

**Effective 5/10/2016**

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

- (1) It is unlawful for a person to transact business in this state as a broker-dealer or agent unless the person is licensed under this chapter.
- (2)
  - (a) It is unlawful for a broker-dealer or issuer to employ or engage an agent unless the agent is licensed. The license of an agent is not effective during any period when the agent is not associated with:
    - (i) a particular broker-dealer licensed under this chapter; or
    - (ii) a particular issuer.
  - (b) When an agent begins or terminates an association with a broker-dealer or issuer, or begins or terminates activities as an agent, the agent and the broker-dealer or issuer shall promptly notify the division.
  - (c) An agent who terminates an association with a broker-dealer or issuer is considered to be unlicensed until the day on which the division:
    - (i) approves the agent's association with a different broker-dealer or issuer; and
    - (ii) notifies the agent of the division's approval of the association.
  - (d)
    - (i) It is unlawful for a broker-dealer or an issuer engaged, directly or indirectly, in offering, offering to purchase, purchasing, or selling a security in this state, to employ or associate with an individual to engage in an activity related to a securities transaction in this state if:
      - (A)
        - (I) the license of the individual is suspended or revoked; or
        - (II) the individual is barred from employment or association with a broker-dealer, an issuer, or a state or federal covered investment adviser; and
      - (B) the suspension, revocation, or bar described in Subsection (2)(d)(i)(A) is by an order:
        - (I) under this chapter;
        - (II) of the Securities and Exchange Commission;
        - (III) of a self-regulatory organization; or
        - (IV) of a securities administrator of a state other than Utah.
    - (ii) A broker-dealer or issuer does not violate this Subsection (2)(d) if the broker-dealer or issuer did not know and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar.
    - (iii) An order under this chapter may modify or waive, in whole or in part, the application of Subsection (2)(d)(i) to a broker-dealer or issuer.
- (3) It is unlawful for a person to transact business in this state as an investment adviser or as an investment adviser representative unless:
  - (a) the person is licensed under this chapter;
  - (b) the person's only clients in this state are:
    - (i) one or more of the following whether acting for itself or as a trustee with investment control:
      - (A) an investment company as defined in the Investment Company Act of 1940;
      - (B) another investment adviser;
      - (C) a federal covered adviser;
      - (D) a broker-dealer;
      - (E) a depository institution;
      - (F) a trust company;
      - (G) an insurance company;

- (H) an employee benefit plan with assets of not less than \$1,000,000; or
- (I) a governmental agency or instrumentality; or
- (ii) other institutional investors as are designated by rule or order of the director; or
- (c) the person:
  - (i)
    - (A) is licensed in another state as an investment adviser or an investment adviser representative; or
    - (B) is exempt from licensing under Section 222(d) of the Investment Advisers Act of 1940;
  - (ii) has no place of business in this state; and
  - (iii) during the preceding 12-month period has had not more than five clients, other than those specified in Subsection (3)(b), who are residents of this state.
- (4)
  - (a) It is unlawful for:
    - (i) a person required to be licensed as an investment adviser under this chapter to employ an investment adviser representative unless the investment adviser representative is licensed under this chapter, except that the license of an investment adviser representative is not effective during any period when the person is not employed by an investment adviser licensed under this chapter;
    - (ii) a federal covered adviser to employ, supervise, or associate with an investment adviser representative having a place of business located in this state, unless the investment adviser representative is:
      - (A) licensed under this chapter; or
      - (B) exempt from licensing; or
    - (iii) an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to providing investment advice in this state if:
      - (A)
        - (I) the license of the individual is suspended or revoked; or
        - (II) the individual is barred from employment or association with a state or federal covered investment adviser, broker-dealer, or issuer; and
      - (B) the suspension, revocation, or bar is by an order:
        - (I) under this chapter;
        - (II) of the Securities and Exchange Commission;
        - (III) a self-regulatory organization; or
        - (IV) a securities administrator of a state other than Utah.
  - (b)
    - (i) An investment adviser does not violate Subsection (4)(a)(iii) if the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar.
    - (ii) An order under this chapter may waive, in whole or in part, the application of Subsection (4)(a)(iii) to an investment adviser.
  - (c) When an investment adviser representative required to be licensed under this chapter begins or terminates employment with an investment adviser, the investment adviser shall promptly notify the division.
  - (d) An investment adviser representative who terminates association with an investment adviser is considered unlicensed until the day on which the division:
    - (i) approves the investment adviser representative's association with a different investment adviser; and
    - (ii) notifies the investment adviser representative of the division's approval of the association.

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

Amended by Chapter 401, 2016 General Session