

191—50.100(502) Fraudulent practices.

50.100(1) An issuer of securities registered under the Act, or any person who is an officer, director or controlling person of such issuer, is presumed to employ a “device, scheme or artifice to defraud” the purchasers of such securities under Iowa Code section 502.501(1) if such person applies, authorizes or causes to be applied any material part of the proceeds from the sale of such securities in any material way contrary to the purposes specified in the prospectus used in offering such securities and not reasonably related to the business of the issuer as described in the prospectus.

50.100(2) A broker-dealer or agent employing one or more of the following practices engages in an “act, practice, or course of business which operates or would operate as a fraud” under Iowa Code section 502.501(3):

a. Entering into any security transaction with a customer at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

b. Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner.

c. In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent possesses material, nonpublic information impacting the value of the security.

d. In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objectives for some to sell and others to purchase the same security, at or about the same time, when the recommendation is not justified by the particular circumstances of each investor.

e. Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, (1) transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees, or (2) parking or withholding securities.

f. Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance including, but not limited to, the use of “boiler-room” tactics such as repeated or harassing unsolicited telephone calls or the use of fictitious or nominee accounts.

50.100(3) Although nothing in this rule precludes applying the general antifraud provisions to any person who engages in practices similar to paragraphs “a” through “h” listed below, the listed practices apply only to soliciting a purchase or sale of OTC non-NASDAQ equity securities and excludes interests in direct participation programs and shares in open-end mutual funds:

a. Failing to disclose the entity’s present bid and ask price of a particular security at the time of solicitation.

b. Failing to advise the customer, both at the time of solicitation and on confirmation, of the total of all charges and fees related to a specific securities transaction.

c. In connection with a principal transaction, failing to disclose, both at the time of solicitation and upon confirmation, a short inventory position in the entity’s account of more than 5 percent of the issued and outstanding shares of that class of securities of the issuer, if the entity is a market maker at the time of solicitation.

d. Conducting sales contests in a particular security.

e. After a solicited purchase by a customer, failing or refusing, for a principal transaction, to promptly execute sell orders.

f. Refusing to sell existing securities held by the customer unless the customer executes a purchase transaction.

g. Soliciting a secondary market when there has not been a bona fide distribution in the primary market.

h. Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security.

This list is not intended to be all-inclusive. Engaging in other conduct including, but not limited to, forgery, embezzlement, conversion, nondisclosure, incomplete disclosure or misstatement of material facts may also be deemed fraudulent.

This rule is intended to implement Iowa Code section 502.501.