

#### **18 NCAC 06A .1414 DISHONEST/UNETHICAL PRACTICES OF DEALERS AND SALESMEN**

(a) All dealers and salesmen shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business and shall give particular attention to any conflicts of interest that may arise or exist. Acts and practices, including but not limited to those set forth in Paragraphs (b), (c), and (d) in this Rule, are considered contrary to such standards and may constitute grounds for denial, suspension or revocation of registration or censure of the registrant or such other action authorized by statute.

(b) Dishonest or unethical business practices in the securities business as used in G.S. 78A-39(a)(2)g. with regard to dealers include, but are not limited to, the following:

- (1) Causing any unreasonable and unjustifiable delay or engaging in a pattern of unreasonable and unjustifiable delays, in the delivery of securities purchased by any of the customers, or in the payment upon request of free credit balances reflecting completed transactions of any of the customers;
- (2) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;
- (3) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the dealer;
- (4) Executing a transaction on behalf of a customer without authorization to do so;
- (5) Exercising any discretionary power in effecting a transaction for customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;
- (6) Extending, arranging for or participating in arranging for credit to a customer in violation of the regulations of the Securities and Exchange Commission or the regulations of the Federal Reserve Board;
- (7) Executing any transaction in a margin account without obtaining from the customer a written margin agreement prior to settlement date for the initial transaction in the account;
- (8) Failing to segregate customers' free securities or securities in safekeeping;
- (9) Hypothecating a customer's securities without having a lien thereon unless a properly executed written consent of the customer is first obtained, except as permitted by rules of the Securities and Exchange Commission;
- (10) 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;
- (11) Entering into a transaction for its own account with a customer with an unreasonable mark-up or mark-down, or with a customer other than a salesman registered with the dealer in which a commission is charged;
- (12) 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 or indeterminate commission or profit;
- (13) Executing orders for the purchase by a customer of securities not registered under the provisions of the Act, unless the securities or transaction are exempt from registration under the Act;
- (14) Engaging in a course of conduct constituting an egregious violation of the rules of a national securities exchange or national securities association of which the dealer is a member with respect to any customer, transaction or business;
- (15) Introducing customer transactions on a "fully disclosed" basis to another dealer or salesman that is not registered under G.S. 78A-37 unless the customer is a person described in G.S. 78A-17(8);
- (16) Unreasonably or unjustifiably 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 all information set forth in the final prospectus;
- (17) Offering to buy from or sell to any person any security at a stated price unless such dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell;
- (18) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless such dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by such dealer, or by any person for whom

- he is acting or with whom he is associated in such distribution, or any person controlled by, controlling or under common control with such dealer;
- (19) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:
    - (A) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;
    - (B) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this Part shall prohibit a dealer from entering bona fide agency cross transactions for its customers;
    - (C) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;
  - (20) Guaranteeing a customer against loss in any securities account of such customer carried by the dealer or in any securities transaction effected by the dealer with or for such customer;
  - (21) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such dealer believes that such quotation represents a bona fide bid for, or offer of, such security;
  - (22) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be distribution of any non-factual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;
  - (23) Failing to disclose to the customer that the dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for such customer for the purchase or sale of such security, and if such 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;
  - (24) 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;
  - (25) Failing or refusing to furnish a customer, upon reasonable request, information to which he is entitled, or to respond to a formal written request or complaint;
  - (26) Establishing, maintaining or operating an account under fictitious name or containing fictitious information;
  - (27) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer;
  - (28) Utilizing an agent or subagent in effecting or attempting to effect purchases or sales of securities where such agent or subagent is not registered as a salesman pursuant to G.S. 78A-37;
  - (29) Associating, affiliating or entering into any arrangement with any person not registered as a dealer pursuant to G.S. 78A-37, for the purpose of engaging in the business of effecting transactions in securities, where the employees of such person, assisting the dealer in effecting transactions in securities, are not either registered as salesmen of the dealer or the activities of these employees are not limited to duties that are exclusively clerical in nature for which the dealer has provided adequate supervision including instruction, training and safeguards against violation of the Act;
  - (30) Associating, affiliating or entering into any arrangement with any person not registered as a dealer pursuant to G.S. 78A-37 for the purpose of engaging in the business of effecting transactions in securities, where such person fails to conspicuously disclose to all customers, in any advertisement or literature published or distributed by such person:

- (A) The identity of the registered dealer;
  - (B) That such person is not subject to regulation by the securities administrator of the State of North Carolina;
  - (C) The manner, form, and amount of compensation, commission or remuneration to be received by such person;
- (31) Representing the availability of financial or investment planning, consultation, or advisement when the representation does not accurately describe the nature of the services offered, the qualifications of the person offering the services, and the method of compensation for the services;
  - (32) Engaging in any act or a course of conduct which resulted in the issuance by a securities agency or administrator of any state of an order to cease and desist the violation of the provisions of any state's securities act or rules (or the equivalent of any such order); or
  - (33) Any other acts or practices that may be determined by the administrator to constitute dishonest or unethical practices in the securities business.
- (c) Dishonest or unethical business practices in the securities business as used in G.S. 78A-39(a)(2)g. with regard to salesmen include, but are not limited to the following:
- (1) Borrowing or engaging in the practice of borrowing money or securities from a customer (other than any institution or organization whose normal business activities include lending or monies), or lending or engaging in the practice of lending money or securities to a customer;
  - (2) Acting as a custodian for money, securities or an executed stock power of a customer;
  - (3) Effecting securities transactions with a customer not recorded on the regular books or records of a dealer which a salesman represents, unless the transactions are disclosed to and authorized in writing by the dealer prior to execution of the transactions;
  - (4) Establishing, maintaining or operating an account under a fictitious name, or containing fictitious information;
  - (5) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the dealer which the salesman represents;
  - (6) Dividing or otherwise splitting commissions, profits, or other compensation from the purchase or sale of securities in this State with any person not also registered as a salesman for the same dealer, or for a dealer under direct or indirect common control;
  - (7) Entering into a transaction for salesman's own account with a customer in which a commission is charged;
  - (8) Entering in a course of conduct constituting an egregious violation of the rules of a national securities exchange or national securities association of which the salesman is a member with respect to any customer, transaction or business;
  - (9) Holding oneself out as representing any person other than the dealer for whom the salesman is registered and, in the case of a salesman whose normal place of business is not on the premises of the dealer, failing to conspicuously disclose the name of the dealer for whom the salesman is registered, when representing the dealer in effecting or attempting to effect purchases or sales of securities;
  - (10) Engaging in conduct specified in Subparagraphs (b)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (12), (13), (15), (16), (19), (20), (21), (22), (25), (26), (31) or (32) of this Rule; or
  - (11) Any other acts or practices that may be determined by the administrator to constitute dishonest or unethical practices in the securities business.
- (d) The conduct set forth in Paragraph (b) and (c) of this Rule is not exhaustive. Engaging in other conduct such as forgery, embezzlement, non-disclosure, incomplete disclosure or misstatement of material facts, or manipulative, deceptive or fraudulent practices shall also be grounds for denial, suspension, or revocation of registration or censure of the registrant.

*History Note: Authority G.S. 78A-39(a)(2)g; 78A-49(a); Eff. January 1, 1984; Amended Eff. October 1, 1988; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.*