

12.204: Denial, Revocation, Suspension, Cancellation and Withdrawal of Registration

(1) Dishonest and Unethical Practices in the Securities Business.

(a) Broker-dealers. Each broker-dealer shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business. Acts and practices, including, but not limited to the following, are considered contrary to such standards and constitute dishonest or unethical practices which are grounds for imposition of an administrative fine, censure, denial, suspension or revocation of a registration, or such other appropriate action:

...

4. Except as provided in 950 CMR 12.207, recommending to a customer an investment strategy, the opening of or transferring of assets to any type of account, or 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 broker-dealer.

...

29. Failing to act in accordance with the duties and standards described in 950 CMR 12.207.

(b) Agents. Each agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of his or her business. Acts and practices, including, but not limited to, the following, are considered contrary to such standards and constitute dishonest or unethical practices in the securities industry and are thereby grounds for imposition of an administrative fine, censure, denial, suspension or revocation of a registration or such other action as is appropriate:

...

8. Engaging in conduct specified in 950 CMR 12.204(1)(a)1., 2., 3., 4., 5., 6., 10., 11., 12., 13., 18., 19., 22., 23., 27., 28., or 29.

12.207: Fiduciary Duty of Broker-Dealers and Agents

(1) The following practices are a non-exclusive list of practices by a broker-dealer or agent which shall be deemed "unethical or dishonest conduct or practices" for purposes of M.G.L. c. 110A, § 204(a)(2)(G):

(a) Failing to act in accordance with a fiduciary duty to a customer when providing investment advice or recommending an investment strategy, the opening of or transferring of assets to any type of account, or the purchase, sale, or exchange of any security.

(b) Failing to act in accordance with a fiduciary duty to a customer during any period in which the broker-dealer or agent:

1. Has or exercises discretion in a customer's account, unless the discretion relates solely to the time and/or price for the execution of the order;
2. Has a contractual fiduciary duty; or
3. Has a contractual obligation to monitor a customer's account on a regular or periodic basis, as such regular or periodic basis is determined by agreement with the customer.

(2) To meet the fiduciary duty, each broker-dealer or agent shall adhere to duties of utmost care and loyalty to the customer.

(a) The duty of care requires a broker-dealer or agent to use the care, skill, prudence, and diligence that a person acting in a like capacity and familiar with such matters would use, taking into consideration all of the relevant facts and circumstances. For purposes of this paragraph, a broker-dealer or agent shall make reasonable inquiry, including:

1. The risks, costs, and conflicts of interest related to all recommendations made and investment advice given;
2. The customer's investment objectives, risk tolerance, financial situation, and needs; and
3. Any other relevant information.

(b) The duty of loyalty requires a broker-dealer or agent to:

1. Disclose all material conflicts of interest;
2. Make all reasonably practicable efforts to avoid conflicts of interest, eliminate conflicts that cannot reasonably be avoided, and mitigate conflicts that cannot reasonably be avoided or eliminated; and
3. Make recommendations and provide investment advice without regard to the financial or any other interest of any party other than the customer.

(c) Disclosing conflicts alone does not meet or demonstrate the duty of loyalty.

(d) It shall be presumed to constitute a breach of the duty of loyalty for a broker-dealer or agent to recommend any investment strategy, the opening of or transferring of assets to a specific type of account, or the purchase, sale, or exchange of any security, if the recommendation is made in connection with any sales contest.

(e) Notwithstanding the foregoing, investment advice or a recommendation regarding the purchase, sale, or exchange of any security in M.G.L. c. 110A, § 402(a)(1) to or for a customer shall be excluded from the scope of 950 CMR 12.207(2)(b).

(3) For purposes of 950 CMR 12.207, the term “customer” shall include current and prospective customers, but shall not include:

(a) A bank, savings and loan association, insurance company, trust company, or registered investment company;

(b) A broker-dealer registered with a state securities commission (or agency or office performing like functions);

(c) An investment adviser registered with the SEC under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or agency or office performing like functions); or

(d) Any other institutional buyer, as defined in 950 CMR 12.205(1)(a)6. and 950 CMR 14.401.

(4) Nothing in 950 CMR 12.207 shall be construed to apply to a person acting in the capacity of a fiduciary to an employee benefit plan, its participants, or its beneficiaries, as those terms are defined in the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001 *et seq.*

(5) Nothing in 950 CMR 12.207 shall be construed to establish any requirements for capital, custody, margin, financial responsibility, making and keeping of records, bonding, or financial or operational reporting for any broker-dealer or agent that differ from, or are in addition to, the requirements established under 15 U.S.C. § 78o(i).

(6) 950 CMR 12.207 shall be enforced as of September 1, 2020.