

***** DRAFT - NOT YET FILED *****

1301:6-3-19

Deceptive practices and good business repute.

(A) No dealer or salesperson shall:

- (1) Engage in any pattern of unreasonable or unjustified delay in the delivery of securities sold;
- (2) Induce trading in a customer's account which is excessive in size or frequency in view of the financial resources of the customer or character of the account;
- (3) Execute a transaction on behalf of a customer without authority to do so;
- (4) Exercise any discretionary authority in selling, pledging, hypothecating or purchasing securities for a customer without first obtaining a manually signed, written authorization from the customer, unless the discretionary authority relates solely to the time or price for execution of orders;
- (5) Sell, purchase, or recommend the sale or purchase of any 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 any other relevant information known to dealer or salesperson;
- (6) Sell, purchase, effect any transaction in or induce the purchase or sale of any security by means of any device, practice, plan, program, design or contrivance declared to be manipulative, deceptive or fraudulent and recognized as such in courts of law or equity, or by any administrative tribunal, state or federal, on or after July 22, 1929, or by the rules, by-laws, code of ethics or other published standard of any self-regulatory association of securities dealers or salesperson of which the dealer or salesperson was a member at the time of the transaction;
- (7) Share any commission, discount, or other remuneration from the purchase or sale of a security with any person not licensed as a dealer or salesperson in Ohio or in the jurisdiction where the purchase or sale of the security took place:
 - (a) Notwithstanding the provisions of paragraph (A)(7) of this rule, a dealer or salesperson:

- (i) May share a commission, discount, or other remuneration from the purchase or sale of a security with:
 - (a) A bank, as that term is defined in division (O) of section 1707.01 of the Revised Code;
 - (b) A bank holding company approved by the board of governors of the federal reserve bank pursuant to the Bank Holding Company Act of 1956, 12 U.S.C. 1841, as amended; or
 - (c) A financial holding company approved by the board of governors of the federal reserve bank pursuant to the Bank Holding Company Act of 1956, 12 U.S.C. 1841, as amended;
 - (ii) May provide to an employee of a bank compensation for the referral of a customer if the compensation is a nominal one-time cash fee of a fixed dollar amount and the payment of the fee is not contingent on whether the referral results in a purchase or sale of a security.
- (8) Enter into any transaction with or for a customer at a price not reasonably related to the current market price of the security involved in the transaction;
 - (9) Fail to disclose, in writing, to a customer prior to the sale of a security that the dealer or salesperson controls, is controlled by, is under common control with, or is affiliated with the issuer of that security;
 - (10) Borrow any money or securities from a customer other than for obligations of dealers arising out of customary option transactions, activity in margin accounts, the maintenance of customer free credit balances, delivery failures in the ordinary course of business, loans from banks and other insured financial institutions, and deposits made pursuant to written subordination agreements or pursuant to securities loan agreements made to cover short positions;
 - (11) Sell or otherwise dispose of any security upon representations contrary to the statements contained in the application for registration or for qualification by exemption or in a manner contrary to the terms of any order of the division relating to the securities;

- (12) Execute any transaction in a margin account without first securing from the customer a manually signed, written margin agreement;
- (13) Share 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 salesperson represents;
- (14) Receive any commission, discount or other remuneration in excess of that provided for in Chapter 1707. of the Revised Code;
- (15) Fail to furnish to a customer purchasing securities in an offering either a final prospectus or a preliminary prospectus and additional documents which would include all information required for a final prospectus, no later than the date of confirmation of the transaction;
- (16) Represent to a customer that the dealer or salesperson will guarantee any person against losses in any securities transaction;
- (17) For securities not listed on a recognized securities exchange or quoted on an automated quotation system, fail to make reasonably available upon request to any person financial statements and related disclosures of the issuer, a profit and loss statement of the issuer, the names of the issuer's proprietor, partners or officers, the nature of the business of the issuer and any other information available to the dealer reasonably necessary for evaluating the desirability or lack of desirability of investing in the securities of an issuer, which information shall not be dated not more than fifteen months prior to the date of delivery by the dealer or salesperson;
- (18) Establish or maintain an account containing fictitious information in order to execute transactions which would otherwise be prohibited; or
- (19) Effect any securities transaction not recorded on the regular books or records of the dealer which the salesperson represents, unless the transaction is authorized in writing by the dealer prior to execution of the transaction.

(B) No dealer shall:

- (1) Fail to institute reasonable procedures and to adopt reasonable precautions designed to avoid the sale or other disposition of any security by a salesperson employed by the dealer upon representations contrary to the statements contained in the registration by description or application for

registration by qualification or in a manner contrary to the terms of any order of the division relating to the securities;

- (2) Fail to segregate customer's free securities or securities held for safekeeping;
- (3) Hypothecate a customer's securities without having a lien thereon unless the dealer first secures from the customer a manually signed, written consent, except as permitted by the rules of the securities and exchange commission;
- (4) Charge 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 or other services related to its securities business;
- (5) Offer to buy from or sell to any person any security at a stated price unless the dealer is prepared to purchase or sell at the price and under the conditions stated at the time of the offer to buy or sell;
- (6) When participating or otherwise financially interested in the primary or secondary distribution of any security which is not admitted to trading on a national securities exchange, represent that a security is being offered to a customer "at market" or at a price reasonably related to the market price unless the dealer 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 any person for whom he is acting or with whom he is associated in the distribution, or any person controlled by, controlling or under common control with the dealer;
- (7) Require any person to purchase any security as a condition of employment;
- (8) Fail to make a bona fide public offering of all of the securities allotted to the 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;
- (9) Fail to reasonably supervise a salesperson or other persons associated with the dealer or to establish reasonable procedures designed to avoid violations of Chapter 1707. of the Revised Code or of Chapter 1301:6-3 of the Administrative Code by salespersons or other persons associated with the dealer; or

- (10) Require any securities customer, by agreement or otherwise, to litigate, arbitrate, or mediate any matter arising out of a sale of securities in this state at a location outside Ohio unless the dealer has clearly disclosed the existence of any requirement to litigate, arbitrate, or mediate outside Ohio prior to the sale of securities giving rise to the dispute to be litigated, arbitrated, or mediated.
- (C) For the protection of investors, the conduct described in paragraphs (A)(1) to (A)(19) and (B)(1) to (B)(10) of this rule shall be defined as deceptive practices or devices in the purchase or sale of securities, as that term is employed in section 1707.19 of the Revised Code.
- (D) In determining "good business repute," as that term is used in sections 1707.15, 1707.151, 1707.16, 1707.161, 1707.163, 1707.165, and 1707.19 of the Revised Code, and paragraph ~~(M)~~(J)(2) of rule 1301:6-3-15 of the Administrative Code, the division shall consider whether the applicant, investment adviser, investment adviser representative, dealer, salesperson, state retirement system investment officer, or bureau of workers' compensation chief investment officer:
- (1) Has engaged in any act or practice declared to be a fraud, fraudulent act, fraudulent practice or fraudulent transaction and recognized as such in courts of law or equity or by any administrative tribunal, state or federal, on or after July 22, 1929, or by the code of ethics of any association of investment advisers, investment adviser representatives, securities salespersons or dealers of which the applicant, investment adviser, investment adviser representative, dealer or salesperson was a member at the time of commission of the prohibited act or practice;
 - (2) Has been the subject of any cease and desist order, permanent or temporary injunction, bar, or consent order against the applicant, investment adviser, investment adviser representative, dealer, salesperson, state retirement system officer, bureau of workers' compensation chief investment officer or any dealer, investment adviser or state retirement system with whom the applicant, investment adviser representative, or salesperson was associated in any capacity at the time the order, injunction, or bar was issued;
 - (3) Has been found guilty of any felony, or of any misdemeanor involving theft, deception, or moral turpitude;
 - (4) Has been found liable for conduct constituting incompetence, misconduct or gross negligence in the sale of securities, in the rendering of investment advice, in any financial services industry, or in acting as a state retirement

system investment officer or acting as a bureau of workers' compensation chief investment officer;

- (5) Exercised management or policy control or has owned ten per cent or more of the voting securities of a firm which has failed in business, made a compromise with creditors, filed a bankruptcy petition, or been declared bankrupt;
- (6) Has been refused or denied membership, registration or licensing by any state or federal agency, by any association of investment advisers, investment adviser representatives, securities salespersons or dealers, by any professional association granted disciplinary or regulatory authority by state or federal law, or by any recognized securities exchange;
- (7) Has been the subject of any suspension, expulsion, bar, revocation, fine, censure or any other disciplinary action by any state or federal agency, by any association of investment advisers, investment adviser representatives, securities salesperson or dealers, by any professional association granted disciplinary or regulatory authority by state or federal law, or by any recognized securities exchange;
- (8) Has violated any provision of paragraph (A) or (B) of this rule, any provision of Chapter 1707. of the Revised Code or any rule promulgated thereunder;
- (9) Has engaged in any conduct which would reflect on the reputation for honesty, integrity, and competence in business and personal dealings of the applicant, investment adviser, investment adviser representative, dealer, salesperson or state retirement system investment officer or bureau of workers' compensation chief investment officer including, but not limited to, forgery, embezzlement, nondisclosure, incomplete disclosure, misstatement of material facts, and manipulative or deceptive practices;
- (10) Has failed to fully satisfy any judgment or award issued by a court of competent jurisdiction, administrative law judge, arbitrator, or mediator in any criminal, civil, administrative, arbitration or mediation proceeding or pursuant to an agreement to settle any such proceeding;
- (11) Has been the subject of any complaint, arbitration or civil litigation that alleges a violation of state or federal law, or the rules or code of ethics of any association of investment advisers, investment adviser representatives, securities salespersons or dealers, any professional association granted disciplinary or regulatory authority by state or federal law, or by any recognized securities exchange, excluding any complaint that has been denied

or any arbitration or civil litigation that resulted in a judgment or an award against the party bringing the action; or

- (12) Has established a reputation for honesty, integrity, and competence in business and personal dealings.

- (E) The rules set out in rule 1301:6-3-44 of the Administrative Code regarding the acts and practices of investment advisers and investment adviser representatives are prescribed for the protection of investors, clients and potential clients.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under:	119.03
Statutory Authority:	1707.20
Rule Amplifies:	1707.19
Prior Effective Dates:	8-3-78; 4-1-83; 1-17-92; 3-18-99; 1-28-00; 2-1-01; 11-15-04; 7-3-06