

51-4.7 Unfair and Dishonest Dealings

The following practices shall be deemed to be “unfair and dishonest dealings” for purposes of section 11-51-410(1)(g), C.R.S.:

- A. Executing a transaction for a customer without legal authority or actual authorization of the customer to do so;
- B. Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by the broker-dealer or sales representative;
- C. Acting in violation of the following SEC Rules

[for purposes of this Rule, the terms “broker” and “dealer” as used in the SEC Rules shall have the same meaning as “broker-dealer” as defined in Section 11-51-201(2), C.R.S., and the term “penny stock” shall have the meaning as set forth in SEC Rule 3a51-1, found at 17 CFR 240.3a51-1]:
 - 1. a. SEC Rule 15c2-6, found at 17 CFR 240.15c2-6;
 - b. SEC Rule 15c2-11, found at 17 CFR 240.15c2-11;
 - 2. Unless the subject transactions are exempt under SEC Rule 15g-1, found at 17 CFR 240.15g-1, or otherwise:
 - a. SEC Rule 15g-2, found at 17 CFR 240.15g-2;
 - b. SEC Rule 15g-3, found at 17 CFR 240.15g-3;
 - c. SEC Rule 15g-4, found at 17 CFR 240.15g-4;
 - d. SEC Rule 15g-5, found at 17 CFR 240.15g-5; or
 - e. SEC Rule 15g-6, found at 17 CFR 240.15g-6;
- D. Failing or refusing, after a solicited purchase of securities by a customer in connection with a principal transaction, to execute promptly sell orders in said securities placed by said customer;
- E. In connection with a principal transaction, imposing as a condition of the purchase or sale of one security, the purchase or sale of another security;
- F. Failure by a sales representative, in connection with a customer's purchase or sale of a security which is not recorded on the books and records of the broker-dealer by which the sales representative is employed or otherwise engaged, to obtain the broker-dealer's

prior written approval of the sales representative's participation in the purchase or sale of the security.

G. Failing to comply with any of the following applicable fair practice or ethical standards contained in the following sections of the FINRA Rules:

1. Section 2000, Duties and Conflicts; and

2. Section 3000, Supervision and Responsibilities Relating to Associated Persons.

H. In connection with the offer or sale of securities by mortgage broker-dealers and mortgage sales representatives:

1. Failing to provide to each investor prior to the time of the sale a written disclosure document which shall contain at least the following:
 - a. A description of the priority of the lien created by the security and the total face amount of any senior lien(s). (A title insurance policy running to the benefit of the purchaser may be provided in lieu of the description of the priority liens);
 - b. A statement as to whether any future advances may have a priority senior to that of the lien created by the security;
 - c. A copy of the most recent property tax statement covering the real property underlying the security;
 - d. The value of the real property underlying the security provided by either the tax assessed value if it is one hundred percent (100%) of the true cash value and is on the same property underlying the security, or an appraisal by an independent appraiser [subsequent to July 1, 1991, this appraisal must be performed by a licensed real estate appraiser under section 12-61-701, *et seq.*, C.R.S.];
 - e. The debtor's payment record on the instrument being sold for the two (2) years immediately preceding the sale or if not available, the payment record to date or a statement that payment records are not available, and a current credit report on the debtor prepared by a credit reporting agency or a current financial statement of the debtor;
 - f. The terms of any senior lien or a copy of the instrument creating the lien and any assignments;
 - g. A statement of any commissions, collection fees, and other costs chargeable to the purchaser of the security;
 - h. A prominent statement of any balloon payments;

- i. In the case of a sale of a note, bond or evidence of indebtedness secured by a mortgage or deed of trust on real estate which is junior to one or more senior liens, a statement of the risk of loss on foreclosure of such senior lien(s); and
 - j. A statement as to whether or not the purchaser of the security will be insured against casualty loss;
- 2. Failing to deliver to the purchaser or licensed escrow agent or title company the original written evidence of the obligation properly endorsed or a lost instrument bond in twice the amount of the face value of the instrument, together with the original or a certified copy of the instrument creating the lien;
- 3. Failing in a timely manner to record or cause to be recorded the instrument creating the lien or assignment of lien involved in the county or counties where the property is located;
- 4. Causing an investor to sign a reconveyance of title, quit claim deed, or any like instrument before such instrument is required in connection with a transaction such as a payoff or a foreclosure;
- 5. Failing to deliver proceeds due to an investor within a reasonable time after receipt by the mortgage broker-dealer; or
- 6. In the case of a mortgage broker-dealer who undertakes to provide to an investor management and collection services in connection with the note, bond or evidence of indebtedness involved, failing to provide in writing to the investor that:
 - a. Payments received will be deposited in a specific loan escrow account immediately upon receipt by the mortgage broker-dealer;
 - b. Investor funds will not be commingled with those of the mortgage broker-dealer or used in any manner not specifically authorized in advance by the investor;
 - c. If the mortgage broker-dealer uses funds of the mortgage broker-dealer to make a payment due from the borrower to the investor, the mortgage broker-dealer may recover the amount of such advance from the specific loan escrow account when the past due payment is received by the mortgage broker-dealer from the borrower; and
 - d. That the mortgage broker-dealer will file a request for notice of default upon any prior encumbrance on the real property securing the obligation that is the subject of the servicing agreement and will promptly notify the investor of any default on such prior encumbrance, or on the obligation.

1. The use of a senior specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be a dishonest and unethical practice in the securities, commodities, and investment business within the meaning of the Colorado Securities Act. The prohibited use of such certifications or professional designation includes, but is not limited to, the following:
 - a. use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;
 - b. use of a nonexistent or self-conferred certification or professional designation;
 - c. use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and
 - d. use of a certification or professional designation that was obtained from a designating or certifying organization that:
 - (1) is primarily engaged in the business of instruction in sales and/or marketing;
 - (2) does not have reasonable standards or procedures for assuring the competency of its designees or certificants;
 - (3) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or
 - (4) does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.
2.
 - a. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of paragraph 1(d) above when the organization has been accredited by:
 - (1) The American National Standards Institute; or

(2) The National Commission for Certifying Agencies.

- b. Certifications or professional designations offered by an organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" may qualify when the certification or professional designation program also specifically meets the paragraph 1(d) requirements listed above.
3. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:
- a. use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and
 - b. the manner in which those words are combined.
4. For purposes of this rule, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:
- a. indicates seniority or standing within the organization; or
 - b. specifies an individual's area of specialization within the organization
- For purposes of this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.
5. Nothing in this rule shall limit the Securities Commissioner's authority to enforce existing provisions of law.