

30 Section 1. Section **61-1-3** is amended to read:

31 **61-1-3. Licensing of broker-dealers, agents, investment advisers, and investment**
32 **adviser representatives.**

33 (1) It is unlawful for a person to transact business in this state as a broker-dealer or
34 agent unless the person is licensed under this chapter.

35 (2) (a) It is unlawful for a broker-dealer or issuer to employ or engage an agent unless
36 the agent is licensed. The license of an agent is not effective during any period when the agent
37 is not associated with:

38 (i) a particular broker-dealer licensed under this chapter; or

39 (ii) a particular issuer.

40 (b) When an agent begins or terminates an association with a broker-dealer or issuer, or
41 begins or terminates activities as an agent, the agent and the broker-dealer or issuer shall
42 promptly notify the division.

43 (c) An agent who terminates an association with a broker-dealer or issuer is considered
44 to be unlicensed until the day on which the division:

45 (i) approves the agent's association with a different broker-dealer or issuer; and

46 (ii) notifies the agent of the division's approval of the association.

47 (d) (i) It is unlawful for a broker-dealer or an issuer engaged, directly or indirectly, in
48 offering, offering to purchase, purchasing, or selling a security in this state, to employ or
49 associate with an individual to engage in an activity related to a securities transaction in this
50 state if:

51 (A) (I) the license of the individual is suspended or revoked; or

52 (II) the individual is barred from employment or association with a broker-dealer, an
53 issuer, or a state or federal covered investment adviser; and

54 (B) the suspension, revocation, or bar described in Subsection (2)(d)(i)(A) is by an
55 order:

56 (I) under this chapter;

57 (II) of the Securities and Exchange Commission;

58 (III) of a self-regulatory organization; or
59 (IV) of a securities administrator of a state other than Utah.
60 (ii) A broker-dealer or issuer does not violate this Subsection (2)(d) if the broker-dealer
61 or issuer did not know and in the exercise of reasonable care could not have known, of the
62 suspension, revocation, or bar.
63 (iii) An order under this chapter may modify or waive, in whole or in part, the
64 application of Subsection (2)(d)(i) to a broker-dealer or issuer.
65 (3) It is unlawful for a person to transact business in this state as an investment adviser
66 or as an investment adviser representative unless:
67 (a) the person is licensed under this chapter;
68 (b) the person's only clients in this state are:
69 (i) one or more of the following whether acting for itself or as a trustee with investment
70 control:
71 (A) an investment company as defined in the Investment Company Act of 1940;
72 (B) another investment adviser;
73 (C) a federal covered adviser;
74 (D) a broker-dealer;
75 (E) a depository institution;
76 (F) a trust company;
77 (G) an insurance company;
78 (H) an employee benefit plan with assets of not less than \$1,000,000; or
79 (I) a governmental agency or instrumentality; or
80 (ii) other institutional investors as are designated by rule or order of the director; or
81 (c) the person;
82 (i) is licensed in another state as an investment adviser or an investment adviser
83 representative;
84 (ii) has no place of business in this state; and
85 (iii) during the preceding 12-month period has had not more than five clients, other

86 than those specified in Subsection (3)(b), who are residents of this state.

87 (4) (a) It is unlawful for:

88 (i) a person required to be licensed as an investment adviser under this chapter to
89 employ an investment adviser representative unless the investment adviser representative is
90 licensed under this chapter, except that the license of an investment adviser representative is
91 not effective during any period when the person is not employed by an investment adviser
92 licensed under this chapter;

93 (ii) a federal covered adviser to employ, supervise, or associate with an investment
94 adviser representative having a place of business located in this state, unless the investment
95 adviser representative is:

96 (A) licensed under this chapter; or

97 (B) exempt from licensing; or

98 (iii) an investment adviser, directly or indirectly, to employ or associate with an
99 individual to engage in an activity related to providing investment advice in this state if:

100 (A) (I) the license of the individual is suspended or revoked; or

101 (II) the individual is barred from employment or association with a state or federal
102 covered investment adviser, broker-dealer, or issuer; and

103 (B) the suspension, revocation, or bar is by an order:

104 (I) under this chapter;

105 (II) of the Securities and Exchange Commission;

106 (III) a self-regulatory organization; or

107 (IV) a securities administrator of a state other than Utah.

108 (b) (i) An investment adviser does not violate Subsection (4)(a)(iii) if the investment
109 adviser did not know, and in the exercise of reasonable care could not have known, of the
110 suspension, revocation, or bar.

111 (ii) An order under this chapter may waive, in whole or in part, the application of
112 Subsection (4)(a)(iii) to an investment adviser.

113 (c) When an investment adviser representative required to be licensed under this

114 chapter begins or terminates employment with an investment adviser, the investment adviser
115 shall promptly notify the division.

116 (d) An investment adviser representative who terminates association with an
117 investment adviser is considered unlicensed until the day on which the division:

118 (i) approves the investment adviser representative's association with a different
119 investment adviser; and

120 (ii) notifies the investment adviser representative of the division's approval of the
121 association.

122 (5) Except with respect to an investment adviser whose only clients are those described
123 under Subsections (3)(b) or (3)(c)(iii), it is unlawful for a federal covered adviser to conduct
124 advisory business in this state unless the person complies with Section 61-1-4.

125 Section 2. Section **61-1-4** is amended to read:

126 **61-1-4. Licensing and notice filing procedure.**

127 (1) (a) A broker-dealer, agent, investment adviser, or investment adviser representative
128 shall obtain an initial or renewal license by filing with the division or its designee an
129 application together with a consent to service of process under Section 61-1-26.

130 (b) (i) The application shall contain the applicant's Social Security number and
131 whatever information the division by rule requires concerning such matters as:

132 (A) the applicant's form and place of organization;

133 (B) the applicant's proposed method of doing business;

134 (C) (I) the qualifications and business history of the applicant; and

135 (II) in the case of a broker-dealer or investment adviser, the qualifications and business
136 history of any partner, officer, or director, any person occupying a similar status or performing
137 similar functions, or any person directly or indirectly controlling the broker-dealer or
138 investment adviser;

139 (D) whether the applicant has been subject to:

140 (I) an injunction, administrative order, or misdemeanor conviction involving a security
141 or any aspect of the securities business; or

- 142 (II) a felony conviction; and
- 143 (E) the applicant's financial condition and history.
- 144 (ii) An applicant's Social Security number is a private record under Subsection
- 145 63G-2-302(1)(h).
- 146 (c) The division may, by rule or order, require an applicant for an initial license to
- 147 publish an announcement of the application in one or more specified newspapers published in
- 148 this state.
- 149 (d) A license or notice filing of a broker-dealer, agent, investment adviser, or
- 150 investment adviser representative expires on December 31 of each year.
- 151 (e) (i) If no denial order is in effect and no proceeding is pending under Section 61-1-6,
- 152 a license becomes effective at noon of the 30th day after an application is filed.
- 153 (ii) The division may by rule or order specify an earlier effective date and may by order
- 154 defer the effective date until noon of the 30th day after the filing of any amendment.
- 155 (iii) Licensing of a broker-dealer automatically constitutes licensing of only one
- 156 partner, officer, director, or a person occupying a similar status or performing similar functions
- 157 as a licensed agent of the broker-dealer.
- 158 (iv) Licensing of an investment adviser automatically constitutes licensing of only one
- 159 partner, officer, director, or a person occupying a similar status or performing similar functions.
- 160 (v) (A) For purposes of the activities of a licensee in this state, during the time period
- 161 that a broker-dealer or investment adviser is licensed in this state:
 - 162 (I) the broker-dealer shall maintain a principal; and
 - 163 (II) the investment adviser shall maintain a designated official.
- 164 (B) The division may by rule made in accordance with Title 63G, Chapter 3, Utah
- 165 Administrative Rulemaking Act, provide a process for a person to identify for the division:
 - 166 (I) a principal or designated official at the time a license is issued; and
 - 167 (II) a different principal or designated official if:
 - 168 (Aa) a broker-dealer changes its principal; or
 - 169 (Bb) an investment adviser changes its designated official.

170 (C) A principal or designated official identified in Subsection (1)(e)(v)(A) is not
171 required to be separately licensed with the division.

172 (2) Except with respect to a federal covered adviser whose only clients are those
173 described in Subsection 61-1-3(3)(b) or [~~(c)~~] (3)(c)(iii), a federal covered adviser shall file with
174 the division, before acting as a federal covered adviser in this state, a notice filing consisting of
175 the documents filed with the Securities and Exchange Commission as the division by rule or
176 order may require.

177 (3) (a) An applicant for an initial or renewal license as a broker-dealer or agent shall
178 pay a reasonable filing fee as determined under Section 61-1-18.4.

179 (b) An applicant for an initial or renewal license as an investment adviser or
180 investment adviser representative who is subject to licensing under this chapter shall pay a
181 reasonable filing fee as determined under Section 61-1-18.4.

182 (c) A person acting as a federal covered adviser in this state shall pay an initial and
183 renewal notice filing fee as determined under Section 61-1-18.4.

184 (d) If the license or renewal is not granted or the application is withdrawn, the division
185 shall retain the fee.

186 (4) A licensed broker-dealer or investment adviser may file an application for licensing
187 of a successor for the unexpired portion of the year. There shall be no filing fee.

188 (5) The division may by rule or order:

189 (a) require a minimum capital for a licensed broker-dealer, subject to the limitations of
190 Section 15 of the Securities Exchange Act of 1934; and

191 (b) establish minimum financial requirements for an investment adviser:

192 (i) subject to the limitations of Section 222 of the Investment Advisers Act of 1940;

193 and

194 (ii) which may include different requirements for an investment adviser who maintains
195 custody of or has discretionary authority over client funds or securities and an investment
196 adviser who does not.

197 (6) (a) The division may by rule or order require a licensed broker-dealer or investment

198 adviser who has custody of or discretionary authority over client funds or securities to post one
199 or more bonds in amounts and under conditions as the division may prescribe, subject to the
200 limitations of Section 15 of the Securities Exchange Act of 1934 for a broker-dealer, and
201 Section 222 of the Investment Advisers Act of 1940 for an investment adviser.

202 (b) An appropriate deposit of cash or securities may be accepted in lieu of a required
203 bond.

204 (c) A bond may not be required of a licensee whose net capital, or in the case of an
205 investment adviser whose minimum financial requirements, which may be defined by rule,
206 exceeds the amounts required by the division.

207 (d) A bond shall provide for suit on the bond by a person who has a cause of action
208 under Section 61-1-22 and, if the division by rule or order requires, by any person who has a
209 cause of action not arising under this chapter.

210 (e) A bond shall provide that a suit may not be maintained to enforce liability on the
211 bond unless brought before the earlier of:

212 (i) the expiration of five years after the act or transaction constituting the violation; or

213 (ii) the expiration of two years after the discovery by the plaintiff of the facts
214 constituting the violation.

215 Section 3. Section **61-1-13** is amended to read:

216 **61-1-13. Definitions.**

217 (1) As used in this chapter:

218 (a) "Affiliate" means a person that, directly or indirectly, through one or more
219 intermediaries, controls or is controlled by, or is under common control with a person
220 specified.

221 (b) (i) "Agent" means an individual other than a broker-dealer who represents a
222 broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.

223 (ii) "Agent" does not include an individual who represents:

224 (A) an issuer, who receives no commission or other remuneration, directly or
225 indirectly, for effecting or attempting to effect purchases or sales of securities in this state, and

226 who effects transactions:

227 (I) in securities exempted by Subsection 61-1-14(1)(a), (b), (c), or (g);

228 (II) exempted by Subsection 61-1-14(2);

229 (III) in a covered security as described in Sections 18(b)(3) and 18(b)(4)(D) of the

230 Securities Act of 1933; or

231 (IV) with existing employees, partners, officers, or directors of the issuer; or

232 (B) a broker-dealer in effecting transactions in this state limited to those transactions

233 described in Section 15(h)(2) of the Securities Exchange Act of 1934.

234 (iii) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a

235 similar status or performing similar functions, is an agent only if the partner, officer, director,

236 or person otherwise comes within the definition of "agent."

237 (iv) "Agent" does not include a person described in Subsection (3).

238 (c) (i) "Broker-dealer" means a person engaged in the business of effecting transactions

239 in securities for the account of others or for the person's own account.

240 (ii) "Broker-dealer" does not include:

241 (A) an agent;

242 (B) an issuer;

243 (C) a depository institution or trust company;

244 (D) a person who has no place of business in this state if:

245 (I) the person effects transactions in this state exclusively with or through:

246 (Aa) the issuers of the securities involved in the transactions;

247 (Bb) other broker-dealers;

248 (Cc) a depository institution, whether acting for itself or as a trustee;

249 (Dd) a trust company, whether acting for itself or as a trustee;

250 (Ee) an insurance company, whether acting for itself or as a trustee;

251 (Ff) an investment company, as defined in the Investment Company Act of 1940,

252 whether acting for itself or as a trustee;

253 (Gg) a pension or profit-sharing trust, whether acting for itself or as a trustee; or

254 (Hh) another financial institution or institutional buyer, whether acting for itself or as a
255 trustee; or

256 (II) during any period of 12 consecutive months the person does not direct more than
257 15 offers to sell or buy into this state in any manner to persons other than those specified in
258 Subsection (1)(c)(ii)(D)(I), whether or not the offeror or an offeree is then present in this state;

259 (E) a general partner who organizes and effects transactions in securities of three or
260 fewer limited partnerships, of which the person is the general partner, in any period of 12
261 consecutive months;

262 (F) a person whose participation in transactions in securities is confined to those
263 transactions made by or through a broker-dealer licensed in this state;

264 (G) a person who is a principal broker or associate broker licensed in this state and
265 who effects transactions in a bond or other evidence of indebtedness secured by a real or chattel
266 mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire
267 mortgage, deed of trust, or agreement, together with all the bonds or other evidences of
268 indebtedness secured thereby, is offered and sold as a unit;

269 (H) a person effecting transactions in commodity contracts or commodity options;

270 (I) a person described in Subsection (3); or

271 (J) other persons as the division, by rule or order, may designate, consistent with the
272 public interest and protection of investors, as not within the intent of this Subsection (1)(c).

273 (d) "Buy" or "purchase" means a contract for purchase of, contract to buy, or
274 acquisition of a security or interest in a security for value.

275 (e) "Commission" means the Securities Commission created in Section 61-1-18.5.

276 (f) "Commodity" means, except as otherwise specified by the division by rule:

277 (i) an agricultural, grain, or livestock product or byproduct, except real property or a
278 timber, agricultural, or livestock product grown or raised on real property and offered or sold
279 by the owner or lessee of the real property;

280 (ii) a metal or mineral, including a precious metal, except a numismatic coin whose fair
281 market value is at least 15% greater than the value of the metal it contains;

282 (iii) a gem or gemstone, whether characterized as precious, semi-precious, or
283 otherwise;
284 (iv) a fuel, whether liquid, gaseous, or otherwise;
285 (v) a foreign currency; and
286 (vi) all other goods, articles, products, or items of any kind, except a work of art
287 offered or sold by art dealers, at public auction or offered or sold through a private sale by the
288 owner of the work.

289 (g) (i) "Commodity contract" means an account, agreement, or contract for the
290 purchase or sale, primarily for speculation or investment purposes and not for use or
291 consumption by the offeree or purchaser, of one or more commodities, whether for immediate
292 or subsequent delivery or whether delivery is intended by the parties, and whether characterized
293 as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures
294 contract, installment or margin contract, leverage contract, or otherwise.

295 (ii) A commodity contract offered or sold shall, in the absence of evidence to the
296 contrary, be presumed to be offered or sold for speculation or investment purposes.

297 (iii) (A) A commodity contract may not include a contract or agreement that requires,
298 and under which the purchaser receives, within 28 calendar days from the payment in good
299 funds any portion of the purchase price, physical delivery of the total amount of each
300 commodity to be purchased under the contract or agreement.

301 (B) A purchaser is not considered to have received physical delivery of the total
302 amount of each commodity to be purchased under the contract or agreement when the
303 commodity or commodities are held as collateral for a loan or are subject to a lien of any
304 person when the loan or lien arises in connection with the purchase of each commodity or
305 commodities.

306 (h) (i) "Commodity option" means an account, agreement, or contract giving a party to
307 the option the right but not the obligation to purchase or sell one or more commodities or one
308 or more commodity contracts, or both whether characterized as an option, privilege, indemnity,
309 bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

310 (ii) "Commodity option" does not include an option traded on a national securities
311 exchange registered:

312 (A) with the Securities and Exchange Commission; or

313 (B) on a board of trade designated as a contract market by the Commodity Futures
314 Trading Commission.

315 (i) "Depository institution" is as defined in Section 7-1-103.

316 (j) "Director" means the director of the division appointed in accordance with Section
317 61-1-18.

318 (k) "Division" means the Division of Securities established by Section 61-1-18.

319 (l) "Executive director" means the executive director of the Department of Commerce.

320 (m) "Federal covered adviser" means a person who:

321 (i) is registered under Section 203 of the Investment Advisers Act of 1940; or

322 (ii) is excluded from the definition of "investment adviser" under Section 202(a)(11) of
323 the Investment Advisers Act of 1940.

324 (n) "Federal covered security" means a security that is a covered security under Section
325 18(b) of the Securities Act of 1933 or rules or regulations promulgated under Section 18(b) of
326 the Securities Act of 1933.

327 (o) "Fraud," "deceit," and "defraud" are not limited to their common-law meanings.

328 (p) "Guaranteed" means guaranteed as to payment of principal or interest as to debt
329 securities, or dividends as to equity securities.

330 (q) (i) "Investment adviser" means a person who:

331 (A) for compensation, engages in the business of advising others, either directly or
332 through publications or writings, as to the value of securities or as to the advisability of
333 investing in, purchasing, or selling securities; or

334 (B) for compensation and as a part of a regular business, issues or promulgates
335 analyses or reports concerning securities.

336 (ii) "Investment adviser" includes a financial planner or other person who:

337 (A) as an integral component of other financially related services, provides the

338 investment advisory services described in Subsection (1)(q)(i) to others for compensation and
339 as part of a business; or

340 (B) holds the person out as providing the investment advisory services described in
341 Subsection (1)(q)(i) to others for compensation.

342 (iii) "Investment adviser" does not include:

343 (A) an investment adviser representative;

344 (B) a depository institution or trust company;

345 (C) a lawyer, accountant, engineer, or teacher whose performance of these services is
346 solely incidental to the practice of the profession;

347 (D) a broker-dealer or its agent whose performance of these services is solely
348 incidental to the conduct of its business as a broker-dealer and who receives no special
349 compensation for the services;

350 (E) a publisher of a bona fide newspaper, news column, news letter, news magazine, or
351 business or financial publication or service, of general, regular, and paid circulation, whether
352 communicated in hard copy form, or by electronic means, or otherwise, that does not consist of
353 the rendering of advice on the basis of the specific investment situation of each client;

354 (F) a person who is a federal covered adviser;

355 (G) a person described in Subsection (3); or

356 (H) such other persons not within the intent of this Subsection (1)(q) as the division
357 may by rule or order designate.

358 (r) (i) "Investment adviser representative" means a partner, officer, director of, or a
359 person occupying a similar status or performing similar functions, or other individual, except
360 clerical or ministerial personnel, who:

361 (A) (I) is employed by or associated with an investment adviser who is licensed or
362 required to be licensed under this chapter; or

363 (II) has a place of business located in this state and is employed by or associated with a
364 federal covered adviser; and

365 (B) does any of the following:

- 366 (I) makes a recommendation or otherwise renders advice regarding securities;
- 367 (II) manages accounts or portfolios of clients;
- 368 (III) determines which recommendation or advice regarding securities should be given;
- 369 (IV) solicits, offers, or negotiates for the sale of or sells investment advisory services;

370 or

- 371 (V) supervises employees who perform any of the acts described in this Subsection
- 372 (1)(r)(i)(B).

373 (ii) "Investment adviser representative" does not include a person described in
374 Subsection (3).

375 (s) "Investment contract" includes:

376 (i) an investment in a common enterprise with the expectation of profit to be derived
377 through the essential managerial efforts of someone other than the investor; or

378 (ii) an investment by which:

379 (A) an offeree furnishes initial value to an offerer;

380 (B) a portion of the initial value is subjected to the risks of the enterprise;

381 (C) the furnishing of the initial value is induced by the offerer's promises or
382 representations that give rise to a reasonable understanding that a valuable benefit of some kind
383 over and above the initial value will accrue to the offeree as a result of the operation of the
384 enterprise; and

385 (D) the offeree does not receive the right to exercise practical [~~or~~] and actual control
386 over the managerial decisions of the enterprise.

387 (t) "Isolated transaction" means not more than a total of two transactions that occur
388 anywhere during six consecutive months.

389 (u) (i) "Issuer" means a person who issues or proposes to issue a security or has
390 outstanding a security that it has issued.

391 (ii) With respect to a preorganization certificate or subscription, "issuer" means the one
392 or more promoters of the person to be organized.

393 (iii) "Issuer" means the one or more persons performing the acts and assuming duties

394 of a depositor or manager under the provisions of the trust or other agreement or instrument
395 under which the security is issued with respect to:

396 (A) interests in trusts, including collateral trust certificates, voting trust certificates, and
397 certificates of deposit for securities; or

398 (B) shares in an investment company without a board of directors.

399 (iv) With respect to an equipment trust certificate, a conditional sales contract, or
400 similar securities serving the same purpose, "issuer" means the person by whom the equipment
401 or property is to be used.

402 (v) With respect to interests in partnerships, general or limited, "issuer" means the
403 partnership itself and not the general partner or partners.

404 (vi) With respect to certificates of interest or participation in oil, gas, or mining titles or
405 leases or in payment out of production under the titles or leases, "issuer" means the owner of
406 the title or lease or right of production, whether whole or fractional, who creates fractional
407 interests therein for the purpose of sale.

408 (v) (i) "Life settlement interest" means the entire interest or a fractional interest in any
409 of the following that is the subject of a life settlement:

410 (A) a policy; or

411 (B) the death benefit under a policy.

412 (ii) "Life settlement interest" does not include the initial purchase from the owner by a
413 life settlement provider.

414 (w) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

415 (x) "Person" means:

416 (i) an individual;

417 (ii) a corporation;

418 (iii) a partnership;

419 (iv) a limited liability company;

420 (v) an association;

421 (vi) a joint-stock company;

- 422 (vii) a joint venture;
- 423 (viii) a trust where the interests of the beneficiaries are evidenced by a security;
- 424 (ix) an unincorporated organization;
- 425 (x) a government; or
- 426 (xi) a political subdivision of a government.
- 427 (y) "Precious metal" means the following, whether in coin, bullion, or other form:
 - 428 (i) silver;
 - 429 (ii) gold;
 - 430 (iii) platinum;
 - 431 (iv) palladium;
 - 432 (v) copper; and
 - 433 (vi) such other substances as the division may specify by rule.
- 434 (z) "Promoter" means a person who, acting alone or in concert with one or more
435 persons, takes initiative in founding or organizing the business or enterprise of a person.
- 436 (aa) (i) Except as provided in Subsection (1)(aa)(ii), "record" means information that
437 is:
 - 438 (A) inscribed in a tangible medium; or
 - 439 (B) (I) stored in an electronic or other medium; and
 - 440 (II) retrievable in perceivable form.
- 441 (ii) This Subsection (1)(aa) does not apply when the context requires otherwise,
442 including when "record" is used in the following phrases:
 - 443 (A) "of record";
 - 444 (B) "official record"; or
 - 445 (C) "public record."
- 446 (bb) (i) "Sale" or "sell" includes a contract for sale of, contract to sell, or disposition of,
447 a security or interest in a security for value.
- 448 (ii) "Offer" or "offer to sell" includes an attempt or offer to dispose of, or solicitation of
449 an offer to buy, a security or interest in a security for value.

450 (iii) The following are examples of the definitions in Subsection (1)(bb)(i) or (ii):

451 (A) a security given or delivered with or as a bonus on account of a purchase of a
452 security or any other thing, is part of the subject of the purchase, and is offered and sold for
453 value;

454 (B) a purported gift of assessable stock is an offer or sale as is each assessment levied
455 on the stock;

456 (C) an offer or sale of a security that is convertible into, or entitles its holder to acquire
457 or subscribe to another security of the same or another issuer is an offer or sale of that security,
458 and also an offer of the other security, whether the right to convert or acquire is exercisable
459 immediately or in the future;

460 (D) a conversion or exchange of one security for another constitutes an offer or sale of
461 the security received in a conversion or exchange, and the offer to buy or the purchase of the
462 security converted or exchanged;

463 (E) securities distributed as a dividend wherein the person receiving the dividend
464 surrenders the right, or the alternative right, to receive a cash or property dividend is an offer or
465 sale;

466 (F) a dividend of a security of another issuer is an offer or sale; or

467 (G) the issuance of a security under a merger, consolidation, reorganization,
468 recapitalization, reclassification, or acquisition of assets constitutes the offer or sale of the
469 security issued as well as the offer to buy or the purchase of a security surrendered in
470 connection therewith, unless the sole purpose of the transaction is to change the issuer's
471 domicile.

472 (iv) The terms defined in Subsections (1)(bb)(i) and (ii) do not include:

473 (A) a good faith gift;

474 (B) a transfer by death;

475 (C) a transfer by termination of a trust or of a beneficial interest in a trust;

476 (D) a security dividend not within Subsection (1)(bb)(iii)(E) or (F); or

477 (E) a securities split or reverse split.

478 (cc) "Securities Act of 1933," "Securities Exchange Act of 1934," and "Investment
479 Company Act of 1940" mean the federal statutes of those names as amended before or after the
480 effective date of this chapter.

481 (dd) "Securities Exchange Commission" means the United States Securities Exchange
482 Commission created by the Securities Exchange Act of 1934.

483 (ee) (i) "Security" means a:

484 (A) note;

485 (B) stock;

486 (C) treasury stock;

487 (D) bond;

488 (E) debenture;

489 (F) evidence of indebtedness;

490 (G) certificate of interest or participation in a profit-sharing agreement;

491 (H) collateral-trust certificate;

492 (I) preorganization certificate or subscription;

493 (J) transferable share;

494 (K) investment contract;

495 (L) burial certificate or burial contract;

496 (M) voting-trust certificate;

497 (N) certificate of deposit for a security;

498 (O) certificate of interest or participation in an oil, gas, or mining title or lease or in
499 payments out of production under such a title or lease;

500 (P) commodity contract or commodity option;

501 (Q) interest in a limited liability company;

502 (R) life settlement interest; or

503 (S) in general, an interest or instrument commonly known as a "security," or a
504 certificate of interest or participation in, temporary or interim certificate for, receipt for,
505 guarantee of, or warrant or right to subscribe to or purchase an item listed in Subsections

506 (1)(ee)(i)(A) through (R).

507 (ii) "Security" does not include:

508 (A) an insurance or endowment policy or annuity contract under which an insurance
509 company promises to pay money in a lump sum or periodically for life or some other specified
510 period;

511 (B) an interest in a limited liability company in which the limited liability company is
512 formed as part of an estate plan where all of the members are related by blood or marriage, or
513 the person claiming this exception can prove that all of the members are actively engaged in the
514 management of the limited liability company; or

515 (C) (I) a whole long-term estate in real property;

516 (II) an undivided fractionalized long-term estate in real property that consists of 10 or
517 fewer owners; or

518 (III) an undivided fractionalized long-term estate in real property that consists of more
519 than 10 owners if, when the real property estate is subject to a management agreement:

520 (Aa) the management agreement permits a simple majority of owners of the real
521 property estate to not renew or to terminate the management agreement at the earlier of the end
522 of the management agreement's current term, or 180 days after the day on which the owners
523 give notice of termination to the manager;

524 (Bb) the management agreement prohibits, directly or indirectly, the lending of the
525 proceeds earned from the real property estate or the use or pledge of its assets to a person or
526 entity affiliated with or under common control of the manager; and

527 (Cc) the management agreement complies with any other requirement imposed by rule
528 by the Real Estate Commission under Section 61-2f-103.

529 (iii) For purposes of Subsection (1)(ee)(ii)(B), evidence that members vote or have the
530 right to vote, or the right to information concerning the business and affairs of the limited
531 liability company, or the right to participate in management, may not establish, without more,
532 that all members are actively engaged in the management of the limited liability company.

533 (ff) "State" means a state, territory, or possession of the United States, the District of

534 Columbia, and Puerto Rico.

535 (gg) (i) "Undivided fractionalized long-term estate" means an ownership interest in real
536 property by two or more persons that is [a]:

537 (A) a tenancy in common; or

538 (B) any other legal form of undivided estate in real property including:

539 (I) a fee estate;

540 (II) a life estate; or

541 (III) other long-term estate.

542 (ii) "Undivided fractionalized long-term estate" does not include a joint tenancy.

543 (hh) "Whole long-term estate" means a person owns or persons through joint tenancy
544 own real property through:

545 (i) a fee estate;

546 (ii) a life estate; or

547 (iii) other long-term estate.

548 (ii) "Working days" means 8 a.m. to 5 p.m., Monday through Friday, exclusive of legal
549 holidays listed in Section 63G-1-301.

550 (2) A term not defined in this section shall have the meaning as established by division
551 rule. The meaning of a term neither defined in this section nor by rule of the division shall be
552 the meaning commonly accepted in the business community.

553 (3) (a) This Subsection (3) applies to:

554 (i) the offer or sale of a real property estate exempted from the definition of security
555 under Subsection (1)(ee)(ii)(C); or

556 (ii) the offer or sale of an undivided fractionalized long-term estate that is the offer of a
557 security.

558 (b) A person who, directly or indirectly receives compensation in connection with the
559 offer or sale as provided in this Subsection (3) of a real property estate is not an agent,
560 broker-dealer, investment adviser, or investment adviser representative under this chapter if
561 that person is licensed under Chapter 2f, Real Estate Licensing and Practices Act, as:

562 (i) a principal broker;

563 (ii) an associate broker; or

564 (iii) a sales agent.

565 (4) The list of real property estates excluded from the definition of securities under
566 Subsection (1)(ee)(ii)(C) is not an exclusive list of real property estates or interests that are not
567 a security.

568 Section 4. Section **61-1-25** is amended to read:

569 **61-1-25. Record of registrations.**

570 (1) (a) A document is filed when it is received by the division.

571 (b) If the last day prescribed for the filing of a document is a Saturday, Sunday, or legal
572 holiday, the document is considered timely filed if it is filed on the next succeeding day that is
573 not a Saturday, Sunday, or legal holiday.

574 (2) (a) The division shall keep a register of:

575 (i) all applications for registration and registration statements that are or have ever been
576 effective under this chapter; and

577 (ii) all denial, suspension, or revocation orders entered under this chapter.

578 (b) The register shall be open for public inspection.

579 (3) The information contained in or filed with a registration statement, application, or
580 report may be made available to the public under the rules the division prescribes.

581 (4) (a) The division shall furnish to a person a photostatic or other copy, certified under
582 seal if requested, of an entry in the register or any document that is a matter of public record:

583 (i) upon request; and

584 (ii) at a reasonable charge prescribed by the division.

585 (b) In a proceeding or prosecution under this chapter, a copy certified under this
586 Subsection (4) is prima facie evidence of the contents of the entry or document certified.

587 (5) The division may issue an interpretative opinion requested by an interested person
588 if the commission concurs in the interpretative opinion.