

## **RULE**

### **Office of the Governor Office of Financial Institutions**

#### **Dishonest or Unethical Practices (LAC 10:XIII.1201 and 1205)**

In accordance with the Louisiana Securities Law (hereinafter “the LSL”), R.S. 51:701, et seq., and particularly, R.S. 51:704 A.(10), and the Louisiana Administrative Procedure Act, R.S. 49:950, et seq., the commissioner of Financial Institutions, in his capacity as the Commissioner of Securities (hereinafter “the Commissioner”) adopts LAC 10:XIII.1201-1205, a Rule illustrating examples of dishonest or unethical practices providing grounds for suspension or revocation of registration. Such examples are illustrative only and shall not be deemed exclusive.

This Rule is necessary to carry out the provisions of the LSL where such action is consistent with the public interest and with the purpose fairly intended by the policy and provisions of the LSL.

#### **Title 10**

### **FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES AND UCC**

#### **Part XIII. Investment Securities Subpart 1. Securities**

#### **Chapter 12. Dishonest or Unethical Practices**

##### **§1201. General**

A. Any dealer, salesman, investment adviser, or investment adviser representative who engages in one or more of the following practices set out in Section 1203 or Section 1205 shall be deemed to have engaged in dishonest or unethical practices as provided by R.S. 51:704 A.(10), and such conduct may constitute grounds for suspension or revocation of registration or such other action authorized by statute. This Rule is not intended to be all inclusive, and thus, acts or practices not enumerated herein may also be deemed to be dishonest or unethical

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:704 A(10)

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 38:3169 (December 2012).

##### **§1203. Dealers and Salesmen**

A. *Dealers and Salesmen*—includes the following actions:

1. engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any customer or in the payment upon request of free credit balances reflecting completed transactions of any customer;
2. inducing trading in a customer’s account which is excessive in size or frequency in view of the financial resources and character of the account;
3. recommending to a customer the purchase, sale or exchange of a security without reasonable grounds to believe that the transaction or recommendation is

suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs and other relevant information known by the dealer;

4. executing a transaction on behalf of a customer without authorization to do so;
5. exercising discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price, or both, for the execution of orders;
6. executing a transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;
7. failing to segregate customers' free securities or securities held in safekeeping;
8. hypothecating a customer's securities without having a lien thereon unless the dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by rules of the Securities and Exchange Commission;
9. entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;
10. failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include information set forth in the final prospectus;
11. charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping or custody of securities and other services related to its securities business;
12. offering to buy from or sell to a person a security at a stated price unless the dealer or salesman is prepared to purchase or sell the security at such price and under the conditions that are stated at the time of the offer to buy or sell;
13. representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless the dealer or salesman knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the dealer, or by a person for whom the dealer is acting, or by a person with whom the dealer is associated in the distribution, or by a person controlled by, controlling or under common control with the dealer;
14. effecting a transaction in, or inducing the purchase or sale of, a security by means of a manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include:
  - a. effecting a transaction in a security which involves no change in the beneficial ownership thereof;
  - b. entering an order for the purchase or sale of a security with the knowledge that an order of substantially the same size, at substantially the same time, and substantially the same price, for the sale of the security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or

a false or misleading appearance with respect to the market for the security. Nothing in this subsection prohibits a dealer from entering bona fide agency cross transactions for its customers;

- c. effecting, along or with one or more other persons, a series of transactions in a security creating actual or apparent active trading in the security or raising or depressing the price of the security, for the purpose of inducing the purchase or sale of the security by others;
15. guaranteeing a customer against loss in a securities account of the customer or in a securities transaction effected with or for the customer;
16. publishing or circulating, or causing to be published or circulated, a notice, circular, advertisement, newspaper article, investment service or communication of any kind which purports to report a transaction as a purchase or sale of a security unless the dealer or salesman believes that the transaction was a bona fide purchase or sale of the security; or which purports to quote the bid price or asked price for a security, unless the dealer believes that the quotation represents a bona fide bid for, or offer of, the security;
17. using an advertising or sales presentation in such a fashion as to be deceptive or misleading;
18. failing to disclose that the dealer is controlled by, controlling, affiliated with, or under common control with the issuer of a security before entering into a contract with or for a customer for the purchase or sale of the security. If the disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;
19. failing to make a bona fide public offering of all of the securities allotted to a dealer for distribution, whether acquired as an underwriter, a selling group member or from a member participating in the distribution as an underwriter or selling group member;
20. failure or refusal to furnish a customer, upon reasonable request, information to which he is entitled, or to respond to a formal written request or complaint;
21. failing to comply with an applicable provision of the Rules of Fair Practice of the Financial Industry Regulatory Authority or an applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission;
22. engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer without proper authority to do so;
23. effecting securities transactions not recorded on the regular books or records of the dealer, unless the transactions are authorized in writing by the dealer prior to execution of the transaction;
24. establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;
25. sharing directly or indirectly in profits or losses in the account of a customer without the written authorization of the customer;
26. dividing or otherwise splitting a salesman's commissions, profits or other compensation from the purchase or sale of securities with a person not also

registered as a salesman for the same dealer, or for a dealer under direct or indirect common control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:704 A(10)

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 38:3169 (December 2012).

## **§1205. Investment Advisers and Investment Adviser Representatives**

A.1. Investment Advisers and Investment Adviser Representatives—includes the following actions:

- a. recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of a 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 or investment adviser representative;
- b. exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed under oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both;
- c. 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;
- d. placing an order to purchase or sell a security for the account of a client without authority to do so;
- e. 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;
- f. borrowing money or securities from a client unless the client is a dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds;
- g. loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser;
- h. misrepresenting to an advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative, or an employee of the investment adviser; misrepresenting the nature of the advisory services being offered; or misrepresenting fees to be charged for the 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;
- i. providing a report or recommendation to an advisory client prepared by someone other than the investment adviser or investment adviser representative without disclosing that fact. This prohibition does not apply to a situation where the investment adviser or investment adviser representative

- uses published research reports or statistical analyses to render advice or where an investment adviser or investment adviser representative orders the report in the normal course of providing advice;
- j. charging a client an unreasonable advisory fee in light of the type of service to be provided; the experience and expertise of the investment adviser; or the sophistication or bargaining power of the client; or without notice to the client, dividing or otherwise splitting the advisory fee or other compensation derived from the advisory services;
  - k. failing to disclose to clients in writing before advice is rendered a material conflict of interest relating to the investment adviser, the investment adviser representative or an employee of the investment adviser which could reasonably be expected to impair the rendering of unbiased and objective advice including:
    - i. compensation arrangements connected with advisory services to clients which are in addition to compensation from the clients for the services;
    - ii. charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to the advice will be received by the investment adviser, the investment adviser representative or an employee of the investment adviser;
  - l. guaranteeing a client that a specific result will be achieved, gain or no loss, with advice which will be rendered;
  - m. publishing, circulating or distributing an advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940 (15 U.S.C.A. §§80b-1 - 80b-21);
  - n. disclosing the identity, affairs or investments of a client unless required by law to do so, or unless consented to by the client;
  - o. entering into, extending or renewing an investment advisory contract unless the contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of a prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the adviser and that no assignment of the contract shall be made by the investment adviser without the consent of the other party to the contract;
  - p. failing to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of section 204a of the Investment Advisers Act of 1940 (15 U.S.C.A. §80b-4a) and the rules and regulations of the United States Securities and Exchange Commission promulgated thereunder;
  - q. 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.A. §80b-5) and the rules and regulations of the United States Securities and Exchange Commission promulgated thereunder. This applies to all investment advisers and investment adviser representatives registered under section 703 of the LSL notwithstanding whether the investment adviser is exempt from registration with the United States Securities and Exchange

Commission under section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C.A. §80b-3);

- r. to indicate, in an advisory contract, any condition, stipulation or provision binding any person to waive compliance with any provision of the LSL or any other language which may lead a client to believe that legal rights have been restricted or waived;
- s. engaging in any act, practice or course of business which is fraudulent, deceptive or manipulative or contrary to the provisions of section 206(4) of the Investment Advisers Act of 1940 (15 U.S.C.A. §80b-6(4) and the rules and regulations of the United States Securities and Exchange Commission promulgated thereunder. This applies to all investment advisers and investment adviser representatives registered under section 703 of the LSL notwithstanding whether the investment adviser is exempt from registration with the United States Securities and Exchange Commission under section 203(b) of the Investment Advisers Act of 1940;
- t. engaging in conduct or committing any act, directly, indirectly or through or by another person, which would be unlawful for the person to do directly under the provisions of the LSL or any rule, regulation or order issued thereunder, or engaging in other conduct such as nondisclosure, incomplete disclosure or deceptive practices shall be deemed an unethical practice.

2. This Section does not apply to Federally-covered advisers unless the conduct otherwise is actionable under section 712 of the LSL.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51: 704 A. (10)

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 38:3170 (December 2012).

John Ducrest  
Commissioner of Securities

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