

Senator Benjamin M. McAdams proposes the following substitute bill:

SECURITIES RELATED AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Benjamin M. McAdams

House Sponsor: Jim Bird

LONG TITLE

General Description:

This bill modifies the Utah Uniform Securities Act to address licensing requirements.

Highlighted Provisions:

This bill:

- ▶ addresses the licensing of investment advisers and investment adviser representatives;
- ▶ clarifies definitions;
- ▶ addresses the timeliness of filings; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

61-1-3, as last amended by Laws of Utah 2009, Chapter 351

61-1-4, as last amended by Laws of Utah 2009, Chapter 351

61-1-13, as last amended by Laws of Utah 2010, Chapter 379



26 **61-1-25**, as last amended by Laws of Utah 2009, Chapter 351



27
28 *Be it enacted by the Legislature of the state of Utah:*

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

30 **61-1-3. Licensing of broker-dealers, agents, investment advisers, and investment**
31 **adviser representatives.**

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

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

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

38 (ii) a particular issuer.

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

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

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

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

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

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

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

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

55 (I) under this chapter;

56 (II) of the Securities and Exchange Commission;

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

88 employ an investment adviser representative unless the investment adviser representative is
89 licensed under this chapter, except that the license of an investment adviser representative is
90 not effective during any period when the person is not employed by an investment adviser
91 licensed under this chapter;

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

95 (A) licensed under this chapter; or

96 (B) exempt from licensing; or

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

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

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

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

103 (I) under this chapter;

104 (II) of the Securities and Exchange Commission;

105 (III) a self-regulatory organization; or

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

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

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

112 (c) When an investment adviser representative required to be licensed under this
113 chapter begins or terminates employment with an investment adviser, the investment adviser
114 shall promptly notify the division.

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

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

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

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

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

125 **61-1-4. Licensing and notice filing procedure.**

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

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

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

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

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

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

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

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

141 (II) a felony conviction; and

142 (E) the applicant's financial condition and history.

143 (ii) An applicant's Social Security number is a private record under Subsection
144 63G-2-302(1)(h).

145 (c) The division may, by rule or order, require an applicant for an initial license to
146 publish an announcement of the application in one or more specified newspapers published in
147 this state.

148 (d) A license or notice filing of a broker-dealer, agent, investment adviser, or
149 investment adviser representative expires on December 31 of each year.

150 (e) (i) If no denial order is in effect and no proceeding is pending under Section 61-1-6,
151 a license becomes effective at noon of the 30th day after an application is filed.

152 (ii) The division may by rule or order specify an earlier effective date and may by order
153 defer the effective date until noon of the 30th day after the filing of any amendment.

154 (iii) Licensing of a broker-dealer automatically constitutes licensing of only one
155 partner, officer, director, or a person occupying a similar status or performing similar functions
156 as a licensed agent of the broker-dealer.

157 (iv) Licensing of an investment adviser automatically constitutes licensing of only one
158 partner, officer, director, or a person occupying a similar status or performing similar functions.

159 (v) (A) For purposes of the activities of a licensee in this state, during the time period
160 that a broker-dealer or investment adviser is licensed in this state:

161 (I) the broker-dealer shall maintain a principal; and

162 (II) the investment adviser shall maintain a designated official.

163 (B) The division may by rule made in accordance with Title 63G, Chapter 3, Utah
164 Administrative Rulemaking Act, provide a process for a person to identify for the division:

165 (I) a principal or designated official at the time a license is issued; and

166 (II) a different principal or designated official if:

167 (Aa) a broker-dealer changes its principal; or

168 (Bb) an investment adviser changes its designated official.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

215 **61-1-13. Definitions.**

216 (1) As used in this chapter:

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

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

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

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

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

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

228 (III) in a covered security as described in Sections 18(b)(3) and 18(b)(4)(D) of the
229 Securities Act of 1933; or

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

231 (B) a broker-dealer in effecting transactions in this state limited to those transactions
232 described in Section 15(h)(2) of the Securities Exchange Act of 1934.

233 (iii) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a
234 similar status or performing similar functions, is an agent only if the partner, officer, director,
235 or person otherwise comes within the definition of "agent."

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

237 (c) (i) "Broker-dealer" means a person engaged in the business of effecting transactions
238 in securities for the account of others or for the person's own account.

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

240 (A) an agent;

241 (B) an issuer;

242 (C) a depository institution or trust company;

- 243 (D) a person who has no place of business in this state if:
- 244 (I) the person effects transactions in this state exclusively with or through:
- 245 (Aa) the issuers of the securities involved in the transactions;
- 246 (Bb) other broker-dealers;
- 247 (Cc) a depository institution, whether acting for itself or as a trustee;
- 248 (Dd) a trust company, whether acting for itself or as a trustee;
- 249 (Ee) an insurance company, whether acting for itself or as a trustee;
- 250 (Ff) an investment company, as defined in the Investment Company Act of 1940,
- 251 whether acting for itself or as a trustee;
- 252 (Gg) a pension or profit-sharing trust, whether acting for itself or as a trustee; or
- 253 (Hh) another financial institution or institutional buyer, whether acting for itself or as a
- 254 trustee; or
- 255 (II) during any period of 12 consecutive months the person does not direct more than
- 256 15 offers to sell or buy into this state in any manner to persons other than those specified in
- 257 Subsection (1)(c)(ii)(D)(I), whether or not the offeror or an offeree is then present in this state;
- 258 (E) a general partner who organizes and effects transactions in securities of three or
- 259 fewer limited partnerships, of which the person is the general partner, in any period of 12
- 260 consecutive months;
- 261 (F) a person whose participation in transactions in securities is confined to those
- 262 transactions made by or through a broker-dealer licensed in this state;
- 263 (G) a person who is a principal broker or associate broker licensed in this state and
- 264 who effects transactions in a bond or other evidence of indebtedness secured by a real or chattel
- 265 mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire
- 266 mortgage, deed of trust, or agreement, together with all the bonds or other evidences of
- 267 indebtedness secured thereby, is offered and sold as a unit;
- 268 (H) a person effecting transactions in commodity contracts or commodity options;
- 269 (I) a person described in Subsection (3); or
- 270 (J) other persons as the division, by rule or order, may designate, consistent with the
- 271 public interest and protection of investors, as not within the intent of this Subsection (1)(c).
- 272 (d) "Buy" or "purchase" means a contract for purchase of, contract to buy, or
- 273 acquisition of a security or interest in a security for value.

- 274 (e) "Commission" means the Securities Commission created in Section 61-1-18.5.
- 275 (f) "Commodity" means, except as otherwise specified by the division by rule:
- 276 (i) an agricultural, grain, or livestock product or byproduct, except real property or a
277 timber, agricultural, or livestock product grown or raised on real property and offered or sold
278 by the owner or lessee of the real property;
- 279 (ii) a metal or mineral, including a precious metal, except a numismatic coin whose fair
280 market value is at least 15% greater than the value of the metal it contains;
- 281 (iii) a gem or gemstone, whether characterized as precious, semi-precious, or
282 otherwise;
- 283 (iv) a fuel, whether liquid, gaseous, or otherwise;
- 284 (v) a foreign currency; and
- 285 (vi) all other goods, articles, products, or items of any kind, except a work of art
286 offered or sold by art dealers, at public auction or offered or sold through a private sale by the
287 owner of the work.
- 288 (g) (i) "Commodity contract" means an account, agreement, or contract for the
289 purchase or sale, primarily for speculation or investment purposes and not for use or
290 consumption by the offeree or purchaser, of one or more commodities, whether for immediate
291 or subsequent delivery or whether delivery is intended by the parties, and whether characterized
292 as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures
293 contract, installment or margin contract, leverage contract, or otherwise.
- 294 (ii) A commodity contract offered or sold shall, in the absence of evidence to the
295 contrary, be presumed to be offered or sold for speculation or investment purposes.
- 296 (iii) (A) A commodity contract may not include a contract or agreement that requires,
297 and under which the purchaser receives, within 28 calendar days from the payment in good
298 funds any portion of the purchase price, physical delivery of the total amount of each
299 commodity to be purchased under the contract or agreement.
- 300 (B) A purchaser is not considered to have received physical delivery of the total
301 amount of each commodity to be purchased under the contract or agreement when the
302 commodity or commodities are held as collateral for a loan or are subject to a lien of any
303 person when the loan or lien arises in connection with the purchase of each commodity or
304 commodities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

336 (A) as an integral component of other financially related services, provides the
337 investment advisory services described in Subsection (1)(q)(i) to others for compensation and
338 as part of a business; or

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

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

342 (A) an investment adviser representative;

343 (B) a depository institution or trust company;

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

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

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

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

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

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

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

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

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

364 (B) does any of the following:

365 (I) makes a recommendation or otherwise renders advice regarding securities;

366 (II) manages accounts or portfolios of clients;

367 (III) determines which recommendation or advice regarding securities should be given;

368 (IV) solicits, offers, or negotiates for the sale of or sells investment advisory services;

369 or

370 (V) supervises employees who perform any of the acts described in this Subsection

371 (1)(r)(i)(B).

372 (ii) "Investment adviser representative" does not include a person described in

373 Subsection (3).

374 (s) "Investment contract" includes:

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

377 (ii) an investment by which:

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

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

380 (C) the furnishing of the initial value is induced by the offerer's promises or

381 representations that give rise to a reasonable understanding that a valuable benefit of some kind

382 over and above the initial value will accrue to the offeree as a result of the operation of the

383 enterprise; and

384 (D) the offeree does not receive the right to exercise practical [~~or~~] and actual control

385 over the managerial decisions of the enterprise.

386 (t) "Isolated transaction" means not more than a total of two transactions that occur

387 anywhere during six consecutive months.

388 (u) (i) "Issuer" means a person who issues or proposes to issue a security or has

389 outstanding a security that it has issued.

390 (ii) With respect to a preorganization certificate or subscription, "issuer" means the one

391 or more promoters of the person to be organized.

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

393 of a depositor or manager under the provisions of the trust or other agreement or instrument

394 under which the security is issued with respect to:

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

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

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

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

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

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

409 (A) a policy; or

410 (B) the death benefit under a policy.

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

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

414 (x) "Person" means:

415 (i) an individual;

416 (ii) a corporation;

417 (iii) a partnership;

418 (iv) a limited liability company;

419 (v) an association;

420 (vi) a joint-stock company;

421 (vii) a joint venture;

422 (viii) a trust where the interests of the beneficiaries are evidenced by a security;

423 (ix) an unincorporated organization;

424 (x) a government; or

425 (xi) a political subdivision of a government.

426 (y) "Precious metal" means the following, whether in coin, bullion, or other form:

427 (i) silver;

428 (ii) gold;

- 429 (iii) platinum;
- 430 (iv) palladium;
- 431 (v) copper; and
- 432 (vi) such other substances as the division may specify by rule.
- 433 (z) "Promoter" means a person who, acting alone or in concert with one or more
- 434 persons, takes initiative in founding or organizing the business or enterprise of a person.
- 435 (aa) (i) Except as provided in Subsection (1)(aa)(ii), "record" means information that
- 436 is:
 - 437 (A) inscribed in a tangible medium; or
 - 438 (B) (I) stored in an electronic or other medium; and
 - 439 (II) retrievable in perceivable form.
- 440 (ii) This Subsection (1)(aa) does not apply when the context requires otherwise,
- 441 including when "record" is used in the following phrases:
 - 442 (A) "of record";
 - 443 (B) "official record"; or
 - 444 (C) "public record."
- 445 (bb) (i) "Sale" or "sell" includes a contract for sale of, contract to sell, or disposition of,
- 446 a security or interest in a security for value.
- 447 (ii) "Offer" or "offer to sell" includes an attempt or offer to dispose of, or solicitation of
- 448 an offer to buy, a security or interest in a security for value.
- 449 (iii) The following are examples of the definitions in Subsection (1)(bb)(i) or (ii):
 - 450 (A) a security given or delivered with or as a bonus on account of a purchase of a
 - 451 security or any other thing, is part of the subject of the purchase, and is offered and sold for
 - 452 value;
 - 453 (B) a purported gift of assessable stock is an offer or sale as is each assessment levied
 - 454 on the stock;
 - 455 (C) an offer or sale of a security that is convertible into, or entitles its holder to acquire
 - 456 or subscribe to another security of the same or another issuer is an offer or sale of that security,
 - 457 and also an offer of the other security, whether the right to convert or acquire is exercisable
 - 458 immediately or in the future;
 - 459 (D) a conversion or exchange of one security for another constitutes an offer or sale of

460 the security received in a conversion or exchange, and the offer to buy or the purchase of the
461 security converted or exchanged;

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

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

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

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

472 (A) a good faith gift;

473 (B) a transfer by death;

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

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

476 (E) a securities split or reverse split.

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

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

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

483 (A) note;

484 (B) stock;

485 (C) treasury stock;

486 (D) bond;

487 (E) debenture;

488 (F) evidence of indebtedness;

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

490 (H) collateral-trust certificate;

- 491 (I) preorganization certificate or subscription;
- 492 (J) transferable share;
- 493 (K) investment contract;
- 494 (L) burial certificate or burial contract;
- 495 (M) voting-trust certificate;
- 496 (N) certificate of deposit for a security;
- 497 (O) certificate of interest or participation in an oil, gas, or mining title or lease or in
- 498 payments out of production under such a title or lease;
- 499 (P) commodity contract or commodity option;
- 500 (Q) interest in a limited liability company;
- 501 (R) life settlement interest; or
- 502 (S) in general, an interest or instrument commonly known as a "security," or a
- 503 certificate of interest or participation in, temporary or interim certificate for, receipt for,
- 504 guarantee of, or warrant or right to subscribe to or purchase an item listed in Subsections
- 505 (1)(ee)(i)(A) through (R).
- 506 (ii) "Security" does not include:
- 507 (A) an insurance or endowment policy or annuity contract under which an insurance
- 508 company promises to pay money in a lump sum or periodically for life or some other specified
- 509 period;
- 510 (B) an interest in a limited liability company in which the limited liability company is
- 511 formed as part of an estate plan where all of the members are related by blood or marriage, or
- 512 the person claiming this exception can prove that all of the members are actively engaged in the
- 513 management of the limited liability company; or
- 514 (C) (I) a whole long-term estate in real property;
- 515 (II) an undivided fractionalized long-term estate in real property that consists of 10 or
- 516 fewer owners; or
- 517 (III) an undivided fractionalized long-term estate in real property that consists of more
- 518 than 10 owners if, when the real property estate is subject to a management agreement:
- 519 (Aa) the management agreement permits a simple majority of owners of the real
- 520 property estate to not renew or to terminate the management agreement at the earlier of the end
- 521 of the management agreement's current term, or 180 days after the day on which the owners

522 give notice of termination to the manager;

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

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

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

532 (ff) "State" means a state, territory, or possession of the United States, the District of
533 Columbia, and Puerto Rico.

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

536 (A) tenancy in common; or

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

538 (I) a fee estate;

539 (II) a life estate; or

540 (III) other long-term estate.

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

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

544 (i) a fee estate;

545 (ii) a life estate; or

546 (iii) other long-term estate.

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

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

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

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

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

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

561 (i) a principal broker;

562 (ii) an associate broker; or

563 (iii) a sales agent.

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

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

568 **61-1-25. Record of registrations.**

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

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

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

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

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

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

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

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

582 (i) upon request; and

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

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

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