

SECURITIES AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jim Bird

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to certain securities related disciplinary proceedings.

Highlighted Provisions:

This bill:

- ▶ provides a process for the Securities Board to hear certain securities related disciplinary proceedings;
- ▶ addresses the relationship between the division and the Securities Board; and
- ▶ makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 13-1-11**, as enacted by Chapter 322, Laws of Utah 1983
- 61-1-6**, as last amended by Chapter 36, Laws of Utah 2003
- 61-1-12**, as last amended by Chapter 133, Laws of Utah 1990
- 61-1-13**, as last amended by Chapter 4, Laws of Utah 2006, Third Special Session
- 61-1-14**, as last amended by Chapter 160, Laws of Utah 1997



- 28 **61-1-15.5**, as enacted by Chapter 160, Laws of Utah 1997
- 29 **61-1-18**, as last amended by Chapter 139, Laws of Utah 2006
- 30 **61-1-18.3**, as enacted by Chapter 284, Laws of Utah 1983
- 31 **61-1-18.5**, as last amended by Chapter 176, Laws of Utah 2002
- 32 **61-1-18.6**, as enacted by Chapter 161, Laws of Utah 1987
- 33 **61-1-18.7**, as last amended by Chapter 256, Laws of Utah 2002
- 34 **61-1-19**, as last amended by Chapter 133, Laws of Utah 1990
- 35 **61-1-20**, as last amended by Chapter 12, Laws of Utah 1994
- 36 **61-1-21**, as last amended by Chapter 149, Laws of Utah 2001
- 37 **61-1-21.5**, as last amended by Chapters 38 and 158, Laws of Utah 1993
- 38 **61-1-23**, as last amended by Chapter 133, Laws of Utah 1990

40 *Be it enacted by the Legislature of the state of Utah:*

41 Section 1. Section **13-1-11** is amended to read:

42 **13-1-11. Employment of administrative law judges.**

43 ~~[The]~~ (1) Except as provided in Subsection (2), the department may employ
 44 administrative law judges to:

45 (a) conduct hearings for the department, its divisions, and agencies[;]; and [to]

46 (b) advise the executive director, division directors, and agency boards on hearing and
 47 rulemaking procedures.

48 (2) A proceeding conducted under Section 61-1-6 shall be conducted by:

49 (a) the Securities Board created in Section 61-1-18.5; or

50 (b) an administrative law judge to whom the Securities Board delegates the proceeding
 51 in accordance with Subsection 61-1-6(6).

52 Section 2. Section **61-1-6** is amended to read:

53 **61-1-6. Denial, suspension, revocation, cancellation, or withdrawal of license --**
 54 **Sanctions.**

55 (1) Subject to the requirements of ~~[Subsections (2) and (3)]~~ this section, the ~~[director;~~
 56 ~~by means of adjudicative proceedings conducted in accordance with Title 63, Chapter 46b,~~
 57 ~~Administrative Procedures Act, may issue an order]~~ Securities Board may:

58 (a) ~~[denying, suspending, or revoking any]~~ deny, suspend, or revoke a license;

59 (b) ~~[barring or censuring any]~~ censure;

60 (i) a licensee; or

61 (ii) any officer, director, partner, or person occupying a similar status or performing

62 similar functions for a licensee;

63 ~~(c) bar any officer, director, partner, or person occupying a similar status or performing~~

64 similar functions for a licensee from employment with [a] the licensed broker-dealer or

65 investment adviser;

66 ~~[(c) restricting or limiting]~~ (d) restrict or limit a licensee as to any function or activity

67 of the business for which a license is required in this state;

68 ~~[(d) imposing]~~ (e) impose a fine; or

69 ~~[(e)]~~ (f) do any combination of actions under Subsections (1)(a) through ~~[(d)]~~ (e).

70 (2) (a) The ~~[director]~~ Securities Board may ~~[impose the sanctions]~~ take an action

71 described in Subsection (1) if the [director] Securities Board finds that:

72 (i) it is in the public interest; and ~~[finds, with respect to the]~~

73 (ii) one of the following engaged in an act described in Subsection (2)(b):

74 (A) a person who is an applicant ~~[or]~~;

75 (B) a person who is a licensee ~~[or, in the case of a broker-dealer or investment adviser,~~

76 any];

77 (C) a person who is a partner, officer, or director~~[-, or any]~~ of a broker-dealer or

78 investment adviser;

79 (D) a person occupying a similar status or performing similar functions~~[-, or any]~~ to a

80 partner, officer, or director of a broker-dealer or investment adviser; or

81 (E) a person directly or indirectly controlling the broker-dealer or investment adviser~~;~~

82 that the person:];

83 (b) To comply with this Subsection (2), the Securities Board is required to find that a

84 person described in Subsection (2)(a)(ii):

85 ~~[(a) has filed]~~ (i) files an application for a license that, as of its effective date or as of

86 any date after filing in the case of an order denying effectiveness, ~~[was]~~ is;

87 (A) incomplete in any material respect; or ~~[contained]~~

88 (B) contains any statement that ~~[was]~~ is, in light of the circumstances under which it

89 ~~[was]~~ is made, false or misleading with respect to any material fact;

90 ~~[(b) has]~~ (ii) willfully ~~[violated]~~ violates or willfully ~~[failed]~~ fails to comply with any
91 provision of this chapter or a predecessor act or any rule or order under this chapter or a
92 predecessor act;

93 ~~[(c) was]~~ (iii) is convicted, within the past ten years, of:

94 (A) any misdemeanor involving a security or any aspect of the securities business~~[-];~~ or

95 (B) any felony;

96 ~~[(d)]~~ (iv) is permanently or temporarily enjoined by any court of competent jurisdiction
97 from engaging in or continuing any conduct or practice involving any aspect of the securities
98 business;

99 ~~[(e)]~~ (v) is the subject of an order ~~[of the director or any predecessor]~~ under this chapter
100 denying, suspending, or revoking license as:

101 (A) a broker-dealer~~[-];~~

102 (B) an agent~~[-];~~

103 (C) an investment adviser~~[-];~~ or

104 (D) an investment adviser representative;

105 ~~[(f)]~~ (vi) is the subject of:

106 ~~[(i)]~~ (A) an adjudication or determination, within the past five years by a securities or
107 commodities agency or administrator of another state, Canadian province or territory, or a court
108 of competent jurisdiction that the person has willfully violated;

109 (I) the Securities Act of 1933~~[-];~~

110 (II) the Securities Exchange Act of 1934~~[-];~~

111 (III) the Investment Advisers Act of 1940~~[-];~~

112 (IV) the Investment Company Act of 1940~~[-];~~

113 (V) the Commodity Exchange Act~~[-];~~ or

114 (VI) the securities or commodities law of any other state; or

115 ~~[(ii)]~~ (B) subject to Subsection (2)(c), an order:

116 (I) entered within the past five years by the securities administrator of any state or
117 Canadian province or territory or by the Securities and Exchange Commission denying or
118 revoking license as a broker-dealer, agent, investment adviser, or investment adviser
119 representative or the substantial equivalent of those terms ~~[or is the subject of an order];~~

120 (II) of the Securities and Exchange Commission suspending or expelling the person

121 from a national securities exchange or national securities association registered under the
122 Securities Exchange Act of 1934[;]; or [~~is the subject of~~
123 (III) that is a United States post office fraud order; [except that]
124 [~~(iii) the division may not commence agency action to revoke or suspend any license~~
125 ~~under Subsection (2)(f) more than one year from the date of the order relied on, and the director~~
126 ~~may not enter an order under Subsection (2)(f) on the basis of an order under another state's~~
127 ~~law unless that order was based on facts that would currently constitute a ground for an agency~~
128 ~~action under this section;]~~
129 [~~(g) has engaged~~] (vii) engages in dishonest or unethical practices in the securities
130 business;
131 [~~(h)~~] (viii) is insolvent, either in the sense that liabilities exceed assets or in the sense
132 that obligations cannot be met as they mature, except that [~~the director may not enter~~] an order
133 may not be entered against a broker-dealer or investment adviser under this Subsection (2)[~~(h)~~
134 (b)(viii) without a finding of insolvency as to the broker-dealer or investment adviser;
135 [~~(i)~~] (ix) is not qualified on the basis of the lack of training, experience, and knowledge
136 of the securities business, except as otherwise provided in Subsection [~~(6)~~] (3);
137 [~~(j) has failed~~] (x) fails reasonably to supervise [~~his~~] that person's:
138 (A) agents or employees if the person is a broker-dealer[;]; or [~~his~~]
139 (B) investment adviser representatives or employees if the person is an investment
140 adviser; or
141 [~~(k) has failed~~] (xi) fails to pay the proper filing fee within 30 days after being notified
142 by the division of a deficiency.
143 (c) (i) The division may not commence agency action to revoke or suspend a license
144 under Subsection (2)(b)(iv) more than one year from the day on which the order on which the
145 division relies is entered.
146 (ii) An order may not be entered under Subsection (2)(b)(iv) on the basis of an order
147 under another state's law unless that order is issued on the basis of facts that would constitute a
148 ground for an agency action under this section on the day on which the notice of agency action
149 is filed.
150 [~~(3) Before the director may issue an order under Subsection (1) that: revokes any~~
151 ~~license; bars or censures any licensee or any officer, director, partner, or person occupying a~~

152 similar status or performing similar functions for a licensee from employment with a licensed
153 broker-dealer or investment adviser; or imposes a fine, the Securities Advisory Board shall:]

154 [~~(a)~~ review the order; and]

155 [~~(b)~~ if a majority of the Securities Advisory Board approves the order, authorize the
156 director to issue it.]

157 [~~(4)~~ (d) The ~~[division]~~ Securities Board may ~~[enter]~~ vacate a denial order under
158 Subsection (2)[~~(j) or (k)~~, but shall vacate the order] (b)(x) or (xi) when the deficiency has been
159 corrected.

160 [~~(5)~~ (e) The division may not ~~[institute]~~ seek a suspension or revocation ~~[proceeding]~~
161 of a license on the basis of a fact or transaction known to ~~[it]~~ the division when the license
162 became effective unless the proceeding is instituted within ~~[the next]~~ 120 days of the day on
163 which the license takes effect.

164 [~~(6)~~ (3) The following provisions govern the application of Subsection (2)[~~(f)~~] (b)(ix):
165 (a) ~~[The director may not enter an]~~ An order against a broker-dealer may not be entered
166 on the basis of the lack of qualification of any person other than:

167 (i) the broker-dealer ~~[himself]~~ if ~~[he]~~ the broker-dealer is an individual; or

168 (ii) an agent of the broker-dealer.

169 (b) ~~[The director may not enter an]~~ An order against an investment adviser may not be
170 entered on the basis of the lack of qualification of any person other than:

171 (i) the investment adviser ~~[himself]~~ if ~~[he]~~ the investment adviser is an individual; or

172 (ii) an investment adviser representative.

173 (c) ~~[The director may not enter an]~~ An order may not be entered solely on the basis of
174 lack of experience if the applicant or licensee is qualified by training or knowledge.

175 (d) The ~~[director]~~ Securities Board under Subsection (6) shall consider that:

176 (i) an agent who will work under the supervision of a licensed broker-dealer need not
177 have the same qualifications as a broker-dealer; and ~~[that]~~

178 (ii) an investment adviser representative who will work under the supervision of a
179 licensed investment adviser need not have the same qualifications as an investment adviser.

180 (e) (i) The ~~[director]~~ Securities Board under Subsection (6) shall consider that an
181 investment adviser is not necessarily qualified solely on the basis of experience as a
182 broker-dealer or agent.

183 (ii) When the director finds that an applicant for a license as a broker-dealer is not
 184 qualified as an investment adviser, the director may in issuing or renewing a license condition
 185 the applicant's license as a broker-dealer upon the applicant's not transacting business in this
 186 state as an investment adviser.

187 (f) (i) The division may by rule provide for examinations, which may be written or oral
 188 or both, to be taken by any class of or all applicants.

189 (ii) The division may by rule or order waive the examination requirement as to a person
 190 or class of persons if the division determines that the examination is not necessary for the
 191 protection of investors.

192 ~~[(7)]~~ (4) ~~[(H)]~~ Subject to Subsection (6), the division may summarily cancel or deny a
 193 license or application according to the procedures and requirements of Title 63, Chapter 46b,
 194 Administrative Procedures Act, if the director finds that any licensee or applicant for a license:

195 (a) is no longer in existence~~[-];~~;

196 (b) has ceased to do business as a broker-dealer, agent, investment adviser, or
 197 investment adviser representative~~[-or];~~ or

198 (c) is subject to:

199 (i) an adjudication of mental incompetence; ~~or [to]~~

200 (ii) the control of a committee, conservator, or guardian~~[-];~~ or

201 (d) cannot be located after reasonable search~~[-the division may summarily cancel or~~
 202 ~~deny the license or application according to the procedures and requirements of Title 63,~~
 203 ~~Chapter 46b, Administrative Procedures Act].~~

204 ~~[(8)]~~ (5) (a) Withdrawal from license as a broker-dealer, agent, investment adviser, or
 205 investment adviser representative becomes effective 30 days after receipt of an application to
 206 withdraw or within a shorter period of time as determined by the director, unless:

207 (i) a revocation or suspension proceeding is pending when the application is filed;

208 (ii) a proceeding to revoke or suspend or to impose conditions upon the withdrawal is
 209 instituted within 30 days after the application is filed; or

210 (iii) additional information is requested by the division regarding the withdrawal
 211 application.

212 (b) (i) If a proceeding described in Subsection ~~[(8)]~~ (5)(a) is pending or instituted, the
 213 ~~[director]~~ Securities Board shall designate by order when and under what conditions the

214 withdrawal becomes effective.

215 (ii) If additional information is requested, withdrawal is effective 30 days after the
216 additional information is filed.

217 (c) (i) If no proceeding is pending or instituted, and withdrawal automatically becomes
218 effective, the director may initiate a revocation or suspension proceeding under this section
219 within one year after withdrawal [~~became~~] becomes effective.

220 (ii) The director shall enter any order under Subsection [~~(2)~~] (5)(b) as of the last date
221 on which the license was effective.

222 (6) (a) The Securities Board may take any action permitted by this section and conduct
223 any administrative proceedings under this section, except that the Securities Board may
224 delegate:

225 (i) to the division the authority to deny one or more licenses; and

226 (ii) to an administrative law judge described in Subsection (6)(b) the authority to
227 conduct an administrative proceeding under this section.

228 (b) An administrative law judge to whom the Securities Board may delegate an
229 administrative hearing:

230 (i) may be employed by the department only with the concurrence of the Securities
231 Board; and

232 (ii) may not be employed by the division.

233 Section 3. Section **61-1-12** is amended to read:

234 **61-1-12. Denial, suspension, and revocation of registration.**

235 (1) Upon approval by a majority of the Securities [~~Advisory~~] Board, the director, by
236 means of adjudicative proceedings conducted in accordance with Title 63, Chapter 46b, [~~the~~]
237 Administrative Procedures Act, may issue a stop order that denies effectiveness to, or suspends
238 or revokes the effectiveness of, any securities registration statement and may impose a fine if
239 [~~he~~] the director finds that the order is in the public interest and that:

240 (a) the registration statement, as of its effective date or as of any earlier date in the case
241 of an order denying effectiveness, or any amendment under Subsection 61-1-11(10) as of its
242 effective date, or any report under Subsection 61-1-11(9), is incomplete in any material respect,
243 or contains any statement that was, in the light of the circumstances under which it was made,
244 false or misleading with respect to any material fact;

- 245 (b) any provision of this chapter, or any rule, order, or condition lawfully imposed
246 under this chapter, ~~[has been]~~ is willfully violated, in connection with the offering, by:
- 247 (i) the person filing the registration statement;
- 248 (ii) the issuer, any partner, officer, or director of the issuer, any person occupying a
249 similar status or performing similar functions, or any person directly or indirectly controlling or
250 controlled by the issuer, but only if the person filing the registration statement is directly or
251 indirectly controlled by or acting for the issuer; or
- 252 (iii) any underwriter;
- 253 (c) subject to Subsection (5), the security registered or sought to be registered is the
254 subject of an administrative stop order or similar order, or a permanent or temporary injunction
255 of any court of competent jurisdiction entered under any other federal or state act applicable to
256 the offering; ~~[except that the division may not commence agency action against an effective
257 registration statement under this subsection more than one year from the date of the order or
258 injunction relied on, and it may not enter an order under this subsection on the basis of an order
259 or injunction entered under the securities act of any other state unless that order or injunction
260 was based on facts that would currently constitute a ground for a stop order under this section;]~~
- 261 (d) the issuer's enterprise or method of business includes or would include activities
262 that are illegal where performed;
- 263 (e) the offering ~~[has worked]~~ works or ~~[tended]~~ tends to work a fraud upon purchasers
264 or would so operate;
- 265 (f) the offering ~~[has been]~~ is or would be made with unreasonable amounts of
266 underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits
267 or participation, or unreasonable amounts or kinds of options;
- 268 (g) when a security is sought to be registered by notification, it is not eligible for such
269 registration;
- 270 (h) when a security is sought to be registered by coordination, there ~~[has been]~~ is a
271 failure to comply with the undertaking required by Subsection 61-1-9(2)(d); or
- 272 (i) the applicant or registrant ~~[has failed]~~ fails to pay the proper filing fee.
- 273 (2) The director may enter an order under this section, but may vacate the order if ~~[he]~~
274 the director finds that the conditions that prompted its entry have changed or that it is otherwise
275 in the public interest to do so.

276 (3) The director may not issue a stop order against an effective registration statement
277 on the basis of a fact or transaction known to the division when the registration statement
278 became effective unless the proceeding is instituted within [~~the next~~] 120 days after the day on
279 which the registration statement becomes effective.

280 (4) [~~No~~] A person may not be considered to have violated Section 61-1-7 or 61-1-15 by
281 reason of any order or sale effected after the entry of an order under this section if that person
282 proves by a preponderance of the evidence that [~~he~~] the person did not know, and in the
283 exercise of reasonable care could not have known, of the order.

284 (5) (a) The division may not commence agency action against an effective registration
285 statement under Subsection (1)(c) more than one year from the date on which the order or
286 injunction relied on to commence the agency action is entered.

287 (b) The division may not enter an order under Subsection (1)(c) on the basis of an order
288 or injunction entered under the securities act of any other state unless that order or injunction is
289 issued on the basis of facts that would constitute a ground for a stop order under this section on
290 the day on which the order is issued under Subsection (1)(c).

291 Section 4. Section **61-1-13** is amended to read:

292 **61-1-13. Definitions.**

293 (1) As used in this chapter:

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

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

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

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

303 (I) in securities exempted by Subsection 61-1-14(1)(a), (b), (c), (i), or (j);

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

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

- 307 (IV) with existing employees, partners, officers, or directors of the issuer; or
308 (B) a broker-dealer in effecting transactions in this state limited to those transactions
309 described in Section 15(h)(2) of the Securities Exchange Act of 1934.
- 310 (iii) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a
311 similar status or performing similar functions, is an agent only if the partner, officer, director,
312 or person otherwise comes within the definition of "agent."
- 313 (iv) "Agent" does not include a person described in Subsection (3).
- 314 (c) (i) "Broker-dealer" means any person engaged in the business of effecting
315 transactions in securities for the account of others or for the person's own account.
- 316 (ii) "Broker-dealer" does not include:
- 317 (A) an agent;
318 (B) an issuer;
319 (C) a bank, savings institution, or trust company;
320 (D) a person who has no place of business in this state if:
321 (I) the person effects transactions in this state exclusively with or through:
322 (Aa) the issuers of the securities involved in the transactions;
323 (Bb) other broker-dealers; or
324 (Cc) banks, savings institutions, trust companies, insurance companies, investment
325 companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts,
326 or other financial institutions or institutional buyers, whether acting for themselves or as
327 trustees; or
328 (II) during any period of 12 consecutive months the person does not direct more than
329 15 offers to sell or buy into this state in any manner to persons other than those specified in
330 Subsection (1)(c)(ii)(D)(I), whether or not the offeror or any of the offerees is then present in
331 this state;
- 332 (E) a general partner who organizes and effects transactions in securities of three or
333 fewer limited partnerships, of which the person is the general partner, in any period of 12
334 consecutive months;
- 335 (F) a person whose participation in transactions in securities is confined to those
336 transactions made by or through a broker-dealer licensed in this state;
- 337 (G) a person who is a real estate broker licensed in this state and who effects

338 transactions in a bond or other evidence of indebtedness secured by a real or chattel mortgage
339 or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage,
340 deed or trust, or agreement, together with all the bonds or other evidences of indebtedness
341 secured thereby, is offered and sold as a unit;

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

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

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

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

348 (e) "Commodity" means, except as otherwise specified by the division by rule:

349 (i) any agricultural, grain, or livestock product or byproduct, except real property or
350 any timber, agricultural, or livestock product grown or raised on real property and offered or
351 sold by the owner or lessee of the real property;

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

354 (iii) any gem or gemstone, whether characterized as precious, semi-precious, or
355 otherwise;

356 (iv) any fuel, whether liquid, gaseous, or otherwise;

357 (v) any foreign currency; and

358 (vi) all other goods, articles, products, or items of any kind, except any work of art
359 offered or sold by art dealers, at public auction or offered or sold through a private sale by the
360 owner of the work.

361 (f) (i) "Commodity contract" means any account, agreement, or contract for the
362 purchase or sale, primarily for speculation or investment purposes and not for use or
363 consumption by the offeree or purchaser, of one or more commodities, whether for immediate
364 or subsequent delivery or whether delivery is intended by the parties, and whether characterized
365 as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures
366 contract, installment or margin contract, leverage contract, or otherwise.

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

369 (iii) (A) A commodity contract [~~shall~~] may not include any contract or agreement
370 which requires, and under which the purchaser receives, within 28 calendar days from the
371 payment in good funds any portion of the purchase price, physical delivery of the total amount
372 of each commodity to be purchased under the contract or agreement.

373 (B) The purchaser is not considered to have received physical delivery of the total
374 amount of each commodity to be purchased under the contract or agreement when the
375 commodity or commodities are held as collateral for a loan or are subject to a lien of any
376 person when the loan or lien arises in connection with the purchase of each commodity or
377 commodities.

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

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

384 (A) with the United States Securities and Exchange Commission; or

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

387 (h) "Director" means the director of the Division of Securities charged with:

388 (i) the administration of this chapter; and

389 (ii) subject to Section 61-1-6, enforcement of this chapter.

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

391 (j) "Executive director" means the executive director of the Department of Commerce.

392 (k) "Federal covered adviser" means a person who:

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

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

396 (l) "Federal covered security" means any security that is a covered security under
397 Section 18(b) of the Securities Act of 1933 or rules or regulations promulgated under Section
398 18(b) of the Securities Act of 1933.

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

400 (n) "Guaranteed" means guaranteed as to payment of principal or interest as to debt
401 securities, or dividends as to equity securities.

402 (o) (i) "Investment adviser" means any person who:

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

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

408 (ii) "Investment adviser" includes financial planners and other persons who:

409 (A) as an integral component of other financially related services, provide the
410 investment advisory services described in Subsection (1)(o)(i) to others for compensation and
411 as part of a business; or

412 (B) hold themselves out as providing the investment advisory services described in
413 Subsection (1)(o)(i) to others for compensation.

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

415 (A) an investment adviser representative;

416 (B) a bank, savings institution, or trust company;

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

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

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

426 (F) any person who is a federal covered adviser;

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

428 (H) such other persons not within the intent of this Subsection (1)(o) as the division
429 may by rule or order designate.

430 (p) (i) "Investment adviser representative" means any partner, officer, director of, or a

431 person occupying a similar status or performing similar functions, or other individual, except
432 clerical or ministerial personnel, who:

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

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

437 (B) does any of the following:

438 (I) makes any recommendations or otherwise renders advice regarding securities;

439 (II) manages accounts or portfolios of clients;

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

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

442 or

443 (V) supervises employees who perform any of the acts described in this Subsection
444 (1)(p)(i)(B).

445 (ii) "Investment advisor representative" does not include a person described in
446 Subsection (3).

447 (q) (i) "Issuer" means any person who issues or proposes to issue any security or has
448 outstanding a security that it has issued.

449 (ii) With respect to a preorganization certificate or subscription, "issuer" means the
450 promoter or the promoters of the person to be organized.

451 (iii) "Issuer" means the person or persons performing the acts and assuming duties of a
452 depositor or manager under the provisions of the trust or other agreement or instrument under
453 which the security is issued with respect to:

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

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

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

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

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

466 (r) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

467 (s) "Person" means:

468 (i) an individual;

469 (ii) a corporation;

470 (iii) a partnership;

471 (iv) a limited liability company;

472 (v) an association;

473 (vi) a joint-stock company;

474 (vii) a joint venture;

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

476 (ix) an unincorporated organization;

477 (x) a government; or

478 (xi) a political subdivision of a government.

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

480 (i) silver;

481 (ii) gold;

482 (iii) platinum;

483 (iv) palladium;

484 (v) copper; and

485 (vi) such other substances as the division may specify by rule.

486 (u) "Promoter" means any person who, acting alone or in concert with one or more
487 persons, takes initiative in founding or organizing the business or enterprise of a person.

488 (v) (i) "Sale" or "sell" includes every contract for sale of, contract to sell, or disposition
489 of, a security or interest in a security for value.

490 (ii) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or
491 solicitation of an offer to buy, a security or interest in a security for value.

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

493 (A) any security given or delivered with or as a bonus on account of any purchase of a
494 security or any other thing, is part of the subject of the purchase, and has been offered and sold
495 for value;

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

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

502 (D) any conversion or exchange of one security for another shall constitute an offer or
503 sale of the security received in a conversion or exchange, and the offer to buy or the purchase
504 of the security converted or exchanged;

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

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

509 (G) the issuance of a security under a merger, consolidation, reorganization,
510 recapitalization, reclassification, or acquisition of assets shall constitute the offer or sale of the
511 security issued as well as the offer to buy or the purchase of any security surrendered in
512 connection therewith, unless the sole purpose of the transaction is to change the issuer's
513 domicile.

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

515 (A) a good faith gift;

516 (B) a transfer by death;

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

518 (D) a security dividend not within Subsection (1)(v)(iii)(E) or (F);

519 (E) a securities split or reverse split; or

520 (F) any act incident to a judicially approved reorganization in which a security is issued
521 in exchange for one or more outstanding securities, claims, or property interests, or partly in
522 such exchange and partly for cash.

523 (w) "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility

524 Holding Company Act of 1935," and "Investment Company Act of 1940" mean the federal
525 statutes of those names as amended before or after the effective date of this chapter.

526 (x) (i) "Security" means any:

527 (A) note;

528 (B) stock;

529 (C) treasury stock;

530 (D) bond;

531 (E) debenture;

532 (F) evidence of indebtedness;

533 (G) certificate of interest or participation in any profit-sharing agreement;

534 (H) collateral-trust certificate;

535 (I) preorganization certificate or subscription;

536 (J) transferable share;

537 (K) investment contract;

538 (L) burial certificate or burial contract;

539 (M) voting-trust certificate;

540 (N) certificate of deposit for a security;

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

543 (P) commodity contract or commodity option;

544 (Q) interest in a limited liability company;

545 (R) viatical settlement interest; or

546 (S) in general, any interest or instrument commonly known as a "security," or any
547 certificate of interest or participation in, temporary or interim certificate for, receipt for,
548 guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

549 (ii) "Security" does not include any:

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

553 (B) interest in a limited liability company in which the limited liability company is
554 formed as part of an estate plan where all of the members are related by blood or marriage,

555 there are five or fewer members, or the person claiming this exception can prove that all of the
556 members are actively engaged in the management of the limited liability company; or

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

558 (II) an undivided fractionalized long-term estate in real property that consists of ten or
559 fewer owners; or

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

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

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

569 (Cc) the management agreement complies with any other requirement imposed by rule
570 by the Real Estate Commission under Section 61-2-26.

571 (iii) For purposes of Subsection (1)(x)(ii)(B), evidence that members vote or have the
572 right to vote, or the right to information concerning the business and affairs of the limited
573 liability company, or the right to participate in management, [~~shall~~] may not establish, without
574 more, that all members are actively engaged in the management of the limited liability
575 company.

576 (y) "State" means any state, territory, or possession of the United States, the District of
577 Columbia, and Puerto Rico.

578 (z) "Threshold security" means a security that is a threshold security under Regulation
579 SHO, 17 C.F.R. 242.200 et seq.

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

582 (A) tenancy in common; or

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

584 (I) a fee estate;

585 (II) a life estate; or

586 (III) other long-term estate.
587 (ii) "Undivided fractionalized long-term estate" does not include a joint tenancy.
588 (bb) (i) "Viatical settlement interest" means the entire interest or any fractional interest
589 in any of the following that is the subject of a viatical settlement:
590 (A) a life insurance policy; or
591 (B) the death benefit under a life insurance policy.
592 (ii) "Viatical settlement interest" does not include the initial purchase from the viator
593 by a provider of viatical settlements.
594 (cc) "Whole long-term estate" means a person or persons through joint tenancy owns
595 real property through:
596 (i) a fee estate;
597 (ii) a life estate; or
598 (iii) other long-term estate.
599 (dd) "Working days" means 8 a.m. to 5 p.m., Monday through Friday, exclusive of
600 legal holidays listed in Section 63-13-2.
601 (2) A term not defined in this section shall have the meaning as established by division
602 rule. The meaning of a term neither defined in this section nor by rule of the division shall be
603 the meaning commonly accepted in the business community.
604 (3) (a) This Subsection (3) applies to:
605 (i) the offer or sale of a real property estate exempted from the definition of security
606 under Subsection (1)(x)(ii)(C); or
607 (ii) the offer or sale of an undivided fractionalized long-term estate that is the offer of a
608 security.
609 (b) A person who, directly or indirectly receives compensation in connection with the
610 offer or sale as provided in this Subsection (3) of a real property estate is not an agent,
611 broker-dealer, investment adviser, or investor adviser representative under this chapter if that
612 person is licensed under Chapter 2, Division of Real Estate, as:
613 (i) a principal real estate broker;
614 (ii) an associate real estate broker; or
615 (iii) a real estate sales agent.
616 (4) The list of real property estates excluded from the definition of securities under

617 Subsection (1)(x)(ii)(C) is not an exclusive list of real property estates or interests that are not a
618 security.

619 Section 5. Section **61-1-14** is amended to read:

620 **61-1-14. Exemptions.**

621 (1) The following securities are exempted from Sections 61-1-7 and 61-1-15:

622 (a) any security, including a revenue obligation, issued or guaranteed by the United
623 States, any state, any political subdivision of a state, or any agency or corporate or other
624 instrumentality of one or more of the foregoing, or any certificate of deposit for any of the
625 foregoing;

626 (b) any security issued or guaranteed by Canada, any Canadian province, any political
627 subdivision of any Canadian province, any agency or corporate or other instrumentality of one
628 or more of the foregoing, or any other foreign government with which the United States
629 currently maintains diplomatic relations, if the security is recognized as a valid obligation by
630 the issuer or guarantor;

631 (c) any security issued by and representing an interest in or a debt of, or guaranteed by,
632 any bank organized under the laws of the United States, or any bank, savings institution, or
633 trust company supervised under the laws of any state;

634 (d) any security issued by and representing an interest in or a debt of, or guaranteed by,
635 any federal savings and loan association, or any building and loan or similar association
636 organized under the laws of any state and authorized to do business in this state;

637 (e) any security issued or guaranteed by any federal credit union or any credit union,
638 industrial loan association, or similar association organized and supervised under the laws of
639 this state;

640 (f) any security issued or guaranteed by any public utility or holding company which is
641 a registered holding company under the Public Utility Holding Company Act of 1935 or a
642 subsidiary of such a company within the meaning of that act, or any security regulated in
643 respect of its rates or in its issuance by a governmental authority of the United States, any state,
644 Canada, or any Canadian province;

645 (g) (i) any security listed on the National Association of Securities Dealers Automated
646 Quotation National Market System, the New York Stock Exchange, the American Stock
647 Exchange, or on any other stock exchange or medium approved by the division, except that the

648 director may at any time suspend or revoke this exemption for any particular stock exchange,
649 medium, security, or securities under Subsection (4);

650 (ii) any other security of the same issuer which is of senior or substantially equal rank
651 to any security [sø] listed and approved by the director[-]; or

652 (iii) any security called for by subscription rights or warrants so listed or approved, or
653 any warrant or right to purchase or subscribe to any of the foregoing;

654 (h) (i) any security issued by any person organized and operated not for private profit
655 but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or
656 reformatory purposes, or as a chamber of commerce or trade or professional association; and

657 (ii) any security issued by a corporation organized under Title 3, Chapter 1, General
658 Provisions Relating to Agricultural Cooperative Associations, and any security issued by a
659 corporation to which the provisions of that chapter are made applicable by compliance with the
660 requirements of Section 3-1-21;

661 (i) a promissory note, draft, bill of exchange, or banker's acceptance that evidences an
662 obligation to pay cash within nine months after the date of issuance, exclusive of days of grace,
663 or a renewal of such an obligation that is likewise limited, or a guarantee of such an obligation
664 or of a renewal:

665 (i) issued in denominations of at least \$50,000; and

666 (ii) either:

667 (A) receives a rating in one of the three highest rating categories from a nationally
668 recognized statistical rating organization; or

669 (B) the issuer satisfies requirements established by rule or order of the division;

670 (j) any investment contract issued in connection with an employees' stock purchase,
671 option, savings, pension, profit-sharing, or similar benefit plan;

672 (k) a security issued by an issuer registered as an open-end management investment
673 company or unit investment trust under Section 8 of the Investment Company Act of 1940, if:

674 (i) (A) the issuer is advised by an investment adviser that is a depository institution
675 exempt from registration under the Investment Advisers Act of 1940 or that is currently
676 registered as an investment adviser, and has been registered, or is affiliated with an adviser that
677 has been registered, as an investment adviser under the Investment Advisers Act of 1940 for at
678 least three years next preceding an offer or sale of a security claimed to be exempt under this

679 Subsection (1)(k); and

680 (B) the adviser has acted, or is affiliated with an investment adviser that has acted as
681 investment adviser to one or more registered investment companies or unit investment trusts
682 for at least three years next preceding an offer or sale of a security claimed to be exempt under
683 this Subsection (1)(k); or

684 (ii) the issuer has a sponsor that has at all times throughout the three years before an
685 offer or sale of a security claimed to be exempt under this Subsection (1)(k) sponsored one or
686 more registered investment companies or unit investment trusts the aggregate total assets of
687 which have exceeded \$100,000,000;

688 (iii) in addition to Subsection (1)(k)(i) or (ii), the division has received prior to any sale
689 exempted ~~herein~~ by this Subsection (1)(k):

690 (A) a notice of intention to sell which has been executed by the issuer and which sets
691 forth the name and address of the issuer and the title of the securities to be offered in this state;
692 and

693 (B) a filing fee as determined under Section 61-1-18.4;

694 (iv) in the event any offer or sale of a security of an open-end management investment
695 company is to be made more than 12 months after the date on which the notice and fee under
696 Subsection (1)(k)(iii) is received by the director, another notice and payment of the applicable
697 fee shall be required;

698 (v) for the purpose of this Subsection (1)(k), an investment adviser is affiliated with
699 another investment adviser if ~~it~~ the investment advisor controls, is controlled by, or is under
700 common control with the other investment adviser; and

701 (l) any security as to which the director, by rule or order, finds that registration is not
702 necessary or appropriate for the protection of investors.

703 (2) The following transactions are exempted from Sections 61-1-7 and 61-1-15:

704 (a) any isolated transaction, whether effected through a broker-dealer or not;

705 (b) any nonissuer transaction in an outstanding security, if as provided by rule of the
706 division:

707 (i) information about the issuer of the security as required by the division is currently
708 listed in a securities manual recognized by the division, and the listing is based upon such
709 information as required by rule of the division; or

710 (ii) the security has a fixed maturity or a fixed interest or dividend provision and there
711 has been no default during the current fiscal year or within the three preceding fiscal years, or
712 during the existence of the issuer and any predecessors if less than three years, in the payment
713 of principal, interest, or dividends on the security;

714 (c) any nonissuer transaction effected by or through a registered broker-dealer pursuant
715 to an unsolicited order or offer to buy;

716 (d) any transaction between the issuer or other person on whose behalf the offering is
717 made and an underwriter, or among underwriters;

718 (e) any transaction in a bond or other evidence of indebtedness secured by a real or
719 chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the
720 entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of
721 indebtedness secured thereby, is offered and sold as a unit;

722 (f) any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in
723 bankruptcy, guardian, or conservator;

724 (g) any transaction executed by a bona fide pledgee without any purpose of evading
725 this chapter;

726 (h) any offer or sale to a bank, savings institution, trust company, insurance company,
727 investment company as defined in the Investment Company Act of 1940, pension or
728 profit-sharing trust, or other financial institution or institutional investor, or to a broker-dealer,
729 whether the purchaser is acting for itself or in some fiduciary capacity;

730 (i) any offer or sale of a preorganization certificate or subscription if:

731 (i) no commission or other remuneration is paid or given directly or indirectly for
732 soliciting any prospective subscriber;

733 (ii) the number of subscribers acquiring any legal or beneficial interest therein does not
734 exceed ten; and

735 (iii) there is no general advertising or solicitation in connection with the offer or sale;

736 (j) any transaction pursuant to an offer by an issuer of its securities to its existing
737 securities holders, if:

738 (i) no commission or other remuneration, other than a standby commission is paid or
739 given directly or indirectly for soliciting any security holders in this state and the transaction
740 constitutes ~~either~~:

- 741 (A) the conversion of convertible securities;
- 742 (B) the exercise of nontransferable rights or warrants;
- 743 (C) the exercise of transferable rights or warrants if the rights or warrants are
744 exercisable not more than 90 days after their issuance; or
- 745 (D) the purchase of securities under a preemptive right; and
- 746 (ii) the exemption created by Subsection (2)(j) is not available for an offer or sale of
747 securities to existing securities holders who have acquired their securities from the issuer in a
748 transaction in violation of Section 61-1-7;
- 749 (k) any offer, but not a sale, of a security for which registration statements have been
750 filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is
751 in effect and no public proceeding or examination looking toward such an order is pending;
- 752 (l) a distribution of securities as a dividend if the person distributing the dividend is the
753 issuer of the securities distributed;
- 754 (m) any nonissuer transaction effected by or through a registered broker-dealer where
755 the broker-dealer or issuer files with the division, and the broker-dealer maintains in ~~[his]~~ the
756 broker-dealer's records, and makes reasonably available upon request to any person expressing
757 an interest in a proposed transaction in the security with the broker-dealer information
758 prescribed by the division under its rules;
- 759 (n) any transactions not involving a public offering;
- 760 (o) any offer or sale of "condominium units" or "time period units" as those terms are
761 defined in ~~[the]~~ Title 57, Chapter 8, Condominium Ownership Act, whether or not to be sold
762 by installment contract, if the ~~[provisions of the Condominium Ownership Act]~~ following are
763 complied with:
- 764 (i) Title 57, Chapter 8, Condominium Ownership Act, or if the units are located in
765 another state, the condominium act of that state~~[-the]~~;
- 766 (ii) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act~~[-the]~~;
- 767 (iii) Title 57, Chapter 19, Utah Timeshare and Camp Resort Act~~[-]~~; and ~~[the]~~
- 768 (iv) Title 70C, Utah [Uniform] Consumer Credit Code~~[-are complied with]~~;
- 769 (p) any transaction or series of transactions involving a merger, consolidation,
770 reorganization, recapitalization, reclassification, or sale of assets, if the consideration for
771 which, in whole or in part, is the issuance of securities of a person or persons, and if:

772 (i) the transaction or series of transactions is incident to a vote of the securities holders
773 of each person involved or by written consent or resolution of some or all of the securities
774 holders of each person involved;

775 (ii) the vote, consent, or resolution is given under a provision in:

776 (A) the applicable corporate statute or other controlling statute;

777 (B) the controlling articles of incorporation, trust indenture, deed of trust, or
778 partnership agreement; or

779 (C) the controlling agreement among securities holders;

780 (iii) (A) one person involved in the transaction is required to file proxy or
781 informational materials under Section 14 (a) or (c) of the Securities Exchange Act of 1934 or
782 Section 20 of the Investment Company Act of 1940 and has so filed;

783 (B) one person involved in the transaction is an insurance company which is exempt
784 from filing under Section 12(g)(2)(G) of the Securities Exchange Act of 1934, and has filed
785 proxy or informational materials with the appropriate regulatory agency or official of its
786 domiciliary state; or

787 (C) all persons involved in the transaction are exempt from filing under Section
788 12(g)(1) of the Securities Exchange Act of 1934, and file with the division such proxy or
789 informational material as the division requires by rule;

790 (iv) the proxy or informational material is filed with the division and distributed to all
791 securities holders entitled to vote in the transaction or series of transactions at least ten working
792 days prior to any necessary vote by the securities holders or action on any necessary consent or
793 resolution; and

794 (v) the division does not, by order, deny or revoke the exemption within ten working
795 days after filing of the proxy or informational materials;

796 (q) any transaction pursuant to an offer to sell securities of an issuer if:

797 (i) the transaction is part of an issue in which there are not more than 15 purchasers in
798 this state, other than those designated in Subsection (2)(h), during any 12 consecutive months;

799 (ii) no general solicitation or general advertising is used in connection with the offer to
800 sell or sale of the securities;

801 (iii) no commission or other similar compensation is given, directly or indirectly, to a
802 person other than a broker-dealer or agent licensed under this chapter, for soliciting a

803 prospective purchaser in this state;

804 (iv) the seller reasonably believes that all the purchasers in this state are purchasing for
805 investment;

806 (v) the transaction is part of an aggregate offering that does not exceed \$500,000, or a
807 greater amount as prescribed by a division rule, during any 12 consecutive months; and

808 (vi) the director, as to a security or transaction, or a type of security or transaction, may
809 withdraw or further condition this exemption or waive one or more of the conditions in
810 Subsection (2)(q);

811 (r) any transaction involving a commodity contract or commodity option; and

812 (s) any transaction as to which the division finds that registration is not necessary or
813 appropriate for the protection of investors.

814 (3) Every person filing an exemption notice or application shall pay a filing fee as
815 determined under Section 61-1-18.4.

816 (4) Upon approval by a majority of the Securities ~~[Advisory]~~ Board, the director, by
817 means of an adjudicative proceeding conducted in accordance with Title 63, Chapter 46b,
818 Administrative Procedures Act, may deny or revoke any exemption specified in Subsection
819 (1)(g), (h), or (j) or in Subsection (2) with respect to:

820 (a) a specific security, transaction, or series of transactions; or

821 (b) any person or issuer, any affiliate or successor to a person or issuer, or any entity
822 subsequently organized by or on behalf of a person or issuer generally and may impose a fine if
823 ~~[he]~~ the director finds that the order is in the public interest and that:

824 (i) the application for or notice of exemption filed with the division is incomplete in
825 any material respect or contains any statement which was, in the light of the circumstances
826 under which it was made, false or misleading with respect to any material fact;

827 (ii) any provision of this chapter, or any rule, order, or condition lawfully imposed
828 under this chapter ~~[has been]~~ is willfully violated in connection with the offering or exemption
829 by:

830 (A) the person filing any application for or notice of exemption;

831 (B) the issuer, any partner, officer, or director of the issuer, any person occupying a
832 similar status or performing similar functions, or any person directly or indirectly controlling or
833 controlled by the issuer, but only if the person filing the application for or notice of exemption

834 is directly or indirectly controlled by or acting for the issuer; or

835 (C) any underwriter;

836 (iii) subject to Subsection (6), the security for which the exemption is sought is the
837 subject of an administrative stop order or similar order, or a permanent or temporary injunction
838 or any court of competent jurisdiction entered under any other federal or state act applicable to
839 the offering or exemption; [the division may not institute a proceeding against an effective
840 exemption under this subsection more than one year from the date of the order or injunction
841 relied on, and it may not enter an order under this subsection on the basis of an order or
842 injunction entered under any other state act unless that order or injunction was based on facts
843 that would currently constitute a ground for a stop order under this section;]

844 (iv) the issuer's enterprise or method of business includes or would include activities
845 that are illegal where performed;

846 (v) the offering [~~has worked, has tended~~] works, tends to work, or would operate to
847 work a fraud upon purchasers;

848 (vi) the offering [~~has been~~] is or was made with unreasonable amounts of underwriters'
849 and sellers' discounts, commissions, or other compensation, or promoters' profits or
850 participation, or unreasonable amounts or kinds of options;

851 (vii) an exemption is sought for a security or transaction which is not eligible for the
852 exemption; or

853 (viii) the proper filing fee, if required, [~~has~~] is not [~~been~~] paid.

854 (5) (a) [~~No~~] An order under Subsection (4) may not operate retroactively.

855 (b) [~~No~~] A person may not be considered to have violated Section 61-1-7 or 61-1-15 by
856 reason of any offer or sale effected after the entry of an order under [~~this~~] Subsection (4) if [~~he~~]
857 the person sustains the burden of proof that [~~he~~] the person did not know, and in the exercise of
858 reasonable care could not have known, of the order.

859 (6) (a) The division may not institute a proceeding against an effective exemption
860 under Subsection (4)(b)(iii) more than one year from the day on which the order or injunction
861 relied on in instituting the proceeding is entered.

862 (b) The division may not enter an order under Subsection (4)(b)(iii) on the basis of an
863 order or injunction entered under any other state act unless that order or injunction is issued on
864 the basis of facts that would constitute a ground for a stop order under this section at the time

865 the order is issued under Subsection (4)(b)(iii).

866 Section 6. Section **61-1-15.5** is amended to read:

867 **61-1-15.5. Federal covered securities.**

868 (1) The division by rule or order may require the filing of any of the following
869 documents with respect to a covered security under Section 18(b)(2) of the Securities Act of
870 1933:

871 (a) prior to the initial offer of federal covered security in this state, a notice form as
872 prescribed by the division or all documents that are part of a federal registration statement filed
873 with the U.S. Securities and Exchange Commission under the Securities Act of 1933, together
874 with a consent to service of process signed by the issuer and a filing fee as determined under
875 Section 61-1-18.4;

876 (b) after the initial offer of such federal covered security in this state, all documents
877 that are part of an amendment to a federal registration statement filed with the U.S. Securities
878 and Exchange Commission under the Securities Act of 1933, which shall be filed concurrently
879 with the division;

880 (c) a report of the value of federal covered securities offered or sold in this state,
881 together with a filing fee as determined under Section 61-1-18.4; and

882 (d) a notice filing under this section shall be effective for one year and shall be
883 renewed annually in order to continue to offer or sell the federal covered securities for which
884 the notice was filed.

885 (2) With respect to any security that is a covered security under Section 18(b)(4)(D) of
886 the Securities Act of 1933, the division by rule or order may require the issuer to file a notice
887 on SEC Form D and a consent to service of process signed by the issuer no later than 15 days
888 after the first sale of such covered security in this state, together with a filing fee as determined
889 under Section 61-1-18.4.

890 (3) The division by rule or order may require the filing of any document filed with the
891 U.S. Securities and Exchange Commission under the Securities Act of 1933, with respect to a
892 covered security under Section 18(b)(3) or (4) of the Securities Act of 1933, together with a
893 filing fee as determined under Section 61-1-18.4.

894 (4) Upon approval by a majority of the Securities [Advisory] Board, the director, by
895 means of adjudicative proceedings conducted in accordance with Title 63, Chapter 46b,

896 Administrative Procedures Act, may issue a stop order suspending the offer and sale of any
897 federal covered security, except a covered security under Section 18(b)(1) of the Securities Act
898 of 1933, if the director finds that the order is in the public interest and there is a failure to
899 comply with any condition established under this section.

900 (5) The division by rule or order may waive any or all of the provisions of this section.

901 Section 7. Section **61-1-18** is amended to read:

902 **61-1-18. Division of Securities established -- Director -- Appointment -- Functions**
903 **-- Investigators.**

904 (1) (a) There is established within the Department of Commerce a Division of
905 Securities.

906 (b) The division shall be under the direction and control of a director, appointed by the
907 executive director with the governor's approval.

908 (c) The director shall be responsible for:

909 (i) the administration of this chapter; and

910 (ii) subject to Section 61-1-6, enforcement of this chapter.

911 (d) The director shall hold office at the pleasure of the governor.

912 (2) The director, with the approval of the executive director, may employ such staff as
913 necessary to discharge the duties of the division at salaries to be fixed by the director according
914 to standards established by the Department of Human Resource Management.

915 (3) An investigator employed pursuant to Subsection (2) who meets the training
916 requirements of Subsection 53-13-105(3) may be designated a special function officer, as
917 defined in Section 53-13-105, by the director, but is not eligible for retirement benefits under
918 the Public Safety Employee's Retirement System.

919 Section 8. Section **61-1-18.3** is amended to read:

920 **61-1-18.3. Information obtained by division -- Use for personal benefit prohibited**
921 **-- Disclosure.**

922 (1) It is unlawful for any of the division's employees or any member of the Securities
923 [Advisory] Board to use for personal benefit any non-public information which is filed with or
924 obtained by the division. [No provision of this]

925 (2) This chapter [authorizes] does not authorize the division or any of its officers or
926 employees to disclose any such information except among themselves or when necessary or

927 appropriate in a proceeding or investigation under this chapter.

928 (3) No provision of this chapter either creates or derogates from any privilege [~~which~~]
929 that exists at common law or otherwise when documentary or other evidence is sought under
930 subpoena directed to the division or any of its employees.

931 Section 9. Section **61-1-18.5** is amended to read:

932 **61-1-18.5. Securities Board established -- Appointment -- Duties -- Qualifications**
933 **-- Terms -- Vacancies -- Meetings -- Conflicts of interest -- Expenses.**

934 (1) (a) There is hereby established a Securities [~~Advisory~~] Board.

935 (b) Members of the board shall be appointed by the governor with the consent of the
936 Senate.

937 (c) The board shall have the following duties:

938 (i) take disciplinary action or impose sanctions as provided in Section 61-1-6;

939 [~~(i)~~] (ii) formulate and make recommendations to the director regarding policy and
940 budgetary matters;

941 [~~(ii)~~] (iii) submit recommendations regarding registration requirements and division
942 rules;

943 [~~(iii)~~] (iv) formulate and make recommendations to the director regarding the
944 establishment of reasonable fees; and

945 [~~(iv)~~] (v) generally act in an advisory capacity to the director with respect to the
946 exercise of his duties, powers, and responsibilities.

947 (2) (a) The Securities [~~Advisory~~] Board shall be comprised of five members who shall
948 be appointed in accordance with the following:

949 (i) two members from the securities brokerage community who have at least five years
950 prior experience in securities matters;

951 (ii) one member from the securities section of the Utah Bar Association;

952 (iii) one member who is an officer or director of a corporation not subject to the
953 reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934; and

954 (iv) one member from the public at large who has no active participation in the
955 securities business.

956 (b) No member may serve more than two consecutive terms.

957 (3) (a) Except as required by Subsection (3)(b), as terms of current board members

958 expire, the governor shall appoint each new member or reappointed member to a four-year
959 term.

960 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the
961 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
962 commission members are staggered so that approximately half of the board is appointed every
963 two years.

964 (4) (a) When a vacancy occurs in the membership for any reason, the replacement shall
965 be appointed for the unexpired term.

966 (b) All members shall serve until their respective successors are appointed and
967 qualified.

968 (5) The board shall meet at least quarterly on a regular date to be fixed by the board
969 and at such other times at the call of the director or any two members of the board. A majority
970 of the board shall constitute a quorum for the transaction of business. Actions of the board
971 shall require a vote of a majority of those present.

972 (6) Each member of the board shall, by sworn and written statement filed with the
973 Department of Commerce and the lieutenant governor, disclose any position of employment or
974 ownership interest that the member has with respect to any entity or business subject to the
975 jurisdiction of the division. This statement shall be filed upon appointment and must be
976 appropriately amended whenever significant changes occur in matters covered by the
977 statement.

978 (7) (a) ~~[Members shall receive no]~~ A member of the board may not receive
979 compensation or benefits for ~~[their]~~ the member's services, but may receive per diem and
980 expenses incurred in the performance of the member's official duties at the rates established by
981 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

982 (b) ~~[Members]~~ A member may decline to receive per diem and expenses for ~~[their]~~ the
983 member's service.

984 Section 10. Section **61-1-18.6** is amended to read:

985 **61-1-18.6. Procedures -- Adjudicative proceedings.**

986 (1) ~~[The Division of Securities]~~ Subject to Subsection (2), the division shall comply
987 with ~~[the procedures and requirements of]~~ Title 63, Chapter 46b, Administrative Procedures
988 Act, in ~~[its]~~ adjudicative proceedings under this chapter.

989 (2) The Securities Board shall comply with Title 63, Chapter 46b, Administrative
990 Procedures Act, in any proceeding held in accordance with Subsection 61-1-6(6).

991 Section 11. Section **61-1-18.7** is amended to read:

992 **61-1-18.7. Funding of securities investor education and training.**

993 (1) There is created a restricted special revenue fund known as the "Securities Investor
994 Education and Training Fund" to provide revenue for educating the public and the securities
995 industry as provided in this section.

996 (2) All money received by the state by reason of civil penalties ordered and
997 administrative fines collected pursuant to this chapter shall be deposited in the Securities
998 Investor Education and Training Fund, and subject to the requirements of Title 51, Chapter 5,
999 Funds Consolidation Act.

1000 (3) The special revenue fund may include any fines collected by the division after July
1001 1, 1989, pursuant to voluntary settlements or administrative orders.

1002 (4) (a) The fund shall earn interest.

1003 (b) All interest earned on fund monies shall be deposited into the fund.

1004 (5) Notwithstanding Title 63, Chapter 38, Budgetary Procedures Act, the director may
1005 use special revenue fund monies, upon concurrence of the Securities [Advisory] Board and the
1006 executive director of the Department of Commerce, in a manner consistent with the duties of
1007 the division under this chapter and only for any or all of the following and the expense of
1008 providing them:

1009 (a) education and training of Utah residents in matters concerning securities laws and
1010 investment decisions, by publications or presentations;

1011 (b) education of registrants and licensees under this chapter, by:

1012 (i) publication of this chapter and rules and policy statements and opinion letters of the
1013 division; and

1014 (ii) sponsorship of seminars or meetings to educate registrants and licensees as to the
1015 requirements of this chapter; and

1016 (c) investigation and litigation.

1017 (6) If the balance in the fund exceeds \$100,000 at the close of any fiscal year, the
1018 excess shall be transferred to the General Fund.

1019 Section 12. Section **61-1-19** is amended to read:

1020 **61-1-19. Investigations authorized.**

1021 (1) (a) The division [~~in its discretion~~] may make any public or private investigations
1022 within or without this state as [~~it~~] the division considers necessary to determine whether any
1023 person has violated, is violating, or is about to violate any provision of this chapter or any rule
1024 or order [~~hereunder~~] under this chapter.

1025 (b) To aid in the enforcement of this chapter or in the prescribing of rules and forms
1026 [~~hereunder~~] under this chapter, the division may require or permit any person to file a statement
1027 in writing, under oath or otherwise as to all the facts and circumstances concerning the matter
1028 to be investigated.

1029 (c) The division may publish information concerning any violation of this chapter or
1030 the violation of any rule or order [~~hereunder~~] under this chapter.

1031 (2) [~~For~~] Subject to Subsection 61-1-6(6), for the purpose of any investigation or
1032 proceeding under this chapter, the division or any employee designated by [~~it~~] the division
1033 may:

1034 (a) administer [~~oaths and affirmations~~] an oath or affirmation;

1035 (b) subpoena [~~witnesses~~] a witness and compel [~~their~~] the attendance of a witness;

1036 (c) take evidence; and

1037 (d) require the production of any books, papers, correspondence, memoranda,
1038 agreements, or other documents or records relevant or material to the investigation.

1039 Section 13. Section **61-1-20** is amended to read:

1040 **61-1-20. Enforcement.**

1041 (1) [~~Whenever~~] If it appears to the director that any person has engaged, is engaging, or
1042 is about to engage in any act or practice constituting a violation of this chapter or any rule or
1043 order under this chapter, in addition to any specific powers granted in this chapter, the director
1044 may take an action provided for in this section except that any hearing required by this section
1045 shall be conducted by the Securities Board in accordance with Subsection 61-1-6(6) if:

1046 (a) the director is seeking any sanction in addition to a cease and desist order; and

1047 (b) the person against whom the director is seeking a sanction is a licensee under this
1048 chapter.

1049 [~~(1)~~] (2) (a) Under the circumstances described in Subsection (1), the director may
1050 issue an order directing the person to appear before the division and show cause why an order

1051 should not be issued directing the person to cease and desist from engaging in the act or
1052 practice, or doing any act in furtherance of the [~~activity;~~] act or practice.

1053 (b) [~~the~~] The order to show cause described in this Subsection (2) shall state:

1054 (i) the reasons for the order; and

1055 (ii) the date of the hearing[;].

1056 (c) [~~the~~] The director shall promptly serve a copy of the order to show cause upon each
1057 person named in the order[;] to show cause.

1058 (d) [~~the~~] The director shall hold a hearing on the order to show cause no sooner than
1059 ten business days after the order to show cause is issued[;].

1060 (e) (i) [~~after~~] After a hearing, the director may issue an order to cease and desist from
1061 engaging in any act or practice constituting a violation of this chapter or any rule or order under
1062 this chapter.

1063 (ii) The order described in this Subsection (2)(e) shall be accompanied by written
1064 findings of fact and conclusions of law[;].

1065 (f) [~~the director~~] An order described in Subsection (2)(e) may:

1066 (i) impose a fine; and

1067 [~~(g)~~] (ii) [~~the director may~~] bar or suspend that person from associating with:

1068 (A) a licensed broker-dealer in this state; or

1069 (B) an investment adviser in this state.

1070 [~~(2)~~] (3) (a) The director may bring an action in the appropriate district court of this
1071 state or the appropriate court of another state to enjoin the acts or practices and to enforce
1072 compliance with this chapter or any rule or order under this chapter[;].

1073 (b) [~~upon~~] Upon a proper showing in an action brought under this [~~section~~] Subsection
1074 (3), the court may:

1075 (i) issue a permanent or temporary, prohibitory or mandatory injunction;

1076 (ii) issue a restraining order or writ of mandamus;

1077 (iii) enter a declaratory judgment;

1078 (iv) appoint a receiver or conservator for the defendant or the defendant's assets;

1079 (v) order disgorgement;

1080 (vi) order rescission;

1081 (vii) impose a fine of not more than \$500 for each violation of [~~the act~~] this chapter or

1082 any rule or order under this chapter; and

1083 (viii) enter any other relief the court considers just~~[, and]~~.

1084 (c) ~~[the]~~ A court may not require the division to post a bond in an action brought under
1085 this Subsection (3).

1086 Section 14. Section **61-1-21** is amended to read:

1087 **61-1-21. Penalties for violations.**

1088 (1) A person is guilty of a third degree felony who willfully violates any provision of
1089 this chapter except Sections 61-1-1 and 61-1-16, or who willfully violates any rule or order
1090 under this chapter, or who willfully violates Section 61-1-16 knowing the statement made to be
1091 false or misleading in any material respect.

1092 (2) A person who willfully violates Section 61-1-1:

1093 (a) is guilty of a third degree felony if, at the time the crime was committed, the
1094 property, money, or thing unlawfully obtained or sought to be obtained was worth less than
1095 \$10,000;

1096 (b) is guilty of a second degree felony if:

1097 (i) at the time the crime was committed, the property, money, or thing unlawfully
1098 obtained or sought to be obtained was worth \$10,000 or more; or

1099 (ii) (A) at the time the crime was committed, the property, money, or thing unlawfully
1100 obtained or sought to be obtained was worth less than \$10,000; and

1101 (B) in connection with that violation, the violator knowingly accepted any money
1102 representing:

1103 (I) equity in a person's home;

1104 (II) a withdrawal from any individual retirement account; or

1105 (III) a withdrawal from any qualified retirement plan as defined in the Internal Revenue
1106 Code; or

1107 (c) is guilty of a second degree felony punishable by imprisonment for an indeterminate
1108 term of not less than three years or more than 15 years if:

1109 (i) at the time the crime was committed, the property, money, or thing unlawfully
1110 obtained or sought to be obtained was worth \$10,000 or more; and

1111 (ii) in connection with that violation, the violator knowingly accepted any money
1112 representing:

1113 (A) equity in a person's home;
1114 (B) a withdrawal from any individual retirement account; or
1115 (C) a withdrawal from any qualified retirement plan as defined in the Internal Revenue
1116 Code.

1117 (3) No person may be imprisoned for the violation of any rule or order if he proves that
1118 he had no knowledge of the rule or order.

1119 (4) In addition to any other penalty for a criminal violation of this chapter, the
1120 sentencing judge may impose any penalty or remedy provided for in Subsection 61-1-20[(2)]
1121 (3)(b).

1122 Section 15. Section **61-1-21.5** is amended to read:

1123 **61-1-21.5. Legal counsel -- Prosecutions.**

1124 (1) The attorney general shall advise and represent the division and its staff in all civil
1125 matters, administrative or judicial, requiring legal counsel or services in the exercise or defense
1126 of the division's power or the performance of [its] the division's duties.

1127 (2) With the concurrence of the attorney general, the staff of the division may represent
1128 the division in hearings conducted during the course of adjudicative proceedings [~~of the~~
1129 ~~division~~] under this chapter.

1130 (3) In the prosecution of all criminal actions under this chapter, the attorney general,
1131 county attorney, or district attorney of the appropriate jurisdiction, shall provide all legal
1132 services for the division and its staff. The division may refer [~~such~~] the evidence [~~as is~~]
1133 available concerning violations of this chapter to the attorney general or the appropriate county
1134 attorney or district attorney for criminal prosecution.

1135 Section 16. Section **61-1-23** is amended to read:

1136 **61-1-23. Review of orders.**

1137 [~~Any~~] A person aggrieved by a final order [~~of the director~~] under this chapter
1138 determining all of the issues of an adjudicative proceeding may obtain review of the order by
1139 the executive director in accordance with Title 63, Chapter 46b, [~~the~~] Administrative
1140 Procedures Act.

Legislative Review Note
as of 1-26-07 12:09 PM

Office of Legislative Research and General Counsel

H.B. 153 - Securities Amendments

Fiscal Note

2007 General Session
State of Utah

State Impact

Enactment of this bill will require an additional \$45,000 from the Commerce Service Fund to pay for outsourced hearings. Appropriations from the Commerce Service Fund could impact the General Fund over time.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>
Commerce Service Fund	\$0	\$45,000	\$45,000	\$0	\$0	\$0
Total	\$0	\$45,000	\$45,000	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
