

2 **SSB 5195 - H COMM AMD ADOPTED 4-8-93**

3 By Committee on Financial Institutions & Insurance

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5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** A new section is added to chapter 21.20 RCW
8 to read as follows:

9 It is unlawful for a broker-dealer, salesperson, investment
10 adviser, or investment adviser salesperson knowingly to effect or cause
11 to be effected, with or for a customer's account, transactions of
12 purchase or sale (1) that are excessive in size or frequency in view of
13 the financial resources and character of the account and (2) that are
14 effected because the broker-dealer, salesperson, investment adviser, or
15 investment adviser salesperson is vested with discretionary power or is
16 able by reason of the customer's trust and confidence to influence the
17 volume and frequency of the trades.

18 NEW SECTION. **Sec. 2.** A new section is added to chapter 21.20 RCW
19 to read as follows:

20 (1) In recommending to a customer the purchase, sale, or exchange
21 of a security, a broker-dealer, salesperson, investment adviser, or
22 investment adviser salesperson must have reasonable grounds for
23 believing that the recommendation is suitable for the customer upon the
24 basis of the facts, if any, disclosed by the customer as to his or her
25 other security holdings and as to his or her financial situation and
26 needs.

27 (2) Before the execution of a transaction recommended to a
28 noninstitutional customer, other than transactions with customers where
29 investments are limited to money market mutual funds, a broker-dealer,
30 salesperson, investment adviser, or investment adviser salesperson
31 shall make reasonable efforts to obtain information concerning:

- 32 (a) The customer's financial status;
33 (b) The customer's tax status;
34 (c) The customer's investment objectives; and

1 (d) Such other information used or considered to be reasonable by
2 the broker-dealer, salesperson, investment adviser, or investment
3 adviser salesperson or registered representative in making
4 recommendations to the customer.

5 **Sec. 3.** RCW 21.20.110 and 1986 c 14 s 45 are each amended to read
6 as follows:

7 The director may by order deny, suspend, or revoke registration of
8 any broker-dealer, salesperson, investment adviser salesperson, or
9 investment adviser; censure or fine the registrant or an officer,
10 director, partner, or person occupying similar functions for a
11 registrant; or restrict or limit a registrant's function or activity of
12 business for which registration is required in this state; if the
13 director finds that the order is in the public interest and that the
14 applicant or registrant or, in the case of a broker-dealer or
15 investment adviser, any partner, officer, or director:

16 (1) Has filed an application for registration under this section
17 which, as of its effective date, or as of any date after filing in the
18 case of an order denying effectiveness, was incomplete in any material
19 respect or contained any statement which was, in the light of the
20 circumstances under which it was made, false, or misleading with
21 respect to any material fact;

22 (2) Has willfully violated or willfully failed to comply with any
23 provision of this chapter or a predecessor act or any rule or order
24 under this chapter or a predecessor act, or any provision of chapter
25 21.30 RCW or any rule or order thereunder;

26 (3) Has been convicted, within the past five years, of any
27 misdemeanor involving a security, or a commodity contract or commodity
28 option as defined in RCW 21.30.010, or any aspect of the securities or
29 investment commodities business, or any felony involving moral
30 turpitude;

31 (4) Is permanently or temporarily enjoined by any court of
32 competent jurisdiction from engaging in or continuing any conduct or
33 practice involving any aspect of the securities or investment
34 commodities business;

35 (5) Is the subject of an order of the director denying, suspending,
36 or revoking registration as a broker-dealer, salesperson, investment
37 adviser, or investment adviser salesperson;

1 (6) Is the subject of an order entered within the past five years
2 by the securities administrator of any other state or by the federal
3 securities and exchange commission denying or revoking registration as
4 a broker-dealer or salesperson, or a commodity broker-dealer or sales
5 representative, or the substantial equivalent of those terms as defined
6 in this chapter or by the commodity futures trading commission denying
7 or revoking registration as a commodity merchant as defined in RCW
8 21.30.010, or is the subject of an order of suspension or expulsion
9 from membership in or association with a self-regulatory organization
10 registered under the securities exchange act of 1934 or the federal
11 commodity exchange act, or is the subject of a United States post
12 office fraud order; but (a) the director may not institute a revocation
13 or suspension proceeding under this clause more than one year from the
14 date of the order relied on, and (b) the director may not enter any
15 order under this clause on the basis of an order unless that order was
16 based on facts which would currently constitute a ground for an order
17 under this section;

18 (7) Has engaged in dishonest or unethical practices in the
19 securities or investment commodities business;

20 (8) Is insolvent, either in the sense that his or her liabilities
21 exceed his or her assets or in the sense that he or she cannot meet his
22 or her obligations as they mature; but the director may not enter an
23 order against a broker-dealer or investment adviser under this clause
24 without a finding of insolvency as to the broker-dealer or investment
25 adviser;

26 (9) Has not complied with a condition imposed by the director under
27 RCW 21.20.100, or is not qualified on the basis of such factors as
28 training, experience, or knowledge of the securities business; or

29 (10)(a) Has failed to supervise reasonably (~~his or her~~) a
30 salesperson(~~s if he or she is a broker-dealer~~) or (~~his or her~~) an
31 investment adviser salesperson (~~if he or she is an investment adviser.~~

32 ~~The director may by order summarily postpone or suspend~~
33 ~~registration pending final determination of any proceeding under this~~
34 ~~section)). For the purposes of this subsection, no person fails to~~
35 ~~supervise reasonably another person, if:~~

36 (i) There are established procedures, and a system for applying
37 those procedures, that would reasonably be expected to prevent and
38 detect, insofar as practicable, any violation by another person of this
39 chapter, or a rule or order under this chapter; and

1 (ii) The supervising person has reasonably discharged the duties
2 and obligations required by these procedures and system without
3 reasonable cause to believe that another person was violating this
4 chapter or rules or orders under this chapter.

5 (b) The director may issue a summary order pending final
6 determination of a proceeding under this section upon a finding that it
7 is in the public interest and necessary or appropriate for the
8 protection of investors. The director may not impose a fine under this
9 section except after notice and opportunity for hearing. The fine
10 imposed under this section may not exceed five thousand dollars for
11 each act or omission that constitutes the basis for issuing the order.

12 **Sec. 4.** RCW 21.20.005 and 1989 c 391 s 1 are each amended to read
13 as follows:

14 The definitions set forth in this section shall apply throughout
15 this chapter, unless the context otherwise requires:

16 (1) "Director" means the director of licensing of this state.

17 (2) "Salesperson" means any individual other than a broker-dealer
18 who represents a broker-dealer or issuer in effecting or attempting to
19 effect sales of securities, but "salesperson" does not include an
20 individual who represents an issuer in (a) effecting a transaction in
21 a security exempted by RCW 21.20.310 (1), (2), (3), (4), (9), (10),
22 (11), (12), or (13), as now or hereafter amended, (b) effecting
23 transactions exempted by RCW 21.20.320, or (c) effecting transactions
24 with existing employees, partners, or directors of the issuer if no
25 commission or other remuneration is paid or given directly or
26 indirectly for soliciting any person in this state.

27 (3) "Broker-dealer" means any person engaged in the business of
28 effecting transactions in securities for the account of others or for
29 that person's own account. "Broker-dealer" does not include (a) a
30 salesperson, issuer, bank, savings institution, or trust company, (b)
31 a person who has no place of business in this state if the person
32 effects transactions in this state exclusively with or through the
33 issuers of the securities involved in the transactions, other broker-
34 dealers, or banks, savings institutions, trust companies, insurance
35 companies, investment companies as defined in the investment company
36 act of 1940, pension or profit-sharing trusts, or other financial
37 institutions or institutional buyers, whether acting for themselves or
38 as trustees, or (c) a person who has no place of business in this state

1 if during any period of twelve consecutive months that person does not
2 direct more than fifteen offers to sell or to buy into this state in
3 any manner to persons other than those specified in subsection (b)
4 above.

5 (4) "Guaranteed" means guaranteed as to payment of principal,
6 interest, or dividends.

7 (5) "Full business day" means all calendar days, excluding
8 therefrom Saturdays, Sundays, and all legal holidays, as defined by
9 statute.

10 (6) "Investment adviser" means any person who, for compensation,
11 engages in the business of advising others, either directly or through
12 publications or writings, as to the value of securities or as to the
13 advisability of investing in, purchasing, or selling securities, or
14 who, for compensation and as a part of a regular business, issues or
15 promulgates analyses or reports concerning securities. "Investment
16 adviser" also includes financial planners and other persons who, as an
17 integral component of other financially related services, (a) provide
18 the foregoing investment advisory services to others for compensation
19 as part of a business or (b) hold themselves out as providing the
20 foregoing investment advisory services to others for compensation.
21 Investment adviser shall also include any person who holds himself out
22 as a financial planner.

23 "Investment adviser" does not include (a) a bank, savings
24 institution, or trust company, (b) a lawyer, accountant, certified
25 public accountant licensed under chapter 18.04 RCW, engineer, or
26 teacher whose performance of these services is solely incidental to the
27 practice of his or her profession, (c) a broker-dealer, (d) a publisher
28 of any bona fide newspaper, news magazine, or business or financial
29 publication of general, regular, and paid circulation, (e) a radio or
30 television station, (f) a person whose advice, analyses, or reports
31 relate only to securities exempted by RCW 21.20.310(1), (g) a person
32 who has no place of business in this state if (i) that person's only
33 clients in this state are other investment advisers, broker-dealers,
34 banks, savings institutions, trust companies, insurance companies,
35 investment companies as defined in the investment company act of 1940,
36 pension or profit-sharing trust, or other financial institutions or
37 institutional buyers, whether acting for themselves or as trustees, or
38 (ii) during any period of twelve consecutive months that person does
39 not direct business communications into this state in any manner to

1 more than five clients other than those specified in clause (i) above,
2 or (h) such other persons not within the intent of this paragraph as
3 the director may by rule or order designate.

4 (7) "Issuer" means any person who issues or proposes to issue any
5 security, except that with respect to certificates of deposit, voting
6 trust certificates, or collateral-trust certificates, or with respect
7 to certificates of interest or shares in an unincorporated investment
8 trust not having a board of directors (or persons performing similar
9 functions) or of the fixed, restricted management, or unit type; the
10 term "issuer" means the person or persons performing the acts and
11 assuming the duties of depositor or manager pursuant to the provisions
12 of the trust or other agreement or instrument under which the security
13 is issued.

14 (8) "Nonissuer" means not directly or indirectly for the benefit of
15 the issuer.

16 (9) "Person" means an individual, a corporation, a partnership, an
17 association, a joint-stock company, a trust where the interest of the
18 beneficiaries are evidenced by a security, an unincorporated
19 organization, a government, or a political subdivision of a government.

20 (10) "Sale" or "sell" includes every contract of sale of, contract
21 to sell, or disposition of, a security or interest in a security for
22 value. "Offer" or "offer to sell" includes every attempt or offer to
23 dispose of, or solicitation of an offer to buy, a security or interest
24 in a security for value.

25 Any security given or delivered with, or as a bonus on account of,
26 any purchase of securities or any other thing is considered to
27 constitute part of the subject of the purchase and to have been offered
28 and sold for value. A purported gift of assessable stock is considered
29 to involve an offer and sale. Every sale or offer of a warrant or
30 right to purchase or subscribe to another security of the same or
31 another issuer, as well as every sale or offer of a security which
32 gives the holder a present or future right or privilege to convert into
33 another security of the same or another issuer, is considered to
34 include an offer of the other security.

35 (11) "Securities Act of 1933", "Securities Exchange Act of 1934",
36 "Public Utility Holding Company Act of 1935", and "Investment Company
37 Act of 1940" means the federal statutes of those names as amended
38 before or after June 10, 1959.

1 (12) "Security" means any note; stock; treasury stock; bond;
2 debenture; evidence of indebtedness; certificate of interest or
3 participation in any profit-sharing agreement; collateral-trust
4 certificate; preorganization certificate or subscription; transferable
5 share; investment contract; investment of money or other consideration
6 in the risk capital of a venture with the expectation of some valuable
7 benefit to the investor where the investor does not receive the right
8 to exercise practical and actual control over the managerial decisions
9 of the venture; voting-trust certificate; certificate of deposit for
10 a security; certificate of interest or participation in an oil, gas or
11 mining title or lease or in payments out of production under such a
12 title or lease; charitable gift annuity; or, in general, any interest
13 or instrument commonly known as a "security", or any certificate of
14 interest or participation in, temporary or interim certificate for,
15 receipt for, guarantee of, or warrant or right to subscribe to or
16 purchase, any of the foregoing; or any sale of or indenture, bond or
17 contract for the conveyance of land or any interest therein where such
18 land is situated outside of the state of Washington and such sale or
19 its offering is not conducted by a real estate broker licensed by the
20 state of Washington. "Security" does not include any insurance or
21 endowment policy or annuity contract under which an insurance company
22 promises to pay money either in a lump sum or periodically for life or
23 some other specified period.

24 (13) "State" means any state, territory, or possession of the
25 United States, as well as the District of Columbia and Puerto Rico.

26 (14) "Investment adviser salesperson" means a person retained or
27 employed by an investment adviser to solicit clients or offer the
28 services of the investment adviser or manage the accounts of said
29 clients.

30 (15) "Relatives", as used in RCW 21.20.310(11) as now or hereafter
31 amended, shall include:

- 32 (a) A member's spouse;
- 33 (b) Parents of the member or the member's spouse;
- 34 (c) Grandparents of the member or the member's spouse;
- 35 (d) Natural or adopted children of the member or the member's
36 spouse;
- 37 (e) Aunts and uncles of the member or the member's spouse; and
- 38 (f) First cousins of the member or the member's spouse.

1 (16) "Customer" means a person other than a broker-dealer or
2 investment adviser."

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