washington Securities Division has proposed amendments to Washington’s rules concerning broker-dealers and salespersons of broker-dealers. The proposed rules would repeal the broker-dealer and salesperson rules at Chapters [460-20B](#) WAC, [460-21B](#) WAC, and [460-22B](#) WAC and replace them with a new combined chapter provisionally titled Chapter 460-20C WAC. The proposed chapter can be found at <https://dfi.wa.gov/rulemaking/broker-dealer-rules-amendments>.

The purpose of the amendments is to bring Washington’s rules up to date with federal rules, incorporate NASAA model rules, to accurately describe the application filing procedures and requirements for broker-dealers (including broker-dealers who are not members of FINRA), and add additional examples of unethical business practices, among other updates.

This document provides an outline for the proposed chapter followed by a section-by-section analysis of the changes in proposed rules as compared to the current rules.

**I. OUTLINE**

<b><u>Proposed Chapter 460-20C WAC</u></b>			
<b><u>Section</u></b>	<b><u>Title</u></b>	<b><u>Notes</u></b>	<b><u>Page of Rules</u></b>
WAC 460-20C-010	Application of chapter.	Replaces WAC <a href="#">460-20B-010</a> and WAC <a href="#">460-22B-010</a>	1
WAC 460-20C-015	Cross reference to other sections relating to securities salespersons and broker-dealers.	Replaces WAC <a href="#">460-22B-020</a>	1
WAC 460-20C-020	Definitions.	Replaces WAC <a href="#">460-20B-020</a>	1
WAC 460-20C-025	Filings made through the Central Registration Depository.	New section	3
WAC 460-20C-030	Registration Procedure.	Replaces WAC <a href="#">460-20B-030</a> and WAC <a href="#">460-22B-030</a>	4
WAC 460-20C-035	Canadian broker-dealers and salespersons.	Replaces WAC <a href="#">460-20B-035</a>	6
WAC 460-20C-040	Examination requirements.	Replaces WAC <a href="#">460-20B-040</a> and WAC <a href="#">460-20B-040</a>	7
WAC 460-20C-045	Notice of termination of pending applications.	New section	7
WAC 460-20C-050	Expiration and renewal of registration.	Replaces WAC <a href="#">460-20B-050</a> and WAC <a href="#">460-22B-050</a>	8
WAC 460-20C-060	Notice of changes by broker-dealers.	Replaces WAC <a href="#">460-20B-060</a>	9

WAC 460-20C-080	Mass transfer of salespersons.	New section	10
WAC 460-20C-090	Termination of broker-dealer registration.	New section	11
WAC 460-20C-100	Termination of salesperson registration.	Replaces WAC <b>460-20B-060(3)</b>	11
WAC 460-20C-110	Minimum net capital requirements for broker-dealers.	Replaces WAC <b>460-21B-030</b> and WAC <b>460-21B-040</b>	12
WAC 460-20C-120	Reserve and custody requirements.	New section	13
WAC 460-20C-130	Books and records of broker-dealers.	Replaces WAC <b>460-21B-050</b>	13
WAC 460-20C-140	Financial reporting requirements.	New section	14
WAC 460-20C-150	Supervision of salespersons and employees.	Replaces WAC <b>460-21B-070</b>	15
WAC 460-20C-160	Fraudulent practices of broker-dealers and salespersons.	Replaces WAC <b>460-21B-008</b>	17
WAC 460-20C-170	Excessive trading.	Replaces WAC <b>460-21B-010</b>	19
WAC 460-20C-180	Transmission or Maintenance of Payments Received in Connection with Underwritings.	Replaces WAC <b>460-21B-020</b>	19
WAC 460-20C-190	Communications with the public.	New section	20
WAC 460-20C-200	Deferred variable annuities.	New section	20
WAC 460-20C-210	Dishonest or unethical practices – broker-dealers.	Replaces WAC <b>460-21B-060</b>	22
WAC 460-20C-220	Dishonest or unethical practices – salespersons.	Replaces WAC <b>460-22B-090</b>	28
Repealer	Chapter <b>460-20B</b>		33
Repealer	Chapter <b>460-21B</b>		34
Repealer	Chapter <b>460-22B</b>		35

**II. SECTION-BY-SECTION ANALYSIS**

**WAC 460-20C-010: Application of Chapter**

The proposed rulemaking would create a new rule at WAC 460-20C-010 to describe the scope of the rules in the chapter. The rule replaces WAC [460-20B-010](#) and WAC [460-22B-010](#). As compared to the existing rules, the proposed rule:

- Adds a statement that the rules in the chapter apply to broker-dealers to the extent permitted by the National Securities Markets Improvement Act of 1996.
- Removes outdated references to Chapter 460-33A WAC (repealed in 2022).

### **WAC 460-20C-015: Cross-Reference to Other Sections**

The proposed rulemaking would create a new rule at WAC 460-20C-015 to provide cross-references to other rule chapters pertaining to broker-dealers and salespersons. The rule replaces WAC [460-22B-020](#). As compared to the existing rule, the proposed rule:

- Adds a reference to Chapter 460-21C WAC, the rule chapter pertaining to the provision of broker-dealer services at financial institutions.
- Removes outdated references to Chapter 460-33A WAC (repealed in 2022).

### **WAC 460-20C-020: Definitions**

The proposed rulemaking would create a new rule at WAC 460-20C-020 to replace the definitions currently in WAC [460-20B-020](#). As compared to the existing rule, the proposed rule:

- Revises the “Branch Office” definition to conform to the FINRA definition.
- Adds definitions for “Chief Compliance Officer” and “Principal” based on FINRA definitions.
- Adds definitions for “FINRA,” “FINRA member,” “Form BD,” “Form BR,” “Form BDW,” “Form U4,” and “Form U5.”
- Adds a definition for “Solicited” based on [Securities Act Interpretive Statement 16](#).

### **WAC 460-20C-025: Electronic Filing through CRD**

The proposed rulemaking would create a new rule at WAC 460-20C-025 that designates CRD to receive and store filings and collect fees with respect to FINRA members. The proposed rule would also specify that filings are made when all fees are received and the filing is accepted by CRD on behalf of Washington.

### **WAC 460-20C-030: Registration Procedure**

The proposed rulemaking would create a new rule, WAC 460-20C-030, to specify the registration procedure for broker-dealers and salespersons. The rule replaces the existing registration procedures currently in WAC [460-20B-030](#) (broker-dealers) and WAC [460-22B-030](#) (salespersons). As compared to the existing rules, the proposed rule:

- Describes the current application procedures for registering as a broker-dealer, including separate procedures for FINRA members and non-members of FINRA.
- Adds a requirement for persons who supervise salespersons in Washington to register as salespersons in Washington.
- Adds a subsection specifying how to withdraw a pending application.
- Adds a subsection regarding registration of successor broker-dealer.
- Adds a subsection requiring the notification of branch office on Form BR.

- Describes the current application procedures for registering as a salesperson of a broker-dealer.

### **WAC 460-20C-035: Canadian Broker-Dealer Exemption**

The proposed rulemaking would create a new Canadian broker-dealer exemption rule at WAC 460-20C-035 to revise and replace the current exemption at WAC [460-20B-035](#). As compared to the existing rule, the proposed rule:

- Clarifies that Canadian broker-dealers must amend their exemption filing if material information changes.
- Clarifies that no annual filing is required to maintain the exemption (unless there are material changes).
- Revises the exemption requirements consistent with current Canadian regulatory procedures and terminology.
- Specifies that broker-dealers using the exemption must submit a consent to service of process (Form U2).

### **WAC 460-20C-040: Examination Requirements**

The proposed rulemaking would create a new rule, WAC 460-20C-040, to specify the examination requirements for principals of broker-dealers and salespersons of broker-dealers. The rule combines and replaces the existing examination requirements currently in WAC [460-20B-040](#) (broker-dealers) and WAC [460-22B-040](#) (salespersons). As compared to the existing rules, the proposed rule:

- Clarifies that a broker-dealer must have at least one principal who has passed the Series 24 at all times.
- Adopts the NASAA Model Rule: Examination Requirements for Broker-Dealer Agents. This Model Rule extends the validity of exam scores for up to five years for persons who participate in the FINRA Maintaining Qualifications Program and the NASAA Examination Validity Extension Program.

### **WAC 460-20C-045: Notice of Termination of Pending Applications**

The proposed rulemaking would create a new rule at WAC 460-20C-045 that sets forth a procedure for the termination of pending applications on which the applicant has taken no action for nine months. The proposed rule requires the Securities Division to provide notice that the Division will terminate the inactive application in 30 days unless the applicant responds in writing showing good cause why the application should be continued as a pending application. The rule is consistent with RCW 21.20.275.

### **WAC 460-20C-050: Expiration and Renewal of Registration**

The proposed rulemaking would create a new rule at WAC 460-20C-050 regarding the expiration and renewal of registration for broker-dealers and salespersons. The rule replaces the existing provision currently in WAC [460-20B-050](#) (broker-dealers) and WAC [460-22B-050](#) (salespersons). As compared to the existing rules, the proposed rule:

- Clarifies the current procedure for filing a renewal application for broker-dealer registration, including separate procedures for FINRA members and non-members of FINRA.
- Clarifies the current procedure for filing a renewal application for salesperson registration.
- Clarifies the procedure for filing a delinquent renewal application.

### **WAC 460-20C-060: Notice of Changes by Broker-Dealers**

The proposed rulemaking would create a new rule at WAC 460-20C-060, to revise and replace the rule currently at WAC [460-20B-060](#) specifying the requirement of broker-dealers to file amendments to notify the director of material changes. As compared to the existing rule, the proposed rule:

- Adds a statement to clarify that the broker-dealer must amend Form BD if there is a “material change” or the information in the Form becomes "inaccurate or incomplete in any material respect." This language is consistent with RCW 21.20.090 and RCW 21.20.100(3). In contrast, the current rule specifies that the broker-dealer must amend upon “any change.”
- Clarifies the procedures for filing amendments to Form BD.
- Adds a non-exclusive list of changes that are considered material.
- Removes the indication that amendments must be filed “in any event within thirty days after the change occurs.” The remaining language continues to require that amendments be made “promptly,” which is consistent with RCW [21.20.100](#)(3) and SEC Rule 15b3-1.
- Clarifies that broker-dealers must file amendments to Form U4 on behalf of their salespersons if there is a “material change” or the information in the Form U4 become "inaccurate or incomplete in any material respect."

### **WAC 460-20C-080: Mass Transfer of Salespersons**

The proposed rulemaking would create a new rule at WAC 460-20C-080 to describe the procedure for completing a mass transfer of salespersons from one broker-dealer to another. The proposed rule provides as follows:

**FINRA members:** At least 30 days prior to the effective date of transfer, a broker-dealer that is a member of FINRA and is transferring salespersons to another member of FINRA must file a roster of all the salespersons the broker-dealer intends to transfer, together with an indication of whether any salesperson has disclosable items in Section 14 of Form U4

and the current transfer fee of \$25 per salesperson as specified in RCW 21.20.340(9)(b). These provisions are intended to supplement and not supersede any FINRA policies with respect to the mass transfer of salespersons.

**Non-Members of FINRA:** At least 30 days prior to the effective date of transfer, a transferring broker-dealer that is not a member of FINRA must file the Forms U4 for each salesperson and the current transfer fee of \$25 fee per salesperson as specified in RCW 21.20.340(9)(b).

### **WAC 460-20C-090: Termination of Broker-Dealer**

The proposed rulemaking would create a new rule at WAC 460-20C-090 regarding the termination of broker-dealer registration. The proposed rule requires the broker-dealer to file a Form BDW to terminate its registration. The proposed rule specifies that the date of the termination of the registration will be 60 days from the date of the filing of the Form BDW, unless the registrant has any open customer accounts in Washington or a revocation or suspension proceeding is pending. The rule further provides:

- The settlement of any open customer accounts is a condition of termination.
- If a revocation or suspension proceeding is pending, termination becomes effective upon such conditions as the director may determine.
- If no proceeding is pending or commenced at the time of the filing of Form BDW, and termination automatically becomes effective, the director may commence a revocation or suspension proceeding under RCW 21.20.110(1)(b) within one (1) year after withdrawal becomes effective and may enter a revocation or suspension order as of the last date on which registration was effective.

### **WAC 460-20C-100: Termination of Salespersons**

The proposed rulemaking would create a new rule at WAC 460-20C-100 regarding the procedure to terminate salesperson registration. The rule replaces the provision at WAC [460-20B-060\(3\)](#), which specifies the requirement of broker-dealers to file a Form U5 to notify the director of the termination of the association or employment of a salesperson. As compared to the existing rule, the proposed rule adds the following provisions:

- The date of termination of the registration is the actual date of the termination of the employment or association with the broker-dealer.
- If a revocation or suspension proceeding is pending against the salesperson at the time of the submission of the Form U5, termination becomes effective upon such conditions as the director may determine.
- If no proceeding is pending or commenced at the time of the filing of the Form U5, and termination automatically becomes effective, the director may commence a revocation or suspension proceeding under RCW 21.20.110(1)(b) within one (1) year after withdrawal

becomes effective and may enter a revocation or suspension order as of the last date on which registration was effective.

### **WAC 460-20C-110: Minimum Capital Requirements**

The proposed rulemaking would create a new minimum capital requirements rule at WAC 460-20C-100 to replace the rules currently at WAC [460-21B-030](#) and WAC [460-21B-040](#). As compared to the existing rules, the proposed rule:

- Specifies that broker-dealers must comply with the minimum capital requirements in SEC Rule 15c3-1.
- Specifies that FINRA members must comply with SEC Rule 17a-11. However, if a broker-dealer is required to give notification to the SEC for failure to meet minimum capital requirements under SEC Rule 17a-11, the broker-dealer is only required to notify the director upon request.
- Specifies that broker-dealers that are not members of FINRA must provide notification to the director if the broker-dealer fails to comply with net capital requirements. The broker-dealer must provide notification in the form of a Financial and Operational Combined Uniform Single (FOCUS) Report.

### **WAC 460-20C-120: Reserve and Custody Requirements**

The proposed rulemaking would create a new rule at WAC 460-20C-120 to state that broker-dealers must comply with the customer protection reserves and custody of securities requirements set forth in SEC Rule 15c3-3.

### **WAC 460-20C-130: Books and Records of Broker-Dealers**

The proposed rulemaking would create a new books and records rule at WAC 460-20C-130 to replace the rule currently at WAC [460-21B-050](#). As compared to the existing rule, the proposed rule:

- Adds that broker-dealers must comply with SEC Rules 10b-10, 15g-2(c), 15g-4(b)(2), 15g-5(b)(2), 17a-2(c), 17a-8, and 17a-13(b)(5). As in the current rule, broker-dealers must also comply with SEC Rule 17a-3, 17a-4, and 15c-11.
- Removes an outdated reference to repealed SEC Rule 15c2-6.
- Adds a subsection addressing how federal defined terms correlate to defined terms under the Securities Act of Washington (e.g., “associated person” correlates to “salesperson”)
- Adds a subsection requiring members of Self-Regulatory Organizations to maintain all the records that the Organization requires you to maintain.
- Adds a subsection stating that records may be kept in paper or electronic format.
- Adds a subsection that includes language from SEC Rule 17a-4 regarding how records must be maintained.



- Adds a subsection stating that the broker-dealer must make the records required to be maintained under the rule easily accessible for inspection by state examiners. The subsection also requires that during an examination authorized by RCW [21.20.100](#)(4), the broker-dealer must honor all requests by state examiners to have physical access to all areas of the broker-dealer’s office.

### **WAC 460-20C-140: Financial Reporting Requirements**

The proposed rulemaking would create a new financial reporting requirements rule at WAC 460-20C-140. The proposed rule provides as follows:

**FINRA Members.** FINRA broker-dealers with “principal business address” or “firm main address” as disclosed on Form BD in Washington must file annually with the director through the eFOCUS portal the financial statements required to be filed with the SEC or its designee. Other FINRA broker-dealers registered in Washington must file financial statements only upon request.

#### **Non-Members of FINRA.**

- Non-members of FINRA must file annually with the director financial statements that have been prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant. Filings must be made within 120 days of the end of the broker-dealer’s fiscal year through the Securities Division’s eFin electronic filing system.
- Non-members of FINRA with “principal business address” or “firm main address” as disclosed on Form BD in Washington also must file quarterly Financial and Operational Combined Uniform Single (FOCUS) Reports upon request through the eFin electronic filing system.

### **WAC 460-20C-150: Supervision of Salespersons and Employees**

The proposed rulemaking would create a supervision rule at WAC 460-20C-150 to replace the rule currently at WAC [460-21B-070](#). As compared to the existing rule, the proposed rule:

- Adds that the broker-dealer also must reasonably supervise employees (in addition to its salespersons).
- Adds that the broker-dealer must comply with supervision requirements set forth in FINRA conduct rules.
- Removes existing requirement that supervisors of salespersons located in Washington have their principal place of business in Washington or a contiguous state.
- Adds that the broker-dealer must provide training to its employees who are salespersons regarding the financial exploitation of vulnerable adults if such employees have contact with customers and access to account information on a regular basis and as part of their jobs. The training must comply with the requirements under RCW [74.34.220](#)(3). Please note that providing this training is an existing requirement for broker-dealers and other



financial institutions in Washington under the Abuse of Vulnerable Adults Act, RCW 74.34.

- Adds a subsection stating that the director may require heightened supervision as a condition of registration for salespersons with a history of past misconduct or industry or regulatory-related incidents that may pose a risk to customers. The director may require the submission of a written heightened supervisory plan. The heightened supervision plan specifications are based on FINRA Regulatory Notice 18-15, except that the proposed rule specifies that heightened supervision plan may also include restrictions on the sale of certain products by the salesperson.

### **WAC 460-20C-160: Fraudulent Practices**

The proposed rulemaking would create a new fraudulent practices rule at WAC 460-20C-160 to replace the rule currently at WAC [460-21B-008](#). As compared to the existing rule, the proposed rule:

- Adds a fraudulent practice adapted from FINRA rule 3220 regarding the giving of certain gifts in excess of one hundred dollars per individual per year where the gift is in relation to the business of the employer of the recipient.
- Adds that it is a fraudulent practice to make false or misleading statements in examinations or other proceedings with the Securities Division or in documents filed with the Securities Division.
- Adds that it is a fraudulent practice to hold out as providing investment advisory services when not registered as an investment adviser.
- Adds that the rule applies to salespersons as well as broker-dealers.
- Revises subsection (5) to conform language to the corresponding, near-identical provision in the dishonest or unethical practices rule for broker-dealers (currently at WAC [460-21B-060](#)(19)).
- Expands subsection (7) to define “boiler room tactics.”

### **WAC 460-20C-170: Excessive Trading**

The proposed rulemaking would create a new excessive trading rule at WAC 460-20C-170 to replace the churning rule currently at WAC [460-21B-010](#). As compared to the existing rule, the proposed rule makes the following revisions:

- Specifies that the director may consider cost-to-equity ratio and turnover ratio, as well as other methods, to determine whether trading is excessive.
- Adds references to RCW [21.20.035](#) (unlawful purchases or sales for customer’s account) and the dishonest or unethical practices provisions in the proposed rulemaking chapter that pertain to excessive trading.

### **WAC 460-20C-180: Transmission or Maintenance of Payments Received in Connection with Underwritings**

The proposed rulemaking would create a new rule at WAC 460-20C-180 to replace the rule currently at WAC [460-21B-020](#). There are no substantive changes to the rule.

### **WAC 460-20C-190: Communications with the Public**

The proposed rulemaking would create a new rule at WAC 460-20C-190 regarding broker-dealer and salesperson communications with the public. The proposed rule adopts the content standards set forth in FINRA Rule 2210(d)(1)(A), (B), (D), (E), and (d)(3).

The proposed rule requires that communications be based on principles of fair dealing and good faith, avoid untrue or misleading statements or omissions, and provide details and explanations appropriate to the audience to which they are directed. The proposed rule also requires that retail communications and correspondence identify the broker-dealer and state any relationship the broker-dealer has to other persons named in the communication.

### **WAC 460-20C-200: Deferred Variable Annuities**

The proposed rulemaking would create a new rule at WAC 460-20C-200 regarding the sale of deferred variable annuities by broker-dealers and salespersons. The proposed rule adopts the provisions of FINRA Rule 2330.

In addition, subsection (6) of the proposed rule includes a provision based on Regulation Best Interest. This provision requires, prior to recommending the purchase or exchange of a deferred variable annuity to a retail customer, that the salesperson or broker-dealer make inquiry regarding other reasonably available securities and investment strategies offered by the broker-dealer that could achieve the retail customer's investment objectives.

### **WAC 460-20C-210: Dishonest or Unethical Business Practices – Broker-Dealers**

The proposed rulemaking would create a new dishonest or unethical practices rule for broker-dealers at WAC 460-20C-210 to replace the rule currently at WAC [460-21B-060](#). The new rule revises existing unethical practices and adopts additional unethical practices. As compared to the existing rule, the proposed rule makes the following changes:

- Introduction: Adds language from the NASAA Dishonest or Unethical Practices of Broker-Dealers Model Rule that states broker-dealers must observe high standards of commercial honor and just and equitable principles of trade in conducting their business.
- Subsection (3): Expands existing language to add that in determining suitability, a broker-dealer must make inquiry into “the customer’s age, other investments, tax status, investment experience, investment time horizon, liquidity needs, and risk tolerance.”

These additional components of customer's investment profile are included in FINRA Rule 2111(a). Compare to current WAC [460-21B-060](#)(3).

- Subsection (7): Removes the clause “promptly after the initial transaction in the account.” Compare to current WAC [460-21B-060](#)(6).
- Subsection (9): Removes the clause “promptly after the initial transaction.” Compare to current WAC [460-21B-060](#)(8).
- Subsection (12): Revises the term “unreasonable and inequitable fees” to “unreasonable and inequitable compensation, fees, concessions, discounts, commissions, or other allowances.” Compare to current WAC [460-21B-060](#)(11).
- Subsection (15): Adds the following as examples of manipulative, deceptive, or fraudulent devices: (d) front running (language derived from FINRA Rule 5270); (e) trading ahead (language derived from FINRA Rule 5320); and (f) aggressive, high-pressure, or deceptive marketing tactics. Compare to current WAC [460-21B-060](#)(14).
- Subsection (18): Adds language designed to include influencer or solicitor communications, customer correspondence, and social media and electronic communication, and adds reference to proposed rule at WAC 460-20C-190. Compare to current WAC [460-21B-060](#)(17).
- Subsection (20): Adds language to conform to proposed communications rule at WAC 460-20C-160(5). Compare to current WAC [460-21B-060](#)(19).
- Subsection (21): Adds language to require response “within 14 calendar days.” Compare to current WAC [460-21B-060](#)(20).
- Subsection (25): Adds references to other financial regulators. Compare to current WAC [460-21B-060](#)(24).
- Subsection (26): Adds language to incorporate the fraudulent practices specified in WAC 460-20C-160. This subsection currently refers only to excessive trading as a fraudulent practice. Compare to current WAC [460-21B-060](#)(25).

In addition, the proposed rule adds the following new unethical practices:

- New Subsection (4): Making a recommendation of any security transaction or investment strategy involving securities (including account recommendations) to a retail customer if the recommendation does not comply with the obligations set forth in Regulation Best Interest
- New Subsection (28): Operating a securities business while unable to meet current liabilities, or violating any statutory provision, rule, or order relating to minimum capital or surety bond.
- New Subsection (29): Extending, arranging for, or participating in arranging for credit to a customer in violation of any federal law or regulation, including but not limited to 15 U.S.C 78k(d) or 12 C.F.R. 220.7.
- New Subsection (30): Failing to refrain from soliciting prospective customers who have informed the broker-dealer that such person does not want to be solicited, or conducting business by telephone at unreasonable times.
- New Subsection (31): Failing to disclose to a person purchasing securities on the premises of a depository institution that such investment is not insured by the Federal Deposit Insurance Corporation or the National Credit Union Association (as applicable), is not a deposit or other obligation of the depository institution or guaranteed by the

depository institution, and is subject to investment risk; or failing to cause a written disclosure statement to be presented to, and signed by such person, acknowledging that such person has received such information.

- New Subsection (32): Altering or creating any document relevant to or on the books and records of any broker-dealer, investment adviser, bank, credit union, insurance company, or commodities futures business with any entry or deletion which is materially false or misleading.
- New Subsection (33): Failing to comply with a suspension or bar order of the Securities and Exchange Commission, FINRA, any other self-regulatory organization, or any other securities regulator.
- New Subsection (34): Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited.
- New Subsection (35): Engaging in acts or practices that constitute deceptive market-timing in the trading of securities, including, but not limited to: (a) breaking a trade into smaller trades to avoid detection; or (b) using multiple accounts, nominees, agent numbers, or multiple agents or representatives to avoid breakpoints, internal controls, exception reports, or other forms of firm or regulatory supervision.
- New Subsection (36): Engaging in acts or practices that constitute deceptive sales practices in the trading of mutual funds, including but not limited to: (a) recommending mutual funds just under breakpoints; (b) recommending a share class that does not align with customers' needs; or (c) recommending a mutual fund switch that does not align with customers' needs.
- New Subsection (37): Disclosing the identity, investment, or other financial information of any customer or former customer unless required by law to do so, or unless consented to by the customer.
- New Subsection (38): Failing to disclose in any retail communications, correspondence, or other materials used in connection with the promotion or transaction of securities business in Washington the name of the broker-dealer or the name under which the broker-dealer's business is primarily conducted as disclosed on Form BD. For purposes of this subsection, "other materials" include, but are not limited to, business cards, business stationery, and display signs.
- New Subsection (39): Representing that securities will be listed or that application for listing will be made on a securities exchange or the National Association of Securities Dealers Automated Quotations (NASDAQ) system or other quotation system without reasonable basis in fact for the representation.
- New Subsection (40): Engaging in any act, practice, or course of business which is fraudulent, deceptive, manipulative, or unethical.
- New Subsection (41): 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.
- New Subsection (42): Making, in the solicitation of customers, 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 it was made, not misleading.
- New Subsection (43): Failing to pay and fully satisfy any final judgment or arbitration award resulting from an investment-related, customer-initiated arbitration or court

proceeding, unless alternative payment arrangements are agreed to between the customer and the broker-dealer, in writing, and the broker-dealer complies with the terms of the alternative payment arrangement.

- New Subsection (44): Attempting to avoid payment of any final judgment or arbitration award resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the broker-dealer, in writing, and the broker-dealer complies with the terms of the alternative payment arrangement.
- New Subsection (45): Failing to pay and fully satisfy and fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the broker-dealer by the Securities and Exchange Commission, the securities or other financial services regulator of any state or province, or any self-regulatory organization.
- New Subsection (46): Accessing a customer's account by using the customer's own unique identifying information (such as username and password).
- New Subsection (47): Failing to provide training regarding the financial exploitation of vulnerable adults pursuant to RCW 74.34.220 to employees who are required to be registered as salespersons under RCW 21.20.040 if such employees have contact with customers and access to account information on a regular basis and as part of their jobs.
- New Subsection (48): Failing to establish, maintain, and enforce a business continuity and succession plan that identifies procedures to be followed in the event of an emergency or significant business disruption, including a disruption caused by the loss of principals and other key persons.
- New Subsection (49): Paying, directly or indirectly, any compensation, fees, concessions, discounts, commissions, or other allowances to any person that is not registered as a broker-dealer or salesperson under applicable state or federal securities laws but, by reason of receipt of such payment and the activities related thereto, is required to be so registered under state or federal securities laws.
- New Subsection (50): Allowing an individual who is not registered as a salesperson in Washington to enter trades on behalf of retail customers of the broker-dealer who are located in Washington, unless an exemption from salesperson registration would apply.
- New Subsection (51): Receiving fees or commissions on customer accounts or holdings if such fees or commissions are made unreasonable because there is no salesperson of the broker-dealer assigned to the account who currently provides the specific services for which the fees or commissions are charged, except as permitted under FINRA Rule 2040(b).

### **WAC 460-20C-220: Dishonest or Unethical Business Practices – Salespersons**

The proposed rulemaking would create a new dishonest or unethical practices rule at WAC 460-20C-210 to replace the rule currently at WAC [460-22B-090](#). The new rule revises existing unethical practices and adopts additional unethical practices. As compared to the existing rule, the proposed rule makes the following changes:

- Introduction: Adds language from the NASAA Dishonest or Unethical Practices of Broker-Dealers Model Rule that states broker-dealers must observe high standards of commercial honor and just and equitable principles of trade in conducting their business.
- Subsection (7): Expands existing language to add that in determining suitability, a salesperson must make inquiry into “the customer’s age, other investments, tax status, investment experience, investment time horizon, liquidity needs, and risk tolerance.” These additional components of customer’s investment profile are included in FINRA Rule 2111(a). Compare to current WAC [460-22B-090](#)(7).
- Subsection (12): Removes the clause “promptly after the initial transaction in the account.” Compare to current WAC [460-22B-090](#)(10).
- Subsection (16): Adds the following as examples of manipulative, deceptive, or fraudulent devices: (d) front running (language derived from FINRA Rule 5270); and (e) trading ahead (language derived from FINRA Rule 5320). Compare to current WAC [460-22B-090](#)(13).
- Subsection (21): Adds language designed to include influencer or solicitor communications, customer correspondence, and social media and electronic communication, and adds reference to proposed communications rule at WAC 460-20C-190. Compare to current WAC [460-22B-090](#)(15).

In addition, the proposed rule adds the following new unethical practices:

- New Subsection (8): Recommending the purchase, sale, or exchange of any security or investment strategy involving a security without reasonable grounds to believe that the transaction is suitable based on the performance of reasonable diligence to understand the nature of the recommended security or investment strategy and its potential risks and rewards for investors.
- New Subsection (9): Making a recommendation of any security transaction or investment strategy involving securities (including account recommendations) to a retail customer if the recommendation does not comply with Regulation Best Interest.
- New Subsection (15): Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless such salesperson knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by the broker-dealer, or by any person for whom the salesperson is acting or with whom the salesperson is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer.
- New Subsection (17): Using aggressive, high-pressure, or deceptive sales practices or marketing tactics to affect the market price of the security.
- New Subsection (18): Using aggressive, high-pressure, or deceptive sales practices or marketing tactics to make unsuitable recommendations.
- New Subsection (26): Using any term or abbreviation thereof in a manner that misleadingly states or implies that a person has special expertise, certification, or training in financial planning, including, but not limited to, the misleading use of a senior-specific certification or designation as set forth in WAC 460-25A-020.
- New Subsection (27): Contradicting or negating the importance of any information contained in a prospectus or any other offering materials with the intent to deceive or

mislead or using any advertising or sales presentation in a deceptive or misleading manner.

- New Subsection (28): Extending, arranging for, or participating in arranging for credit to a customer in violation of any federal law or regulation, including but not limited to 15 U.S.C 78k(d) (as amended effective September 23, 1994) or 12 C.F.R. 220.7 (as amended effective April 1, 1998).
- New Subsection (29): Altering or creating any document relevant to or on the books and records of any broker-dealer, investment adviser, bank, credit union, insurance company, or commodities futures business with any entry or deletion which is materially false or misleading.
- New Subsection (30): Failing to comply with a suspension or bar order of the Securities and Exchange Commission, FINRA, any other self-regulatory organization, or any other securities regulator.
- New Subsection (31): Engaging in acts or practices that constitute deceptive market-timing in the trading of securities, including, but not limited to: (a) Breaking a trade into smaller trades to avoid detection; or (b) using multiple accounts, nominees, agent numbers, or multiple agents or representatives to avoid breakpoints, internal controls, exception reports, or other forms of firm or regulatory supervision.
- New Subsection (32): Engaging in acts or practices that constitute deceptive sales practices in the trading of mutual funds, including but not limited to: (a) recommending mutual funds just under breakpoints; (b) recommending a share class that does not align with customers' needs; or (c) recommending a mutual fund switch that does not align with customers' needs.
- New Subsection (33): Disclosing the identity, investment, or other financial information of any customer or former customer unless required by law to do so, or unless consented to by the customer.
- New Subsection (34): Failing to disclose in any retail communications, correspondence, or other materials used in connection with the promotion or transaction of securities business in Washington the name of the salesperson's associated broker-dealer or the name under which the broker-dealer's business is primarily conducted as disclosed on Form BD. For purposes of this subsection, "other materials" include, but are not limited to, business cards, business stationery, and display signs.
- New Subsection (35): Representing that securities will be listed or that application for listing will be made on a securities exchange or the National Association of Securities Dealers Automated Quotations (NASDAQ) system or other quotation system without reasonable basis in fact for the representation.
- New Subsection (36): Engaging in any act, practice, or course of business which is fraudulent, deceptive, manipulative, or unethical.
- New Subsection (37): 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.
- New Subsection (38): Making, in the solicitation of customers, 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 it was made, not misleading.



- New Subsection (39): Failing to pay and fully satisfy any final judgment or arbitration award resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and salesperson, in writing, and the salesperson complies with the terms of the alternative payment arrangement.
- New Subsection (40): Attempting to avoid payment of any final judgment or arbitration award resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the salesperson, in writing, and the salesperson complies with the terms of the alternative payment arrangement.
- New Subsection (41): Failing to pay and fully satisfy and fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the broker-dealer or salesperson by the Securities and Exchange Commission, the securities or other financial services regulator of any state or province, or any self-regulatory organization.
- New Subsection (42): Accessing a customer's account by using the customer's own unique identifying information (such as username and password).

**Repealer: Chapter 460-20B WAC**

The existing rules in Chapter **460-20B** WAC would be repealed upon adoption of the proposed combined chapter.

**Repealer: Chapter 460-21B WAC**

The existing rules in Chapter **460-21B** WAC would be repealed upon adoption of the proposed combined chapter.

**Repealer: Chapter 460-22B WAC**

The existing rules in Chapter **460-22B** WAC would be repealed upon adoption of the proposed combined chapter.