

WAC 460-24A-005 Definitions. For purposes of this chapter:

(1) **"Advertisement"** means any business card, notice, circular, letter or other written communication addressed to more than one person, or any notice or other announcement in any publication or by electronic means, including online, or by radio or television, which offers:

(a) Any analysis, report, or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell;

(b) Any graph, chart, formula or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or

(c) Any other investment advisory service with regard to securities.

(2) **"Assignment"** means any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, no assignment of an investment advisory contract will be deemed to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after such admission, will be only a minority of the members and will have only a minority interest in the business. An "assignment" does not include a transaction which does not result in a change of actual control or management of the investment adviser.

(3) **"Central Registration Depository"** or **"CRD"** means the electronic filing system operated by FINRA for the registration of broker-dealers, broker-dealer representatives, and investment adviser representatives.

(4) **"Chief compliance officer"** means a supervised person with the authority and resources to develop and enforce the investment adviser's policies and procedures. The individual designated to serve as chief compliance officer must be registered as an investment adviser representative and must have the background and skills appropriate for fulfilling the responsibilities of the position.

(5) **"Control"** means the power, directly or indirectly, to direct the management or policies of a person whether through ownership of securities, by contract, or otherwise. The following persons are presumed to have control:

(a) Each of the investment adviser's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions); and

(b) A person who:

(i) Directly or indirectly has the right to vote twenty-five percent or more of a class of the voting securities of a corporation or limited liability company;

(ii) Has the power to sell or direct the sale of twenty-five percent or more of a class of the voting securities of a corporation or limited liability company;

(iii) Has the right to receive, upon dissolution, or that has contributed, twenty-five percent or more of the capital of a partnership or limited liability company; or

(iv) Is the manager of a limited liability company or the trustee or managing agent of a trust.

(6) "**Custody**" means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them or the ability to appropriate them. An investment adviser has custody if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services the investment adviser provides to clients.

(a) "**Custody**" includes:

(i) Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving them;

(ii) Any arrangement (including a general power of attorney) under which an investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon an investment adviser's instruction to the custodian;

(iii) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives an investment adviser or its supervised person legal ownership of or access to client funds or securities; or

(iv) Any arrangement where the investment adviser requires the payment of advisory fees six months or more in advance and in excess of five hundred dollars per client.

(b) Receipt of checks drawn by clients and made payable to unrelated third parties will not meet the definition of custody if forwarded to the third party within three business days of receipt and the adviser maintains a ledger or other listing of all securities or funds held or obtained inadvertently as set forth in WAC 460-24A-200.

(7) "**Discretionary authority**" means the authority, directly or indirectly, to:

(a) Determine what securities or other property will be purchased or sold by or on behalf of a client;

(b) Make decisions as to what securities or other property will be purchased or sold by or for the benefit of a client even though some other person may have responsibility for such investment decisions; or

(c) Make decisions as to what investment advisers to retain on behalf of a client.

(8) "**FINRA**" means the Financial Industry Regulatory Authority, Inc., the self-regulatory organization for broker-dealers and broker-dealer representatives that is registered as a national securities association with the Securities and Exchange Commission under Section 15A of the Securities Exchange Act of 1934, 15 U.S.C. Sec. 78o.

(9) "**Independent certified public accountant**" means a certified public accountant that meets the standards of independence described in Rule 2-01 (b) and (c) of Regulation S-X, 17 C.F.R. 210.2-01 (b) and (c), as amended effective March 8, 2005.

(10) "**Independent party**" means a person who:

(a) Is engaged by an investment adviser to act as a gatekeeper for the payment of fees, expenses, and capital withdrawals from a pooled investment;

(b) Does not control and is not controlled by and is not under common control with the investment adviser;

(c) Does not have, and has not had within the past two years, a material business relationship, including acting as an independent representative on behalf of a client of the investment adviser, with the investment adviser;

(d) Must not negotiate or agree to have material business relations with an investment adviser, or relationships with entities under common control with an investment adviser, for a period of two years after serving as the person engaged in an independent party agreement; and

(e) Is required to act in the best interest of the limited partners, members, or other beneficial owners.

(11) "**Independent representative**" means a person who:

(a) Acts as an agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners or members, or other beneficial owners;

(b) Does not control, is not controlled by, and is not under common control with the investment adviser;

(c) Does not have, and has not had within the past two years, a material business relationship, including acting as an independent party, with the investment adviser.

(12) "**Investment Adviser Registration Depository**" or "**IARD**" means the electronic filing system operated by FINRA for the registration of investment advisers and submission of filings by exempt reporting advisers.

(13) "**Private fund adviser**" means an investment adviser who provides advice solely to one or more qualifying private funds.

(14) "**Qualified custodian**" means the following independent institutions or entities:

(a) A bank, including a trust company, as defined in section 202 (a) (2) of the Advisers Act, 15 U.S.C. 80b-2 (a) (2), or a savings association as defined in section 3 (b) (1) of the Federal Deposit Insurance Act, 12 U.S.C. 1813 (b) (1), that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act, 12 U.S.C. 1811;

(b) A broker-dealer registered in this state and under section 15 (b) (1) of the Securities Exchange Act of 1934, 15 U.S.C. 78o (b) (1), holding the client assets in customer accounts;

(c) A futures commission merchant registered under section 4f(a) of the Commodity Exchange Act, 7 U.S.C. 6f(a), holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon;

(d) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets; and

(e) The transfer agent for an open-end company as defined in section 5 (a) (1) of the Investment Company Act of 1940, 15 U.S.C. 80a-5 (a) (1), only with respect to shares of the open-end company.

(15) "**Qualifying private fund**" means a private fund that:

(a) Qualifies for the exclusion from the definition of "investment company" provided in section 3 (c) (7) of the Investment Company Act of 1940, 15 U.S.C. 80a-3 (c) (7);

(b) Is not registered under section 8 of the Investment Company Act of 1940, 15 U.S.C. 80a-8; and

(c) Has not elected to be treated as a business development company pursuant to section 54 of Investment Company Act of 1940, 15 U.S.C. 80a-53.

(16) **"Related person"** means any person, directly or indirectly, controlling or controlled by the investment adviser, and any person that is under common control with the investment adviser.

(17) **"Supervised person"** means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser. The definition includes investment adviser representatives, employees, independent contractors, or other associated persons and supervised personnel, or other persons acting on behalf of the investment adviser.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 19-03-133, § 460-24A-005, filed 1/18/19, effective 2/18/19; WSR 14-13-068, § 460-24A-005, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 21.20.450, 21.20.900, 21.20.100, 21.20.050 - [21.20].060. WSR 08-18-033, § 460-24A-005, filed 8/27/08, effective 9/27/08.]