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950 CMR 12.207: Fiduciary Duty of Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives
(1) The following practices are a non-exclusive list of practices by a broker-dealer, agent, investment adviser, or investment adviser representative 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 or client 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, commodity, or insurance product.
(b) Failing to act in accordance with a fiduciary duty to a customer or client during any period in which the broker-dealer, agent, investment adviser, or investment adviser representative:
1. Has or exercises discretion in a customer's or client'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;
3. Has a contractual obligation to monitor a customer's or client's account on a regular or periodic basis;
4. Receives ongoing compensation or charges ongoing fees for advising a customer or client, either directly or through publications or writings, as to value of securities or as to the advisability of investing in, purchasing, or selling

securities, or providing the foregoing services as an integral component of other financially related services; or
5. Engages in any act, practice, or course of business that results in a customer or client having a reasonable expectation that the broker-dealer, agent, investment adviser, or investment adviser representative will monitor the customer's or client's account(s) or portfolio on a regular or periodic basis.
(c) The use of a title, purported credential, or professional designation containing any variant of the terms "adviser," "manager," "consultant," or "planner," in conjunction with any of the terms "financial," "investment," "wealth," "portfolio," or "retirement," or any terms of similar meaning or import, constitutes engaging in an act, practice, or course of business that results or would result in a customer or client having a reasonable expectation that the broker-dealer, agent, investment adviser, or investment adviser representative will monitor the customer's or client's account(s) or portfolio on a regular or periodic basis within the meaning of 950 CMR 12.207(1)(b)5., above.
(2) To meet the fiduciary duty, each broker-dealer, agent, investment adviser, or investment adviser representative shall adhere to duties of utmost care and loyalty to the customer or client.
(a) The duty of care requires a broker-dealer, agent, investment adviser, or investment adviser representative 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, agent, investment adviser, or investment adviser representative 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 or client's investment objectives, risk tolerance, financial situation, and needs; and
3. Any other relevant information.
(b) The duty of loyalty requires a broker-dealer, agent, investment adviser, or investment adviser representative to:
1. Disclose all material conflicts of interest;
2. Make all reasonably practicable efforts to avoid conflicts of interest, eliminate conflicts that cannot be avoided, and mitigate conflicts that cannot 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 or client.

(c) Disclosing or mitigating 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, agent, investment adviser, or investment adviser representative 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, commodity, or insurance product, if the recommendation is made in connection with any sales contest, implied or express quota requirement, or other special incentive program.
(3) For purposes of 950 CMR 12.207, the terms "customer" and "client" shall include current and prospective customers and clients, 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).