



# PROPOSED RULE MAKING

## CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Financial Institutions, Securities Division

<input checked="" type="checkbox"/> Preproposal Statement of Inquiry was filed as WSR 10-07-089 ; or	<input checked="" type="checkbox"/> Original Notice
<input type="checkbox"/> Expedited Rule Making--Proposed notice was filed as WSR _____; or	<input type="checkbox"/> Supplemental Notice to WSR _____
<input type="checkbox"/> Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).	<input type="checkbox"/> Continuance of WSR _____

**Title of rule and other identifying information:** (Describe Subject)

The Securities Division proposes to amend the investment adviser rules in Chapter 460-24A WAC. The amendments would update various provisions of the investment adviser rules, including the rules regarding examination and registration requirements, financial reporting requirements, custody, performance compensation arrangements, books and records requirements, and unethical business practices. The amendments would add new rule sections addressing compliance policies and procedures, proxy voting, and advisory contracts. In addition, the amendments would create exemptions from registration for certain private fund and venture capital fund advisers. The amendments would repeal WAC 460-24A-058, which defines when an application is considered filed; and make additional updates, clarifications, and changes to the rules.

**Hearing location(s):**

Department of Financial Institutions  
150 Israel Road SW  
Tumwater, WA 98501

Date: June 5, 2014 Time: 10:00 am

**Submit written comments to:**

Name: Jill Vallely  
Address: Securities Division  
PO Box 9033  
Olympia, WA 98507-9033  
e-mail: [jill.vallely@dfi.wa.gov](mailto:jill.vallely@dfi.wa.gov)  
fax (360) 704-7035 by (date) June 4, 2014

**Assistance for persons with disabilities:** Contact

Carolyn Hawkey, PO Box 9033, Olympia, WA 98507

TTY (360) 664-8126 or (360) 902-8760

**Date of intended adoption:** June 6, 2014

(Note: This is NOT the effective date)

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**

- See Attachment

**Reasons supporting proposal:** The proposed amendments should be adopted in order to reflect changes in federal law which impact the state regulation of investment advisers. The amendments will incorporate provisions from updated NASAA Model Rules which will help create uniformity among the states. In addition, the Securities Division believes the amendments should be adopted because they will provide necessary protections for the investing public who use the services of investment advisers or invest in pooled investment vehicles managed by investment advisers.

**Statutory authority for adoption:** RCW 21.20.005, .020, .030, .040, .050, .060, .070, .080, .090, .100, .330, .340, .450, & .702

**Statute being implemented:** RCW 21.20

**Is rule necessary because of a:**

Federal Law?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION: Dodd-Frank Act enacted July 21, 2010, Public Law No. 111-203

**DATE** April 2, 2014

**NAME** (type or print)  
Scott Jarvis

**TITLE**  
Director

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE:** April 02, 2014

**TIME:** 10:32 AM

**WSR 14-08-097**

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

**Name of proponent:** (person or organization) Department of Financial Institutions, Securities Division

- Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

Name	Office Location	Phone
Drafting..... Jill Vallely	150 Israel Rd SW, Tumwater, WA 98501	(360) 902-8760
Implementation.. Scott Jarvis, Director, DFI	150 Israel Rd SW, Tumwater, WA 98501	(360) 902-8760
Enforcement..... William Beatty, Director, Securities	150 Israel Rd SW, Tumwater, WA 98501	(360) 902-8760

**Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?**

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name: Jill Vallely  
Address: Department of Financial Institutions, Securities Division  
PO Box 9033  
Olympia, WA 98507-9033

phone (360) 902-8760  
fax (360) 704-7035  
e-mail [jill.vallely@dfi.wa.gov](mailto:jill.vallely@dfi.wa.gov)

No. Explain why no statement was prepared.

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:  
Address:

phone ( ) \_\_\_\_\_  
fax ( ) \_\_\_\_\_  
e-mail \_\_\_\_\_

No: Please explain: The Department of Financial Institutions is not one of the agencies listed in RCW 34.05.328.

## Attachment to CR-102

### **Purpose of the proposal and its anticipated effects, including any changes in existing rules: (Continued from front page)**

The Securities Division proposes to amend the rules in Chapter 460-24A WAC in order to address changes in federal law and updates to NASAA Model Rules, and to implement necessary protections for the investing public who may use the services of investment advisers. The proposed rules would make the following changes:

- Amend the definitions section at WAC 460-24A-005;
- Create a new section at WAC 460-24A-035 which clarifies who is a client and specifies how to count clients for the purposes of determining who needs to register as an investment adviser under RCW 21.20.040(3);
- Update the examination and registration requirements at WAC 460-24A-050 to make them consistent with NASAA Model Rules;
- Amend the financial reporting requirements at WAC 460-24A-060 to require advisers who have custody to file an audited balance sheet with the Securities Division. In addition, advisers who have custody as defined by WAC 460-24A-005(1)(a)(iii) and who comply with the safekeeping requirements in WAC 460-24A-107(1)(b) by providing audited financial statements of the pooled investment vehicle must file those financial statements with the Securities Division;
- Create a new section at WAC 460-24A-071 which adds an exemption from investment adviser registration for advisers to qualified private funds (which does not apply to advisers of funds exempt from the definition of “investment company” under Section 3(c)(1) of the Investment Company Act of 1940);
- Create a new section at WAC 460-24A-072 which adds an exemption from investment adviser registration for venture capital fund advisers;
- Create a new section at WAC 460-24A-080 which provides for the termination of pending applications where the applicants have taken no action for 9 months;
- Amend the custody rules at WAC 460-24A-105, -106, and -107 to require certain written agreements and to clarify the requirements for account statements to pooled investment vehicles;
- Create a new section at WAC 460-24A-120 which requires investment advisers with more than one employee to adopt compliance policies and procedures reasonably designed to prevent violations of the Securities Act by the adviser and its supervised persons;
- Create a new section at WAC 460-24A-125 which requires investment advisers who vote client securities to adopt policies and procedures reasonably designed to ensure that the adviser votes in the best interest of the clients;
- Create a new section at WAC 460-24A-130 which clarifies the requirements for investment advisory contracts;
- Update the brochure rule at WAC 460-24A-145 to make it consistent with the NASAA Model Rule;
- Amend the performance compensation rule at WAC 460-24A-150 consistent with the NASAA Model Rule and the SEC’s amended rule;
- Amend the books and records requirement at WAC 460-24A-200 to clarify additional recordkeeping requirements;
- Amend the unethical business practices rule at WAC 460-24A-220 to specify additional unethical practices;
- Repeal WAC 460-24A-058, which defined when an application was considered filed; and
- Make additional updates, amendments, and clarifications.