

1 UTAH UNIFORM SECURITIES ACT

2 MODIFICATIONS

3 2009 GENERAL SESSION

4 STATE OF UTAH

5 Chief Sponsor: Jim Bird

6 Senate Sponsor: Lyle W. Hillyard

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13 LONG TITLE

14 General Description:

15 This bill modifies the Utah Uniform Securities Act to create the Securities
16 Commission, outline its powers and duties, and make other substantive changes.

17 Highlighted Provisions:

18 This bill:

- 19 ▶ creates the Securities Commission;
- 20 ▶ outlines the powers and duties of the Securities Commission, including modifying
21 the powers and duties of the Division of Securities and its director;
- 22 ▶ modifies definitions including the definition of a security;
- 23 ▶ addresses disciplinary proceedings;
- 24 ▶ addresses licensing;
- 25 ▶ addresses requirements related to associations between licensed and unlicensed
26 persons;
- 27 ▶ requires the identification of a principal or designated official;
- 28 ▶ expands the scope of criminal pleas considered to determine if disciplinary action
29 or licensing restrictions should be taken;
- 30 ▶ addresses disciplinary action or licensing restrictions for entities that are materially

- 31 the same;
- 32 ▶ addresses civil actions that could result in disciplinary action;
- 33 ▶ repeals registration by notification;
- 34 ▶ modifies the automatic effectiveness related to registration;
- 35 ▶ updates language related to means of providing notices;
- 36 ▶ modifies provisions related to exemptions and registration of securities;
- 37 ▶ modifies remedies available for enforcement;
- 38 ▶ modifies provisions related to private causes of action;
- 39 ▶ provides that prosecutors may bring criminal proceedings without referral from the
- 40 division;
- 41 ▶ deletes outdated language including references to repealed federal law; and
- 42 ▶ makes technical and conforming changes.

43 **Monies Appropriated in this Bill:**

44 None

45 **Other Special Clauses:**

46 None

47 **Utah Code Sections Affected:**

48 AMENDS:

- 49 **31A-5-302**, as last amended by Laws of Utah 1987, Chapter 91
- 50 **61-1-3**, as last amended by Laws of Utah 1997, Chapter 160
- 51 **61-1-4**, as last amended by Laws of Utah 2008, Chapter 382
- 52 **61-1-6**, as last amended by Laws of Utah 2008, Chapter 382
- 53 **61-1-9**, as last amended by Laws of Utah 1991, Chapter 161
- 54 **61-1-11**, as last amended by Laws of Utah 1994, Chapter 12
- 55 **61-1-11.1**, as last amended by Laws of Utah 2008, Chapter 382
- 56 **61-1-12**, as last amended by Laws of Utah 2008, Chapter 382
- 57 **61-1-13**, as last amended by Laws of Utah 2008, Chapter 382
- 58 **61-1-14**, as last amended by Laws of Utah 2008, Chapter 382

- 59 **61-1-15.5**, as last amended by Laws of Utah 2008, Chapter 382
- 60 **61-1-18**, as last amended by Laws of Utah 2006, Chapter 139
- 61 **61-1-18.2**, as enacted by Laws of Utah 1983, Chapter 284
- 62 **61-1-18.3**, as enacted by Laws of Utah 1983, Chapter 284
- 63 **61-1-18.5**, as last amended by Laws of Utah 2002, Chapter 176
- 64 **61-1-18.6**, as last amended by Laws of Utah 2008, Chapter 382
- 65 **61-1-18.7**, as last amended by Laws of Utah 2008, Chapter 382
- 66 **61-1-19**, as last amended by Laws of Utah 1990, Chapter 133
- 67 **61-1-20**, as last amended by Laws of Utah 1994, Chapter 12
- 68 **61-1-21**, as last amended by Laws of Utah 2001, Chapter 149
- 69 **61-1-21.5**, as last amended by Laws of Utah 1993, Chapters 38 and 158
- 70 **61-1-22**, as last amended by Laws of Utah 2007, Chapter 292
- 71 **61-1-23**, as last amended by Laws of Utah 2008, Chapter 382
- 72 **61-1-24**, as last amended by Laws of Utah 1991, Chapter 161
- 73 **61-1-25**, as last amended by Laws of Utah 1983, Chapter 284

74 REPEALS:

- 75 **61-1-8**, as last amended by Laws of Utah 1991, Chapter 161
- 76 **61-1-30**, as last amended by Laws of Utah 2008, Chapter 250



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

79 Section 1. Section **31A-5-302** is amended to read:

80 **31A-5-302. Registration of securities.**

81 (1) [~~Insurance securities~~] (a) An insurance security shall be registered with the
82 commissioner [~~by notification under Section 61-1-8;~~];

83 (i) by coordination under Section 61-1-9[~~;~~]; or

84 (ii) by qualification under Section 61-1-10. [~~The~~]

85 (b) A registration statement [~~in each case~~] under this Subsection (1) shall conform to
86 [~~the provisions of~~] Section 61-1-11.

87 (2) The commissioner has the powers specified in Sections 61-1-12, 61-1-15, 61-1-19,
88 61-1-20, and 61-1-24.

89 (3) ~~[The provisions of]~~ Sections 61-1-16, 61-1-17, 61-1-18.3, and 61-1-25 apply to the
90 regulation of securities under this part.

91 (4) As used in this chapter, the words "commission" or "division" under Title 61,
92 Chapter 1, Utah Uniform Securities Act, mean the insurance commissioner.

93 Section 2. Section **61-1-3** is amended to read:

94 **61-1-3. Licensing of broker-dealers, agents, and investment advisers.**

95 (1) It is unlawful for ~~[any]~~ a person to transact business in this state as a broker-dealer
96 or agent unless the person is licensed under this chapter.

97 (2) (a) It is unlawful for ~~[any]~~ a broker-dealer or issuer to employ or engage an agent
98 unless the agent is licensed. The license of an agent is not effective during any period when
99 ~~[he]~~ the agent is not associated with:

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

101 (ii) a particular issuer.

102 (b) When an agent begins or terminates ~~[a connection]~~ an association with a
103 broker-dealer or issuer, or begins or terminates ~~[those]~~ activities ~~[which make him]~~ as an
104 agent, the agent ~~[as well as]~~ and the broker-dealer or issuer shall promptly notify the division.

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

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

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

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

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

114 (II) the individual is barred from employment or association with a broker-dealer, an

115 issuer, or a state or federal covered investment adviser; and
116 (B) the suspension, revocation, or bar described in Subsection (2)(d)(i)(A) is by an
117 order:
118 (I) under this chapter;
119 (II) of the Securities and Exchange Commission;
120 (III) of a self-regulatory organization; or
121 (IV) of a securities administrator of a state other than Utah.
122 (ii) A broker-dealer or issuer does not violate this Subsection (2)(d) if the
123 broker-dealer or issuer did not know and in the exercise of reasonable care could not have
124 known, of the suspension, revocation, or bar.
125 (iii) An order under this chapter may modify or waive, in whole or in part, the
126 application of Subsection (2)(d)(i) to a broker-dealer or issuer.
127 (3) It is unlawful for [~~any~~] a person to transact business in this state as an investment
128 adviser or as an investment adviser representative unless:
129 (a) the person is licensed under this chapter; [~~or~~]
130 (b) the person's only clients in this state are:
131 (i) one or more of the following whether acting for itself or as a trustee with
132 investment control:
133 (A) an investment [~~companies~~] company as defined in the Investment Company Act of
134 1940[~~, other~~];
135 (B) another investment [~~advisers;~~] adviser;
136 (C) a federal covered [~~advisers, broker-dealers, banks, trust companies, savings and~~
137 loan associations;] adviser;
138 (D) a broker-dealer;
139 (E) a depository institution;
140 (F) a trust company;
141 (G) an insurance [~~companies;~~] company;
142 (H) an employee benefit [~~plans~~] plan with assets of not less than \$1,000,000[~~, and~~]; or

- 143 (I) a governmental [agencies or instrumentalities, whether acting for themselves or as
144 trustees with investment control;] agency or instrumentality; or
- 145 (ii) other institutional investors as are designated by rule or order of the director; or
146 (c) the person has no place of business in this state and during the preceding 12-month
147 period has had not more than five clients, other than those specified in Subsection (3)(b), who
148 are residents of this state.
- 149 (4) (a) It is unlawful for ~~any~~:
- 150 (i) a person required to be licensed as an investment adviser under this chapter to
151 employ an investment adviser representative unless the investment adviser representative is
152 licensed under this chapter, [provided] except that the license of an investment adviser
153 representative is not effective during any period when the person is not employed by an
154 investment adviser licensed under this chapter; [or]
- 155 (ii) a federal covered adviser to employ, supervise, or associate with an investment
156 adviser representative having a place of business located in this state, unless [such] the
157 investment adviser representative is:
- 158 (A) licensed under this chapter; or [is]
- 159 (B) exempt from licensing[-]; or
- 160 (iii) an investment adviser, directly or indirectly, to employ or associate with an
161 individual to engage in an activity related to providing investment advice in this state if:
- 162 (A) (I) the license of the individual is suspended or revoked; or
163 (II) the individual is barred from employment or association with a state or federal
164 covered investment adviser, broker-dealer, or issuer; and
- 165 (B) the suspension, revocation, or bar is by an order:
- 166 (I) under this chapter;
167 (II) of the Securities and Exchange Commission;
168 (III) a self-regulatory organization; or
169 (IV) a securities administrator of a state other than Utah.
- 170 (b) (i) An investment adviser does not violate Subsection (4)(a)(iii) if the investment

171 adviser did not know, and in the exercise of reasonable care could not have known, of the
172 suspension, revocation, or bar.

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

175 ~~[(b)]~~ (c) When an investment adviser representative required to be licensed under this
176 chapter begins or terminates employment with an investment adviser, the investment adviser
177 shall promptly notify the division.

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

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

182 (ii) notifies the investment adviser representative of the division's approval of the
183 association.

184 (5) Except with respect to an investment ~~[advisers]~~ adviser whose only clients are
185 those described under Subsections (3)(b) or (3)(c), it is unlawful for ~~[any]~~ a federal covered
186 adviser to conduct advisory business in this state unless ~~[such]~~ the person complies with ~~[the~~
187 ~~provisions of]~~ Section 61-1-4.

188 Section 3. Section **61-1-4** is amended to read:

189 **61-1-4. Licensing and notice filing procedure.**

190 (1) (a) A broker-dealer, agent, investment adviser, or investment adviser representative
191 ~~[must]~~ shall obtain an initial or renewal license by filing with the division or its designee an
192 application together with a consent to service of process under Section 61-1-26.

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

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

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

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

198 (II) in the case of a broker-dealer or investment adviser, the qualifications and

199 business history of any partner, officer, or director, any person occupying a similar status or
200 performing similar functions, or any person directly or indirectly controlling the broker-dealer
201 or investment adviser;

202 (D) [any] whether the applicant has been subject to:

203 (I) an injunction [or], administrative order [or], or misdemeanor conviction [of a
204 misdemeanor] involving a security or any aspect of the securities business [and any]; or

205 (II) a felony conviction [of a felony]; and

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

207 (ii) An applicant's Social Security number is a private record under Subsection
208 63G-2-302(1)(h).

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

212 (d) ~~[Licenses or notice filings of broker-dealers, agents, investment advisers, and~~
213 ~~investment adviser representatives shall expire] A license or notice filing of a broker-dealer,~~
214 ~~agent, investment adviser, or investment adviser representative expires~~ on December 31 of
215 each year.

216 (e) (i) If no denial order is in effect and no proceeding is pending under Section
217 61-1-6, a license becomes effective at noon of the 30th day after an application is filed.

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

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

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

226 (v) (A) For purposes of the activities of a licensee in this state, during the time period

227 that a broker-dealer or investment adviser is licensed in this state:

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

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

230 (B) The division may by rule made in accordance with Title 63G, Chapter 3, Utah

231 Administrative Rulemaking Act, provide a process for a person to identify for the division:

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

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

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

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

236 (C) A principal or designated official identified in Subsection (1)(e)(v)(A) is not

237 required to be separately licensed with the division.

238 (2) Except with respect to a federal covered [~~advisers~~] adviser whose only clients are
 239 those described in Subsection 61-1-3(3)(b) or (c), a federal covered adviser shall file with the
 240 division, [~~prior to~~] before acting as a federal covered adviser in this state, a notice filing
 241 consisting of [~~such~~] the documents [~~as have been~~] filed with the Securities and Exchange
 242 Commission as the division by rule or order may require.

243 (3) (a) [~~Any~~] An applicant for an initial or renewal license as a broker-dealer or agent
 244 shall pay a reasonable filing fee as determined under Section 61-1-18.4.

245 (b) [~~Any~~] An applicant for an initial or renewal license as an investment adviser or
 246 investment adviser representative who is subject to licensing under this chapter shall pay a
 247 reasonable filing fee as determined under Section 61-1-18.4.

248 (c) [~~Any~~] A person acting as a federal covered adviser in this state shall pay an initial
 249 and renewal notice filing fee as determined under Section 61-1-18.4.

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

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

254 (5) The division may by rule or order;

255 (a) require a minimum capital for a licensed ~~[broker-dealers]~~ broker-dealer, subject to
256 the limitations of Section 15 of the Securities Exchange Act of 1934~~[-]~~; and

257 (b) establish minimum financial requirements for an investment ~~[advisers,]~~ adviser:

258 (i) subject to the limitations of Section 222 of the Investment Advisers Act of 1940~~[-]~~;

259 and

260 (ii) which may include different requirements for ~~[those]~~ an investment ~~[advisers]~~
261 adviser who ~~[maintain]~~ maintains custody of or ~~[have]~~ has discretionary authority over client
262 funds or securities and ~~[those]~~ an investment ~~[advisers]~~ adviser who ~~[do]~~ does not.

263 (6) (a) The division may by rule or order require a licensed ~~[broker-dealers and]~~
264 broker-dealer or investment ~~[advisers]~~ adviser who ~~[have]~~ has custody of or discretionary
265 authority over client funds or securities to post one or more bonds in amounts and under
266 conditions as the division may prescribe, subject to the limitations of Section 15 of the
267 Securities Exchange Act of 1934 for ~~[broker-dealers]~~ a broker-dealer, and Section 222 of the
268 Investment Advisers Act of 1940 for an investment ~~[advisers, and may determine their~~
269 conditions] adviser.

270 (b) ~~[Any]~~ An appropriate deposit of cash or securities may be accepted in lieu of ~~[any]~~
271 a required bond.

272 (c) ~~[No]~~ A bond may not be required of ~~[any]~~ a licensee whose net capital, or in the
273 case of an investment adviser whose minimum financial requirements, which may be defined
274 by rule, exceeds the amounts required by the division.

275 (d) ~~[Every]~~ A bond shall provide for suit on the bond by ~~[any]~~ a person who has a
276 cause of action under Section 61-1-22 and, if the division by rule or order requires, by any
277 person who has a cause of action not arising under this chapter.

278 (e) ~~[Every]~~ A bond shall provide that ~~[no]~~ a suit may not be maintained to enforce
279 ~~[any]~~ liability on the bond unless brought before the earlier of:

280 (i) the expiration of ~~[four]~~ five years after the act or transaction constituting the
281 violation; or

282 (ii) the expiration of two years after the discovery by the plaintiff of the facts

283 constituting the violation[, whichever expires first].

284 Section 4. Section **61-1-6** is amended to read:

285 **61-1-6. Denial, suspension, revocation, cancellation, or withdrawal of license --**

286 **Sanctions.**

287 (1) Subject to the [~~requirements of Subsections (2) and (3), the director,~~] other
 288 provisions of this section and by means of an adjudicative [proceedings] proceeding
 289 conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act[;]:

290 (a) the commission may issue an order:

291 [~~(a) denying;~~] (i) suspending[;] or revoking [~~any~~] a license;

292 [~~(b)~~] (ii) barring or censuring [~~any~~] a licensee or [~~any~~] an officer, director, partner, or
 293 person occupying a similar status or performing similar functions for a licensee from
 294 employment with a licensed broker-dealer or investment adviser;

295 [~~(c)~~] (iii) restricting or limiting a licensee as to [~~any~~] a function or activity of the
 296 business for which a license is required in this state;

297 [~~(d)~~] (iv) imposing a fine; or

298 [~~(e)~~] (v) taking any combination of [~~Subsections (1)(a) through (d)] actions under this~~
 299 Subsection (1)(a); or

300 (b) the director may deny a license.

301 (2) (a) The [~~director~~] commission may impose [~~the sanctions~~] a sanction in
 302 accordance with Subsection (1)(a) or the director may impose a sanction in accordance with
 303 Subsection (1)(b) if the commission or director finds:

304 (i) that it is in the public interest; and [~~finds;~~]

305 (ii) with respect to the applicant or licensee or, in the case of a broker-dealer or
 306 investment adviser, [~~any~~] a partner, officer, or director, or [~~any~~] a person occupying a similar
 307 status or performing similar functions, or [~~any~~] a person directly or indirectly controlling the
 308 broker-dealer or investment adviser, that the person:

309 [~~(a)~~] (A) has filed an application for a license that, as of [~~its~~] the effective date of the
 310 application or as of any date after filing in the case of an order denying effectiveness[;]:

311 (I) was incomplete in ~~[any]~~ a material respect; or
312 (II) contained ~~[any]~~ a statement that was, in light of the circumstances under which it
313 was made, false or misleading with respect to ~~[any]~~ a material fact;

314 ~~[(b)]~~ (B) has willfully violated or willfully failed to comply with ~~[any provision of]~~
315 this chapter or a predecessor act or ~~[any]~~ a rule or order under this chapter or a predecessor
316 act;

317 ~~[(c)]~~ (C) was convicted~~[- within the past ten years,]~~ of ~~[any]~~, or entered a plea of
318 guilty, a plea of no contest, a plea in abeyance, or a similar plea of guilty to:

319 (I) a misdemeanor involving:
320 (Aa) fraud or dishonesty; or
321 (Bb) a security or any aspect of the securities business~~[-];~~; or ~~[any]~~
322 (II) a felony;

323 ~~[(d)]~~ (D) is permanently or temporarily enjoined by ~~[any]~~ a court of competent
324 jurisdiction from engaging in or continuing ~~[any]~~ a conduct or practice involving any aspect of
325 the securities business;

326 ~~[(e)]~~ (E) (I) is the subject of an order of the ~~[director]~~ commission or ~~[any]~~ a
327 predecessor ~~[denying;]~~ suspending~~[-];~~ or revoking a license as a broker-dealer, agent,
328 investment adviser, or investment adviser representative; or

329 (II) is the subject of an order of the director or a predecessor denying a license as a
330 broker-dealer, agent, investment adviser, or investment adviser representative;

331 ~~[(f)]~~ (F) subject to Subsection (2)(b), is the subject of:
332 ~~[(g)]~~ (I) an adjudication or determination, within the past five years by a securities or
333 commodities agency or administrator of another state, Canadian province or territory, or a
334 court of competent jurisdiction that the person has willfully violated;

335 (Aa) the Securities Act of 1933~~[-];~~
336 (Bb) the Securities Exchange Act of 1934~~[-];~~
337 (Cc) the Investment Advisers Act of 1940~~[-];~~
338 (Dd) the Investment Company Act of 1940~~[-];~~

339 ~~(Ee)~~ the Commodity Exchange Act~~[-];~~ or
 340 ~~(Ff)~~ the securities or commodities law of [~~any other~~] another state; or
 341 ~~[(ii)]~~ (II) an order;
 342 (Aa) entered within the past five years by the securities administrator of [~~any~~] a state
 343 or Canadian province or territory or by the Securities and Exchange Commission denying or
 344 revoking a license as a broker-dealer, agent, investment adviser, or investment adviser
 345 representative, or the substantial equivalent of those terms; [~~or is the subject of an order~~]
 346 (Bb) of the Securities and Exchange Commission suspending or expelling the person
 347 from a national securities exchange or national securities association registered under the
 348 Securities Exchange Act of 1934~~[-];~~ or [~~is the subject of~~]
 349 (Cc) that is a United States post office fraud order; [~~except that~~]
 350 ~~[(iii) the division may not commence agency action to revoke or suspend any license~~
 351 ~~under Subsection (2)(f) more than one year from the date of the order relied on, and the~~
 352 ~~director may not enter an order under Subsection (2)(f) on the basis of an order under another~~
 353 ~~state's law unless that order was based on facts that would currently constitute a ground for an~~
 354 ~~agency action under this section;]~~
 355 ~~[(g)]~~ (G) has engaged in dishonest or unethical practices in the securities business;
 356 ~~[(h)]~~ (H) is insolvent, either in the sense that liabilities exceed assets or in the sense
 357 that obligations cannot be met as they mature, except that the director or commission may not
 358 enter an order against a broker-dealer or investment adviser under this Subsection
 359 ~~(2)[(h)](a)(ii)(H)~~ without a finding of insolvency as to the broker-dealer or investment adviser;
 360 ~~[(i)]~~ (I) is not qualified on the basis of the lack of training, experience, and knowledge
 361 of the securities business, except as otherwise provided in Subsection [~~(6)]~~ (5);
 362 ~~[(j)]~~ (J) has failed reasonably to supervise the person's:
 363 (I) agents or employees, if the person is a broker-dealer~~[-];~~ or [~~his~~]
 364 (II) investment adviser representatives or employees, if the person is an investment
 365 adviser; [~~or~~]
 366 ~~[(k)]~~ (K) has failed to pay the proper filing fee within 30 days after being notified by

367 the division of a deficiency[-];

368 ~~[(3) Before the director may issue an order under Subsection (1) that: revokes any~~
369 ~~license; bars or censures any licensee or any officer, director, partner, or person occupying a~~
370 ~~similar status or performing similar functions for a licensee from employment with a licensed~~
371 ~~broker-dealer or investment adviser; or imposes a fine, the Securities Advisory Board shall:]~~

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

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

375 (L) subject to Subsection (2)(c), is a licensee or applicant that is materially the same
376 entity as an entity that is defunct, insolvent, statutorily disqualified, barred, or described in
377 Subsection (2)(a)(ii)(D); or

378 (M) has had a final judgment entered against the person in a civil action on grounds
379 of:

380 (I) fraud;

381 (II) embezzlement;

382 (III) misrepresentation; or

383 (IV) deceit.

384 (b) (i) The commission may not commence an agency action to revoke or suspend a
385 license under Subsection (2)(a)(ii)(F) more than one year from the day on which the order on
386 which the division relies is entered.

387 (ii) The commission or director may not enter an order under Subsection (2)(a)(ii)(F)
388 on the basis of an order under another state's law unless that order is issued on the basis of
389 facts that would constitute a ground for an agency action under this section on the day on
390 which the notice of agency action is filed.

391 (c) (i) For purposes of Subsection (2)(a)(ii)(L), the director or commission may
392 consider one or more factors in determining whether an entity is materially the same as another
393 entity including the following:

394 (A) the entity has one or more of the same executive officers as the prior entity;

- 395 (B) the entity conducts operations in the same location as the prior entity;
- 396 (C) the entity employs two or more agents from the prior entity;
- 397 (D) the entity solicits or serves two or more customers of the prior entity;
- 398 (E) the entity has a name similar to the prior entity; or
- 399 (F) another factor showing a relationship between the entity and the prior entity.

400 (ii) In addition to imposing a sanction in accordance with Subsection (1), for an entity
401 that is materially the same as an entity described in Subsection (2)(a)(ii)(L), the director or the
402 commission may:

- 403 (A) limit the license of the entity; or
- 404 (B) require additional disclosures to the customers or employees of the entity.

405 ~~[(4)]~~ (3) The ~~[division]~~ director may enter a denial order under Subsection (2)~~[(j)]~~ or
406 ~~[(k)]~~(a)(ii)(K), but shall vacate the order when the deficiency ~~[has been]~~ is corrected.

407 ~~[(5)]~~ (4) The division may not institute a suspension or revocation proceeding on the
408 basis of a fact or transaction known to ~~[it]~~ the division when the license became effective
409 unless the proceeding is instituted within the ~~[next]~~ 120 days after the day on which the
410 license takes effect.

411 ~~[(6)]~~ (5) The following provisions govern the application of Subsection
412 (2)~~[(j)]~~(a)(ii)(I):

413 (a) The director or commission may not enter an order against a broker-dealer on the
414 basis of the lack of qualification of ~~[any]~~ a person other than:

- 415 (i) the broker-dealer if the broker-dealer is an individual; or
- 416 (ii) an agent of the broker-dealer.

417 (b) The director or commission may not enter an order against an investment adviser
418 on the basis of the lack of qualification of ~~[any]~~ a person other than:

- 419 (i) the investment adviser if the investment adviser is an individual; or
- 420 (ii) an investment adviser representative.

421 (c) The director or commission may not enter an order solely on the basis of lack of
422 experience if the applicant or licensee is qualified by training or knowledge.

423 (d) The director or commission shall consider that:

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

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

428 (e) (i) The director or commission shall consider that an investment adviser is not
429 necessarily qualified solely on the basis of experience as a broker-dealer or agent.

430 (ii) When the director finds that an applicant for a license as a broker-dealer is not
431 qualified as an investment adviser, the director may condition the applicant's license as a
432 broker-dealer upon the applicant's not transacting business in this state as an investment
433 adviser.

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

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

439 [~~(7)~~] (6) If the director finds that [~~any~~] a licensee or applicant for a license is no longer
440 in existence, has ceased to do business as a broker-dealer, agent, investment adviser, or
441 investment adviser representative, or is subject to an adjudication of mental incompetence or
442 to the control of a committee, conservator, or guardian, or cannot be located after reasonable
443 search, the division may summarily cancel or deny the license or application according to the
444 procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

445 [~~(8)~~] (7) (a) Withdrawal from license as a broker-dealer, agent, investment adviser, or
446 investment adviser representative becomes effective 30 days after receipt of an application to
447 withdraw or within a shorter period of time as determined by the director, unless:

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

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

451 (iii) additional information is requested by the division regarding the withdrawal
452 application.

453 (b) (i) If a proceeding described in Subsection [~~(8)~~] (7)(a) is pending or instituted, the
454 director shall designate by order when and under what conditions the withdrawal becomes
455 effective.

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

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

461 (ii) The [~~director~~] commission shall enter [~~any~~] an order under Subsection
462 (2)[~~(b)~~](a)(ii)(B) as of the last date on which the license [~~was~~] is effective.

463 Section 5. Section **61-1-9** is amended to read:

464 **61-1-9. Registration by coordination.**

465 (1) [~~Any~~] A security for which a registration statement or a notification under
466 Regulation A or [~~any~~] a successor to Regulation A [~~has been~~] is filed under the Securities Act
467 of 1933 in connection with the same offering may be registered by coordination.

468 (2) A registration statement under this section shall contain the following information
469 and be accompanied by the following documents in addition to the information specified in
470 Subsection 61-1-11(3) and the consent to service of process required by Section 61-1-26:

471 (a) one copy of the disclosure statement together with all its amendments filed under
472 the Securities Act of 1933;

473 (b) if the division by rule or otherwise requires, a copy of the articles of incorporation
474 and bylaws or their substantial equivalents currently in effect, a copy of any agreements with
475 or among underwriters, a copy of any indenture or other instrument governing the issuance of
476 the security to be registered and a specimen or copy of the security;

477 (c) if the division requests, any other information, or copies of any other documents,
478 filed under the Securities Act of 1933; and

479 (d) an undertaking to forward all future amendments to the disclosure statement
480 promptly and in any event not later than the first working day after the day they are forwarded
481 to or filed with the Securities and Exchange Commission, whichever first occurs.

482 (3) A registration statement under this section automatically becomes effective at the
483 moment the disclosure statement becomes effective if all the following conditions are satisfied:

484 (a) no stop order is in effect and no proceeding is pending under Section 61-1-12;

485 (b) the disclosure statement ~~[has been]~~ is on file with the division for at least ~~[ten]~~ 20
486 working days; and

487 (c) a statement of the maximum and minimum proposed offering prices and the
488 maximum underwriting discounts and commissions ~~[has been]~~ is on file for two full working
489 days or such shorter period as the division permits by rule or otherwise and the offering is
490 made within those limitations.

491 (4) (a) ~~[The]~~ A registrant shall promptly:

492 (i) notify the division ~~[by telephone or telegram]~~ in a record of the date and time when
493 the disclosure statement became effective and the content of the price amendment, if any~~;~~;
494 and ~~[shall promptly]~~

495 (ii) file a posteffective amendment containing the information and documents in the
496 price amendment.

497 (b) "Price amendment" means the final federal amendment ~~[which]~~ that includes a
498 statement of the:

499 (i) offering price~~;~~;

500 (ii) underwriting and selling discounts or commissions~~;~~;

501 (iii) amount of proceeds~~;~~;

502 (iv) conversion rates~~;~~;

503 (v) call prices~~;~~; and

504 (vi) other matters dependent upon the offering price.

505 (5) (a) Upon failure to receive the required notification and posteffective amendment
506 with respect to the price amendment, the division may enter a stop order, without notice or

507 hearing, retroactively denying effectiveness to the registration statement or suspending its
508 effectiveness until compliance with Subsection (4), if [it] the division promptly notifies the
509 registrant [~~by telephone or telegram and promptly confirms by letter or telegram when it~~
510 ~~notifies by telephone~~] in a record of the issuance of the order.

511 (b) If the registrant proves compliance with the requirements of Subsection (4) as to
512 notice and posteffective amendment, the stop order is void as of the time of its entry.

513 (6) The division may by rule or otherwise waive either or both of the conditions
514 specified in Subsections (3)(b) and (3)(c).

515 (7) If the disclosure statement becomes effective before all the conditions in
516 Subsections (3)(b) and (3)(c) are satisfied and they are not waived, the disclosure statement
517 automatically becomes effective as soon as all the conditions are satisfied.

518 (8) If the registrant advises the division of the date when the disclosure statement is
519 expected to become effective, the division shall promptly advise the registrant [~~by telephone or~~
520 ~~telegram~~] in a record, at the registrant's expense, whether all the conditions are satisfied and
521 whether it then contemplates the institution of proceedings under Section 61-1-12, but this
522 advice by the division does not preclude the institution of such a proceeding at any time.

523 (9) The division may by rule or order permit registration by coordination of [~~any~~] a
524 security for which a notification or similar document [~~has been~~] is filed under the Securities
525 Act of 1933 in connection with the same offering.

526 Section 6. Section **61-1-11** is amended to read:

527 **61-1-11. Provisions applicable to registration generally.**

528 (1) A registration statement may be filed by the issuer, [~~any other~~] another person on
529 whose behalf the offering is to be made, or a licensed broker-dealer.

530 (2) [~~Every~~] A person filing a registration statement shall pay a filing fee as determined
531 under Section 61-1-18.4.

532 (3) [~~Every~~] A registration statement shall specify:

533 (a) the amount of securities to be offered in this state;

534 (b) the states in which a registration statement or similar document in connection with

535 the offering ~~[has been]~~ is or is to be filed; and

536 (c) ~~[any]~~ an adverse order, judgment, or decree entered in connection with the offering
537 by the regulatory authorities in each state or by ~~[any]~~ a court or the Securities and Exchange
538 Commission.

539 (4) ~~[Any]~~ A document filed under this chapter or a predecessor act within five years
540 preceding the filing of a registration statement may be incorporated by reference in the
541 registration statement to the extent that the document is currently accurate.

542 (5) The division may permit the omission of ~~[any]~~ an item of information or document
543 from ~~[any]~~ a registration statement.

544 (6) In the case of a nonissuer distribution, information may not be required under
545 Subsection (9) or Section 61-1-10 ~~[or Subsection 61-1-11 (9)]~~ unless it is known to the person
546 filing the registration statement or to the persons on whose behalf the distribution is to be
547 made, or can be furnished by them without unreasonable effort or expense.

548 (7) (a) The division may require as a condition of registration by qualification or
549 coordination:

550 (i) that ~~[any]~~ security issued within the past three years or to be issued to a promoter
551 for a consideration substantially different from the public offering price, or to ~~[any]~~ a person
552 for a consideration other than cash, be deposited in escrow; and

553 (ii) that the proceeds from the sale of the registered security be impounded until the
554 issuer receives a specified amount from the sale of the security either in this state or elsewhere.

555 (b) The division may determine the conditions of ~~[any]~~ an escrow or impounding
556 required by this Subsection (7), but it may not reject a depository solely because of location in
557 another state.

558 (8) (a) ~~[Every]~~ A registration statement is effective for one year from its effective date.

559 (b) All outstanding securities of the same class as a registered security are considered
560 to be registered for the purpose of ~~[any]~~ a nonissuer transaction:

561 (i) so long as the registration statement is effective; and

562 (ii) between the 30th day after the entry of ~~[any]~~ a stop order suspending or revoking

563 the effectiveness of the registration statement under Section 61-1-12, if the registration
564 statement did not relate in whole or in part to a nonissuer distribution, and one year from the
565 effective date of the registration statement.

566 (c) A registration statement may not be withdrawn for one year from its effective date
567 if ~~[any securities]~~ a security of the same class ~~[are]~~ is outstanding.

568 (d) A registration statement may be withdrawn otherwise only in the discretion of the
569 division.

570 (9) So long as a registration statement is effective and the offering is not completely
571 sold, the division may require the person who filed the registration statement to file reports,
572 not more often than quarterly, to keep reasonably current the information contained in the
573 registration statement and to disclose the progress of the offering.

574 (10) (a) A registration statement may be amended after its effective date so as to
575 increase the securities specified to be offered and sold, if the public offering price and
576 underwriters' discounts and commissions are not changed from the respective amounts of
577 which the division was informed.

578 (b) The amendment becomes effective when the division so orders.

579 (c) ~~[Every]~~ A person filing an amendment shall pay a registration fee as determined
580 under Section 61-1-18.4 with respect to the additional securities proposed to be offered.

581 (d) The amendment relates back to the date of the sale of the additional security being
582 registered, provided that within six months of the date of the sale the amendment is filed and
583 the additional registration fee is paid.

584 ~~[(11) (a) Except as otherwise provided in Subsection (b), an issuer may only employ
585 or engage an agent to effect or attempt to effect transactions in its securities who is licensed
586 under this chapter and associated with a licensed broker-dealer.]~~

587 ~~[(b) A partner, officer, or director of an issuer, or a person occupying a similar status
588 or performing similar functions, may act as an agent of the issuer to effect or attempt to effect
589 transactions in its securities, provided the person is licensed under this chapter and receives no
590 commission or other remuneration, directly or indirectly, for effecting or attempting to effect~~

591 ~~the transactions.]~~

592 ~~[(12)]~~ (11) (a) ~~[Any]~~ A security that is offered or sold under Section 4(5) of the
593 Securities Act of 1933 or that is a "mortgage related security" as defined in Section 3(a)(41) of
594 the Securities Exchange Act of 1934 ~~[shall]~~ may not be exempt under Subsection
595 61-1-14(1)(a) to the same extent as ~~[any]~~ an obligation issued by or guaranteed as to principal
596 and interest by the United States or an agency or instrumentality of the United States.
597 Accordingly, any such security shall comply with the applicable registration and qualification
598 requirements set forth in this chapter.

599 (b) This Subsection (11) specifically overrides the preemption of state law contained
600 in Section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984, Public Law
601 Number 98-440.

602 Section 7. Section **61-1-11.1** is amended to read:

603 **61-1-11.1. Hearings for certain exchanges of securities.**

604 (1) An application may be made to the division for approval to issue securities or to
605 deliver other consideration in exchange for:

606 (a) one or more ~~[bona fide]~~ outstanding securities, claims, or property interests; or

607 (b) partly in exchange for one or more ~~[bona fide]~~ outstanding securities, claims, or
608 property interests, and partly for cash.

609 (2) The director may:

610 (a) hold a hearing upon the fairness of the terms and conditions of an exchange
611 described in Subsection (1); and

612 (b) approve or disapprove the terms and conditions of an exchange described in
613 Subsection (1).

614 (3) After conducting a hearing under this section, if the director finds that the terms
615 and conditions of an exchange described in Subsection (1) are fair to those to whom the
616 securities will be issued, the director may:

617 (a) approve the fairness of the terms and conditions of the exchange described in
618 Subsection (1); and

619 (b) approve the exchange described in Subsection (1).

620 (4) In a hearing under this section, all persons to whom it is proposed to issue
621 securities or to deliver other consideration in an exchange under Subsection (1) may appear.

622 (5) An application under Subsection (1) shall contain the information and be
623 accompanied by the documents required by rule or order of the division.

624 (6) ~~Every~~ A person filing an application under Subsection (1) shall pay a filing fee as
625 determined under Section 61-1-18.4.

626 (7) An applicant under this section shall provide adequate notice of any hearing under
627 this section to all persons that have a right to appear, under Subsection (4), at the hearing.

628 (8) An application may be made under this section regardless of whether the security
629 or transaction being issued is:

630 (a) exempt from registration; or

631 (b) not required to be registered.

632 (9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
633 the division may establish rules to govern the conduct of a hearing permitted by this section in
634 accordance with Sections 61-1-18.5 and 61-1-24.

635 (10) This section is intended to provide for a fairness hearing that satisfies the
636 requirements of ~~[Section 3(a)(10) of the]~~ Securities Act of 1933, Section 3(a)(10), 15 U.S.C.
637 Section 77c(a)(10), or any comparable section that may subsequently be enacted.

638 Section 8. Section **61-1-12** is amended to read:

639 **61-1-12. Denial, suspension, and revocation of registration.**

640 (1) Upon approval by a majority of the ~~[Securities Advisory Board]~~ commission, the
641 director, by means of an adjudicative ~~[proceedings]~~ proceeding conducted in accordance with
642 Title 63G, Chapter 4, Administrative Procedures Act, may issue a stop order that denies
643 effectiveness to, or suspends or revokes the effectiveness of, any securities registration
644 statement and may impose a fine if the director finds that the order is in the public interest and
645 that:

646 (a) the registration statement, as of its effective date or as of any earlier date in the

647 case of an order denying effectiveness, or ~~[any]~~ an amendment under Subsection 61-1-11(10)
648 as of its effective date, or ~~[any]~~ a report under Subsection 61-1-11(9), is incomplete in ~~[any]~~ a
649 material respect, or contains ~~[any]~~ a statement that was, in the light of the circumstances under
650 which it was made, false or misleading with respect to ~~[any]~~ a material fact;

651 (b) ~~[any provision of]~~ this chapter, or ~~[any]~~ a rule, order, or condition lawfully
652 imposed under this chapter, ~~[has been]~~ is willfully violated, in connection with the offering,
653 by:

654 (i) the person filing the registration statement;

655 (ii) the issuer, ~~[any]~~ a partner, officer, or director of the issuer, ~~[any]~~ a person
656 occupying a similar status or performing similar functions, or ~~[any]~~ a person directly or
657 indirectly controlling or controlled by the issuer, but only if the person filing the registration
658 statement is directly or indirectly controlled by or acting for the issuer; or

659 (iii) ~~[any]~~ an underwriter;

660 (c) subject to Subsection (5), the security registered or sought to be registered is the
661 subject of an administrative stop order or similar order, or a permanent or temporary
662 injunction of ~~[any]~~ a court of competent jurisdiction entered under ~~[any other]~~ another federal
663 or state act applicable to the offering; ~~[except that the division may not commence agency~~
664 ~~action against an effective registration statement under this subsection more than one year~~
665 ~~from the date of the order or injunction relied on, and it may not enter an order under this~~
666 ~~subsection on the basis of an order or injunction entered under the securities act of any other~~
667 ~~state unless that order or injunction was based on facts that would currently constitute a~~
668 ~~ground for a stop order under this section;]~~

669 (d) the issuer's enterprise or method of business includes or would include activities
670 that are illegal where performed;

671 (e) the offering has worked or tended to work a fraud upon purchasers or would so
672 operate;

673 (f) the offering ~~[has been]~~ is or would be made with unreasonable amounts of
674 underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits

675 or participation, or unreasonable amounts or kinds of options;

676 ~~[(g) when a security is sought to be registered by notification, it is not eligible for such~~
677 ~~registration;]~~

678 ~~[(h)]~~ (g) when a security is sought to be registered by coordination, there ~~[has been]~~ is
679 a failure to comply with the undertaking required by Subsection 61-1-9(2)(d); or

680 ~~[(i)]~~ (h) the applicant or registrant has failed to pay the proper filing fee.

681 (2) The director may enter an order under this section but may vacate the order if the
682 director finds that the conditions that prompted its entry have changed or that it is otherwise in
683 the public interest to do so.

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

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

692 (5) (a) The director may not commence agency action against an effective registration
693 statement under Subsection (1)(c) more than one year from the day on which the order or
694 injunction on which the director relies is issued.

695 (b) The director may not enter an order under Subsection (1)(c) on the basis of an
696 order or injunction entered under the securities act of another state unless that order or
697 injunction is issued on the basis of facts that would constitute a ground for a stop order under
698 this section at the time the director commences the agency action.

699 Section 9. Section **61-1-13** is amended to read:

700 **61-1-13. Definitions.**

701 (1) As used in this chapter:

702 (a) "Affiliate" means a person that, directly or indirectly, through one or more

703 intermediaries, controls or is controlled by, or is under common control with a person
704 specified.

705 (b) (i) "Agent" means [~~any~~] an individual other than a broker-dealer who represents a
706 broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.

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

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

711 (I) in securities exempted by Subsection 61-1-14(1)(a), (b), (c), [~~(f), or (j)~~] or (g);

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

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

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

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

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

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

722 (c) (i) "Broker-dealer" means [~~any~~] a person engaged in the business of effecting
723 transactions in securities for the account of others or for the person's own account.

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

725 (A) an agent;

726 (B) an issuer;

727 (C) a [~~bank, savings institution, or trust company~~] depository institution or trust
728 company;

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

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

- 731 (Aa) the issuers of the securities involved in the transactions;
- 732 (Bb) other broker-dealers; [or]
- 733 [~~(Cc) banks, savings institutions, trust companies, insurance companies, investment~~
- 734 ~~companies as defined in the Investment Company Act of 1940, pension or profit-sharing~~
- 735 ~~trusts, or other financial institutions or institutional buyers, whether acting for themselves or as~~
- 736 ~~trustees; or]~~
- 737 (Cc) a depository institution, whether acting for itself or as a trustee;
- 738 (Dd) a trust company, whether acting for itself or as a trustee;
- 739 (Ee) an insurance company, whether acting for itself or as a trustee;
- 740 (Ff) an investment company, as defined in the Investment Company Act of 1940,
- 741 whether acting for itself or as a trustee;
- 742 (Gg) a pension or profit-sharing trust, whether acting for itself or as a trustee; or
- 743 (Hh) another financial institution or institutional buyer, whether acting for itself or as
- 744 a trustee; or
- 745 (II) during any period of 12 consecutive months the person does not direct more than
- 746 15 offers to sell or buy into this state in any manner to persons other than those specified in
- 747 Subsection (1)(c)(ii)(D)(I), whether or not the offeror or [~~any of the offerees~~] an offeree is then
- 748 present in this state;
- 749 (E) a general partner who organizes and effects transactions in securities of three or
- 750 fewer limited partnerships, of which the person is the general partner, in any period of 12
- 751 consecutive months;
- 752 (F) a person whose participation in transactions in securities is confined to those
- 753 transactions made by or through a broker-dealer licensed in this state;
- 754 (G) a person who is a real estate broker licensed in this state and who effects
- 755 transactions in a bond or other evidence of indebtedness secured by a real or chattel mortgage
- 756 or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage,
- 757 deed or trust, or agreement, together with all the bonds or other evidences of indebtedness
- 758 secured thereby, is offered and sold as a unit;

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

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

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

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

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

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

767 (i) ~~any~~ a agricultural, grain, or livestock product or byproduct, except real property
768 or ~~any~~ a timber, agricultural, or livestock product grown or raised on real property and
769 offered or sold by the owner or lessee of the real property;

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

772 (iii) ~~any~~ a gem or gemstone, whether characterized as precious, semi-precious, or
773 otherwise;

774 (iv) ~~any~~ a fuel, whether liquid, gaseous, or otherwise;

775 (v) ~~any~~ a foreign currency; and

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

779 ~~(f)~~ (g) (i) "Commodity contract" means ~~any~~ an account, agreement, or contract for
780 the purchase or sale, primarily for speculation or investment purposes and not for use or
781 consumption by the offeree or purchaser, of one or more commodities, whether for immediate
782 or subsequent delivery or whether delivery is intended by the parties, and whether
783 characterized as a cash contract, deferred shipment or deferred delivery contract, forward
784 contract, futures contract, installment or margin contract, leverage contract, or otherwise.

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

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

791 (B) ~~[The]~~ A purchaser is not considered to have received physical delivery of the total
 792 amount of each commodity to be purchased under the contract or agreement when the
 793 commodity or commodities are held as collateral for a loan or are subject to a lien of any
 794 person when the loan or lien arises in connection with the purchase of each commodity or
 795 commodities.

796 ~~[(g)]~~ (h) (i) "Commodity option" means ~~[any]~~ an account, agreement, or contract
 797 giving a party to the option the right but not the obligation to purchase or sell one or more
 798 commodities or one or more commodity contracts, or both whether characterized as an option,
 799 privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

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

802 (A) with the ~~[United States]~~ Securities and Exchange Commission; or

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

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

806 ~~[(h)]~~ (j) "Director" means the director of the ~~[Division of Securities charged with the~~
 807 ~~administration and enforcement of this chapter]~~ division appointed in accordance with Section
 808 61-1-18.

809 ~~[(i)]~~ (k) "Division" means the Division of Securities established by Section 61-1-18.

810 ~~[(j)]~~ (l) "Executive director" means the executive director of the Department of
 811 Commerce.

812 ~~[(k)]~~ (m) "Federal covered adviser" means a person who:

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

814 (ii) is excluded from the definition of "investment adviser" under Section 202(a)(11)

815 of the Investment Advisers Act of 1940.

816 ~~[(t)]~~ (n) "Federal covered security" means ~~[any]~~ a security that is a covered security
817 under Section 18(b) of the Securities Act of 1933 or rules or regulations promulgated under
818 Section 18(b) of the Securities Act of 1933.

819 ~~[(m)]~~ (o) "Fraud," "deceit," and "defraud" are not limited to their common-law
820 meanings.

821 ~~[(n)]~~ (p) "Guaranteed" means guaranteed as to payment of principal or interest as to
822 debt securities, or dividends as to equity securities.

823 ~~[(o)]~~ (q) (i) "Investment adviser" means ~~[any]~~ a person who:

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

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

829 (ii) "Investment adviser" includes a financial ~~[planners and]~~ planner or other ~~[persons]~~
830 person who:

831 (A) as an integral component of other financially related services, ~~[provide]~~ provides
832 the investment advisory services described in Subsection (1)~~[(o)]~~(q)(i) to others for
833 compensation and as part of a business; or

834 (B) ~~[hold themselves]~~ holds the person out as providing the investment advisory
835 services described in Subsection (1)~~[(o)]~~(q)(i) to others for compensation.

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

837 (A) an investment adviser representative;

838 (B) a ~~[bank, savings institution,]~~ depository institution or trust company;

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

841 (D) a broker-dealer or its agent whose performance of these services is solely

842 incidental to the conduct of its business as a broker-dealer and who receives no special

843 compensation for the services;

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

849 (F) ~~[any]~~ a person who is a federal covered adviser;

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

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

853 ~~(p)~~ (r) (i) "Investment adviser representative" means ~~[any]~~ a partner, officer, director
854 of, or a person occupying a similar status or performing similar functions, or other individual,
855 except clerical or ministerial personnel, who:

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

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

860 (B) does any of the following:

861 (I) makes ~~[any recommendations]~~ a recommendation or otherwise renders advice
862 regarding securities;

863 (II) manages accounts or portfolios of clients;

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

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

866 or

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

868 (1)~~(p)~~(r)(i)(B).

869 (ii) "Investment ~~[adviser]~~ adviser representative" does not include a person described
870 in Subsection (3).

- 871 (s) "Investment contract" includes:
- 872 (i) an investment in a common enterprise with the expectation of profit to be derived
- 873 through the essential managerial efforts of someone other than the investor; or
- 874 (ii) an investment by which:
- 875 (A) an offeree furnishes initial value to an offerer;
- 876 (B) a portion of the initial value is subjected to the risks of the enterprise;
- 877 (C) the furnishing of the initial value is induced by the offerer's promises or
- 878 representations that give rise to a reasonable understanding that a valuable benefit of some
- 879 kind over and above the initial value will accrue to the offeree as a result of the operation of
- 880 the enterprise; and
- 881 (D) the offeree does not receive the right to exercise practical or actual control over the
- 882 managerial decisions of the enterprise.
- 883 (t) "Isolated transaction" means not more than a total of two transactions that occur
- 884 anywhere during six consecutive months.
- 885 ~~(q)~~ (u) (i) "Issuer" means [any] a person who issues or proposes to issue [any] a
- 886 security or has outstanding a security that it has issued.
- 887 (ii) With respect to a preorganization certificate or subscription, "issuer" means the
- 888 ~~[promoter or the]~~ one or more promoters of the person to be organized.
- 889 (iii) "Issuer" means the ~~[person or]~~ one or more persons performing the acts and
- 890 assuming duties of a depositor or manager under the provisions of the trust or other agreement
- 891 or instrument under which the security is issued with respect to:
- 892 (A) interests in trusts, including collateral trust certificates, voting trust certificates,
- 893 and certificates of deposit for securities; or
- 894 (B) shares in an investment company without a board of directors.
- 895 (iv) With respect to an equipment trust certificate, a conditional sales contract, or
- 896 similar securities serving the same purpose, "issuer" means the person by whom the equipment
- 897 or property is to be used.
- 898 (v) With respect to interests in partnerships, general or limited, "issuer" means the

899 partnership itself and not the general partner or partners.

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

904 [~~(t)~~] (v) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

905 [~~(s)~~] (w) "Person" means:

906 (i) an individual;

907 (ii) a corporation;

908 (iii) a partnership;

909 (iv) a limited liability company;

910 (v) an association;

911 (vi) a joint-stock company;

912 (vii) a joint venture;

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

914 (ix) an unincorporated organization;

915 (x) a government; or

916 (xi) a political subdivision of a government.

917 [~~(t)~~] (x) "Precious metal" means the following, whether in coin, bullion, or other form:

918 (i) silver;

919 (ii) gold;

920 (iii) platinum;

921 (iv) palladium;

922 (v) copper; and

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

924 [~~(t)~~] (y) "Promoter" means [~~any~~] a person who, acting alone or in concert with one or
925 more persons, takes initiative in founding or organizing the business or enterprise of a person.

926 (z) (i) Except as provided in Subsection (1)(z)(ii), "record" means information that is:

927 (A) inscribed in a tangible medium; or
928 (B) (I) stored in an electronic or other medium; and
929 (II) retrievable in perceivable form.
930 (ii) This Subsection (1)(z) does not apply when the context requires otherwise,
931 including when "record" is used in the following phrases:
932 (A) "of record";
933 (B) "official record"; or
934 (C) "public record."
935 ~~[(v)]~~ (aa) (i) "Sale" or "sell" includes [every] a contract for sale of, contract to sell, or
936 disposition of, a security or interest in a security for value.
937 (ii) "Offer" or "offer to sell" includes ~~[every]~~ an attempt or offer to dispose of, or
938 solicitation of an offer to buy, a security or interest in a security for value.
939 (iii) The following are examples of the definitions in Subsection (1)~~[(v)]~~(aa)(i) or (ii):
940 (A) ~~[any]~~ a security given or delivered with or as a bonus on account of ~~[any]~~ a
941 purchase of a security or any other thing, is part of the subject of the purchase, and ~~[has been]~~
942 is offered and sold for value;
943 (B) a purported gift of assessable stock is an offer or sale as is each assessment levied
944 on the stock;
945 (C) an offer or sale of a security that is convertible into, or entitles its holder to acquire
946 or subscribe to another security of the same or another issuer is an offer or sale of that security,
947 and also an offer of the other security, whether the right to convert or acquire is exercisable
948 immediately or in the future;
949 (D) ~~[any]~~ a conversion or exchange of one security for another ~~[shall constitute]~~
950 constitutes an offer or sale of the security received in a conversion or exchange, and the offer
951 to buy or the purchase of the security converted or exchanged;
952 (E) securities distributed as a dividend wherein the person receiving the dividend
953 surrenders the right, or the alternative right, to receive a cash or property dividend is an offer
954 or sale;

955 (F) a dividend of a security of another issuer is an offer or sale; or
956 (G) the issuance of a security under a merger, consolidation, reorganization,
957 recapitalization, reclassification, or acquisition of assets [~~shall constitute~~] constitutes the offer
958 or sale of the security issued as well as the offer to buy or the purchase of [~~any~~] a security
959 surrendered in connection therewith, unless the sole purpose of the transaction is to change the
960 issuer's domicile.

961 (iv) The terms defined in Subsections (1)[~~(v)~~](aa)(i) and (ii) do not include:

- 962 (A) a good faith gift;
- 963 (B) a transfer by death;
- 964 (C) a transfer by termination of a trust or of a beneficial interest in a trust;
- 965 (D) a security dividend not within Subsection (1)[~~(v)~~](aa)(iii)(E) or (F); or
- 966 (E) a securities split or reverse split[~~; or~~].

967 [~~(F) any act incident to a judicially approved reorganization in which a security is~~
968 ~~issued in exchange for one or more outstanding securities, claims, or property interests, or~~
969 ~~partly in such exchange and partly for cash.]~~

970 [~~(w)~~] (bb) "Securities Act of 1933," "Securities Exchange Act of 1934," [~~"Public~~
971 ~~Utility Holding Company Act of 1935,"~~] and "Investment Company Act of 1940" mean the
972 federal statutes of those names as amended before or after the effective date of this chapter.

973 (cc) "Securities Exchange Commission" means the United States Securities Exchange
974 Commission created by the Securities Exchange Act of 1934.

975 [~~(x)~~] (dd) (i) "Security" means [~~any~~] a:

- 976 (A) note;
- 977 (B) stock;
- 978 (C) treasury stock;
- 979 (D) bond;
- 980 (E) debenture;
- 981 (F) evidence of indebtedness;
- 982 (G) certificate of interest or participation in [~~any~~] a profit-sharing agreement;

- 983 (H) collateral-trust certificate;
- 984 (I) preorganization certificate or subscription;
- 985 (J) transferable share;
- 986 (K) investment contract;
- 987 (L) burial certificate or burial contract;
- 988 (M) voting-trust certificate;
- 989 (N) certificate of deposit for a security;
- 990 (O) certificate of interest or participation in an oil, gas, or mining title or lease or in
- 991 payments out of production under such a title or lease;
- 992 (P) commodity contract or commodity option;
- 993 (Q) interest in a limited liability company;
- 994 (R) viatical settlement interest; or
- 995 (S) in general, ~~[any]~~ an interest or instrument commonly known as a "security," or
- 996 ~~[any]~~ a certificate of interest or participation in, temporary or interim certificate for, receipt
- 997 for, guarantee of, or warrant or right to subscribe to or purchase ~~[any of the foregoing]~~ an item
- 998 listed in Subsections (1)(dd)(i)(A) through (R).
- 999 (ii) "Security" does not include ~~[any]~~:
- 1000 (A) an insurance or endowment policy or annuity contract under which an insurance
- 1001 company promises to pay money in a lump sum or periodically for life or some other specified
- 1002 period;
- 1003 (B) an interest in a limited liability company in which the limited liability company is
- 1004 formed as part of an estate plan where all of the members are related by blood or marriage,
- 1005 ~~[there are five or fewer members,]~~ or the person claiming this exception can prove that all of
- 1006 the members are actively engaged in the management of the limited liability company; or
- 1007 (C) (I) a whole long-term estate in real property;
- 1008 (II) an undivided fractionalized long-term estate in real property that consists of ten or
- 1009 fewer owners; or
- 1010 (III) an undivided fractionalized long-term estate in real property that consists of more

1011 than ten owners if, when the real property estate is subject to a management agreement:

1012 (Aa) the management agreement permits a simple majority of owners of the real
1013 property estate to not renew or to terminate the management agreement at the earlier of the end
1014 of the management agreement's current term, or 180 days after the day on which the owners
1015 give notice of termination to the manager;

1016 (Bb) the management agreement prohibits, directly or indirectly, the lending of the
1017 proceeds earned from the real property estate or the use or pledge of its assets to ~~[any]~~ a person
1018 or entity affiliated with or under common control of the manager; and

1019 (Cc) the management agreement complies with any other requirement imposed by rule
1020 by the Real Estate Commission under Section 61-2-26.

1021 (iii) For purposes of Subsection (1)~~(x)~~(dd)(ii)(B), evidence that members vote or
1022 have the right to vote, or the right to information concerning the business and affairs of the
1023 limited liability company, or the right to participate in management, ~~shall~~ may not establish,
1024 without more, that all members are actively engaged in the management of the limited liability
1025 company.

1026 ~~(y)~~ (ee) "State" means ~~any~~ a state, territory, or possession of the United States, the
1027 District of Columbia, and Puerto Rico.

1028 ~~(z)~~ (ff) (i) "Undivided fractionalized long-term estate" means an ownership interest
1029 in real property by two or more persons that is a:

1030 (A) tenancy in common; or

1031 (B) any other legal form of undivided estate in real property including:

1032 (I) a fee estate;

1033 (II) a life estate; or

1034 (III) other long-term estate.

1035 (ii) "Undivided fractionalized long-term estate" does not include a joint tenancy.

1036 ~~(aa)~~ (gg) (i) "Viatical settlement interest" means the entire interest or ~~any~~ a
1037 fractional interest in any of the following that is the subject of a viatical settlement:

1038 (A) a life insurance policy; or

1039 (B) the death benefit under a life insurance policy.

1040 (ii) "Viatical settlement interest" does not include the initial purchase from the viator
1041 by a viatical settlement provider.

1042 [~~bb~~] hh "Whole long-term estate" means a person owns or persons through joint
1043 tenancy [~~owns~~] own real property through:

1044 (i) a fee estate;

1045 (ii) a life estate; or

1046 (iii) other long-term estate.

1047 [~~cc~~] ii "Working days" means 8 a.m. to 5 p.m., Monday through Friday, exclusive
1048 of legal holidays listed in Section 63G-1-301.

1049 (2) A term not defined in this section shall have the meaning as established by
1050 division rule. The meaning of a term neither defined in this section nor by rule of the division
1051 shall be the meaning commonly accepted in the business community.

1052 (3) (a) This Subsection (3) applies to:

1053 (i) the offer or sale of a real property estate exempted from the definition of security
1054 under Subsection (1)[~~x~~]dd(ii)(C); or

1055 (ii) the offer or sale of an undivided fractionalized long-term estate that is the offer of
1056 a security.

1057 (b) A person who, directly or indirectly receives compensation in connection with the
1058 offer or sale as provided in this Subsection (3) of a real property estate is not an agent,
1059 broker-dealer, investment adviser, or [~~investor~~] investment adviser representative under this
1060 chapter if that person is licensed under Chapter 2, Division of Real Estate, as:

1061 (i) a principal real estate broker;

1062 (ii) an associate real estate broker; or

1063 (iii) a real estate sales agent.

1064 (4) The list of real property estates excluded from the definition of securities under
1065 Subsection (1)[~~x~~]dd(ii)(C) is not an exclusive list of real property estates or interests that
1066 are not a security.

1067 Section 10. Section **61-1-14** is amended to read:

1068 **61-1-14. Exemptions.**

1069 (1) The following securities are ~~[exempted]~~ exempt from Sections 61-1-7 and 61-1-15:

1070 (a) ~~[any]~~ a security, including a revenue obligation, issued or guaranteed by the United
1071 States, ~~[any]~~ a state, ~~[any]~~ a political subdivision of a state, or ~~[any]~~ an agency or corporate or
1072 other instrumentality of one or more of the foregoing, or ~~[any]~~ a certificate of deposit for any
1073 of the foregoing;

1074 (b) ~~[any]~~ a security issued or guaranteed by Canada, ~~[any]~~ a Canadian province, ~~[any]~~
1075 a political subdivision of ~~[any]~~ a Canadian province, ~~[any]~~ an agency or corporate or other
1076 instrumentality of one or more of the foregoing, or ~~[any other]~~ another foreign government
1077 with which the United States currently maintains diplomatic relations, if the security is
1078 recognized as a valid obligation by the issuer or guarantor;

1079 (c) ~~[any]~~ a security issued by and representing an interest in or a debt of, or guaranteed
1080 by, ~~[any bank]~~ a depository institution organized under the laws of the United States, or ~~[any~~
1081 ~~bank, savings institution,]~~ a depository institution or trust company supervised under the laws
1082 of ~~[any]~~ a state;

1083 ~~[(d) any security issued by and representing an interest in or a debt of, or guaranteed~~
1084 ~~by, any federal savings and loan association, or any building and loan or similar association~~
1085 ~~organized under the laws of any state and authorized to do business in this state;]~~

1086 ~~[(e) any security issued or guaranteed by any federal credit union or any credit union,~~
1087 ~~industrial loan association, or similar association organized and supervised under the laws of~~
1088 ~~this state;]~~

1089 ~~[(f) any]~~ (d) a security issued or guaranteed by ~~[any]~~ a public utility ~~[or holding~~
1090 ~~company which is a registered holding company under the Public Utility Holding Company~~
1091 ~~Act of 1935 or a subsidiary of such a company within the meaning of that act,]~~ or ~~[any]~~ a
1092 security regulated in respect of its rates or in its issuance by a governmental authority of the
1093 United States, ~~[any]~~ a state, Canada, or ~~[any]~~ a Canadian province;

1094 ~~[(g) any security listed on the National Association of Securities Dealers Automated~~

1095 ~~Quotation National Market System, the New York Stock Exchange, the American Stock~~
1096 ~~Exchange, or on any other stock exchange or medium approved by the division, except that~~
1097 ~~the director may at any time suspend or revoke this exemption for any particular stock~~
1098 ~~exchange, medium, security, or securities under Subsection (4); any other security of the same~~
1099 ~~issuer which is of senior or substantially equal rank to any security so listed and approved by~~
1100 ~~the director, any security called for by subscription rights or warrants so listed or approved, or~~
1101 ~~any warrant or right to purchase or subscribe to any of the foregoing;]~~

1102 (e) (i) a federal covered security specified in the Securities Act of 1933, Section
1103 18(b)(1), 15 U.S.C. Section 77r(b)(1), or by rule adopted under that provision;

1104 (ii) a security listed or approved for listing on another securities market specified by
1105 rule under this chapter;

1106 (iii) any of the following with respect to a security described in Subsection (1)(e)(i) or
1107 (ii):

1108 (A) a put or a call option contract;

1109 (B) a warrant; or

1110 (C) a subscription right on or with respect to the security;

1111 (iv) an option or similar derivative security on a security or an index of securities or
1112 foreign currencies issued by a clearing agency that is:

1113 (A) registered under the Securities Exchange Act of 1934; and

1114 (B) listed or designated for trading on a national securities exchange, or a facility of a
1115 national securities association registered under the Securities Exchange Act of 1934;

1116 (v) an offer or sale, of the underlying security in connection with the offer, sale, or
1117 exercise of an option or other security that was exempt when the option or other security was
1118 written or issued; or

1119 (vi) an option or a derivative security designated by the Securities and Exchange
1120 Commission under Securities Exchange Act of 1934, Section 9(b), 15 U.S.C. Section 78i(b);

1121 ~~[(h)]~~ (f) (i) [any] a security issued by [any] a person organized and operated not for
1122 private profit but exclusively for religious, educational, benevolent, charitable, fraternal,

1123 social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional
1124 association; and

1125 (ii) ~~[any]~~ a security issued by a corporation organized under Title 3, Chapter 1,
1126 General Provisions Relating to Agricultural Cooperative Associations, and ~~[any]~~ a security
1127 issued by a corporation to which ~~[the provisions of]~~ that chapter ~~[are]~~ is made applicable by
1128 compliance with ~~[the requirements of]~~ Section 3-1-21;

1129 ~~[(i) a promissory note, draft, bill of exchange, or banker's acceptance that evidences an~~
1130 ~~obligation to pay cash within nine months after the date of issuance, exclusive of days of~~
1131 ~~grace, or a renewal of such an obligation that is likewise limited, or a guarantee of such an~~
1132 ~~obligation or of a renewal:]~~

1133 ~~[(i) issued in denominations of at least \$50,000; and]~~

1134 ~~[(ii) either:]~~

1135 ~~[(A) receives a rating in one of the three highest rating categories from a nationally~~
1136 ~~recognized statistical rating organization; or]~~

1137 ~~[(B) the issuer satisfies requirements established by rule or order of the division;]~~

1138 ~~[(j) any]~~ (g) an investment contract issued in connection with an employees' stock
1139 purchase, option, savings, pension, profit-sharing, or similar benefit plan;

1140 ~~[(k) a security issued by an issuer registered as an open-end management investment~~
1141 ~~company or unit investment trust under Section 8 of the Investment Company Act of 1940, if:]~~

1142 ~~[(i) (A) the issuer is advised by an investment adviser that is a depository institution~~
1143 ~~exempt from registration under the Investment Advisers Act of 1940 or that is currently~~
1144 ~~registered as an investment adviser, and has been registered, or is affiliated with an adviser~~
1145 ~~that has been registered, as an investment adviser under the Investment Advisers Act of 1940~~
1146 ~~for at least three years next preceding an offer or sale of a security claimed to be exempt under~~
1147 ~~this subsection; and]~~

1148 ~~[(B) the adviser has acted, or is affiliated with an investment adviser that has acted as~~
1149 ~~investment adviser to one or more registered investment companies or unit investment trusts~~
1150 ~~for at least three years next preceding an offer or sale of a security claimed to be exempt under~~

1151 this subsection; or]

1152 [~~(ii) the issuer has a sponsor that has at all times throughout the three years before an~~
1153 ~~offer or sale of a security claimed to be exempt under this subsection sponsored one or more~~
1154 ~~registered investment companies or unit investment trusts the aggregate total assets of which~~
1155 ~~have exceeded \$100,000,000;]~~

1156 [~~(iii) in addition to Subsection (i) or (ii), the division has received prior to any sale~~
1157 ~~exempted herein:]~~

1158 [~~(A) a notice of intention to sell which has been executed by the issuer which sets~~
1159 ~~forth the name and address of the issuer and the title of the securities to be offered in this state;~~
1160 ~~and]~~

1161 [~~(B) a filing fee as determined under Section 61-1-18.4;]~~

1162 [~~(iv) in the event any offer or sale of a security of an open-end management~~
1163 ~~investment company is to be made more than 12 months after the date on which the notice and~~
1164 ~~fee under Subsection (iii) is received by the director, another notice and payment of the~~
1165 ~~applicable fee shall be required;]~~

1166 [~~(v) for the purpose of this subsection, an investment adviser is affiliated with another~~
1167 ~~investment adviser if it controls, is controlled by, or is under common control with the other~~
1168 ~~investment adviser; and]~~

1169 (h) a security issued by an investment company that is registered, or that has filed a
1170 registration statement, under the Investment Company Act of 1940; and

1171 [~~(†)~~ (i) [any] a security as to which the director, by rule or order, finds that registration
1172 is not necessary or appropriate for the protection of investors.

1173 (2) The following transactions are [~~exempted~~] exempt from Sections 61-1-7 and
1174 61-1-15:

1175 (a) [~~any~~] an isolated nonissuer transaction, whether effected through a broker-dealer or
1176 not;

1177 (b) [~~any~~] a nonissuer transaction in an outstanding security, if as provided by rule of
1178 the division:

1179 (i) information about the issuer of the security as required by the division is currently
 1180 listed in a securities manual recognized by the division, and the listing is based upon such
 1181 information as required by rule of the division; or

1182 (ii) the security has a fixed maturity or a fixed interest or dividend provision and there
 1183 ~~[has been]~~ is no default during the current fiscal year or within the three preceding fiscal years,
 1184 or during the existence of the issuer and any predecessors if less than three years, in the
 1185 payment of principal, interest, or dividends on the security;

1186 (c) ~~[any]~~ a nonissuer transaction effected by or through a registered broker-dealer
 1187 pursuant to an unsolicited order or offer to buy;

1188 (d) ~~[any]~~ a transaction between the issuer or other person on whose behalf the offering
 1189 is made and an underwriter, or among underwriters;

1190 (e) ~~[any]~~ a transaction in a bond or other evidence of indebtedness secured by a real or
 1191 chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if
 1192 the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences
 1193 of indebtedness secured thereby, is offered and sold as a unit;

1194 (f) ~~[any]~~ a transaction by an executor, administrator, sheriff, marshal, receiver, trustee
 1195 in bankruptcy, guardian, or conservator;

1196 (g) ~~[any]~~ a transaction executed by a bona fide pledgee without ~~[any]~~ a purpose of
 1197 evading this chapter;

1198 (h) ~~[any]~~ an offer or sale to one of the following whether the purchaser is acting for
 1199 itself or in a fiduciary capacity:

1200 (i) a ~~[bank, savings institution,]~~ depository institution;

1201 (ii) a trust company~~[-];~~;

1202 (iii) an insurance company~~[-];~~;

1203 (iv) an investment company as defined in the Investment Company Act of 1940~~[-];~~;

1204 (v) a pension or profit-sharing trust~~[-or];~~;

1205 (vi) other financial institution or institutional investor~~[-];~~ or ~~[to]~~

1206 (vii) a broker-dealer~~[-, whether the purchaser is acting for itself or in some fiduciary~~

1207 capacity];

1208 (i) ~~[any]~~ an offer or sale of a preorganization certificate or subscription if:

1209 (i) no commission or other remuneration is paid or given directly or indirectly for

1210 soliciting ~~[any]~~ a prospective subscriber;

1211 (ii) the number of subscribers acquiring ~~[any]~~ a legal or beneficial interest therein does

1212 not exceed ten; ~~[and]~~

1213 (iii) there is no general advertising or solicitation in connection with the offer or sale;

1214 and

1215 (iv) no payment is made by a subscriber;

1216 (j) ~~[any]~~ subject to Subsection (6), a transaction pursuant to an offer by an issuer of its

1217 securities to its existing securities holders, if:

1218 (i) no commission or other remuneration, other than a standby commission is paid or

1219 given directly or indirectly for soliciting ~~[any]~~ a security ~~[holders]~~ holder in this state; and

1220 (ii) the transaction constitutes [either]:

1221 (A) the conversion of convertible securities;

1222 (B) the exercise of nontransferable rights or warrants;

1223 (C) the exercise of transferable rights or warrants if the rights or warrants are

1224 exercisable not more than 90 days after their issuance; ~~[or]~~

1225 (D) the purchase of securities under a preemptive right; ~~[and]~~ or

1226 ~~[(ii) the exemption created by Subsection (2)(j) is not available for an offer or sale of~~

1227 ~~securities to existing securities holders who have acquired their securities from the issuer in a~~

1228 ~~transaction in violation of Section 61-1-7;]~~

1229 (E) a transaction other than one specified in Subsections (2)(j)(ii)(A) through (D) if:

1230 (I) the division is furnished with:

1231 (Aa) a general description of the transaction;

1232 (Bb) the disclosure materials to be furnished to the issuer's securities holders in the

1233 transaction; and

1234 (Cc) a non-refundable fee; and

1235 (II) the division does not, by order, deny or revoke the exemption within 20 working
1236 days after the day on which the filing required by Subsection (2)(j)(ii)(E)(I) is complete;

1237 (k) ~~[any]~~ an offer, but not a sale, of a security for which a registration ~~[statements have~~
1238 ~~been]~~ statement is filed under both this chapter and the Securities Act of 1933 if no stop order
1239 or refusal order is in effect and no public proceeding or examination looking toward such an
1240 order is pending;

1241 (l) a distribution of securities as a dividend if the person distributing the dividend is
1242 the issuer of the securities distributed;

1243 (m) ~~[any]~~ a nonissuer transaction effected by or through a registered broker-dealer
1244 where the broker-dealer or issuer files with the division, and the broker-dealer maintains in the
1245 broker-dealer's records, and makes reasonably available upon request to ~~[any]~~ a person
1246 expressing an interest in a proposed transaction in the security with the broker-dealer
1247 information prescribed by the division under its rules;

1248 (n) ~~[any transactions]~~ a transaction not involving a public offering;

1249 (o) ~~[any]~~ an offer or sale of "condominium units" or "time period units" as those terms
1250 are defined in ~~[the]~~ Title 57, Chapter 8, Condominium Ownership Act, whether or not to be
1251 sold by installment contract, if the ~~[provisions of the]~~ following are complied with:

1252 (i) Title 57, Chapter 8, Condominium Ownership Act, or if the units are located in
1253 another state, the condominium act of that state~~[- the]~~;

1254 (ii) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act~~[- the Utah]~~;

1255 (iii) Title 57, Chapter 19, Timeshare and Camp Resort Act~~[-];~~ and ~~[the]~~

1256 (iv) Title 70C, Utah ~~[Uniform]~~ Consumer Credit Code ~~[are complied with]~~;

1257 (p) ~~[any]~~ a transaction or series of transactions involving a merger, consolidation,
1258 reorganization, recapitalization, reclassification, or sale of assets, if the consideration for
1259 which, in whole or in part, is the issuance of securities of a person or persons, and if:

1260 (i) the transaction or series of transactions is incident to a vote of the securities holders
1261 of each person involved or by written consent or resolution of some or all of the securities
1262 holders of each person involved;

- 1263 (ii) the vote, consent, or resolution is given under a provision in:
1264 (A) the applicable corporate statute or other controlling statute;
1265 (B) the controlling articles of incorporation, trust indenture, deed of trust, or
1266 partnership agreement; or
1267 (C) the controlling agreement among securities holders;
1268 (iii) (A) one person involved in the transaction is required to file proxy or
1269 informational materials under Section 14(a) or (c) of the Securities Exchange Act of 1934 or
1270 Section 20 of the Investment Company Act of 1940 and has so filed;
1271 (B) one person involved in the transaction is an insurance company [~~which~~] that is
1272 exempt from filing under Section 12(g)(2)(G) of the Securities Exchange Act of 1934, and has
1273 filed proxy or informational materials with the appropriate regulatory agency or official of its
1274 domiciliary state; or
1275 (C) all persons involved in the transaction are exempt from filing under Section
1276 12(g)(1) of the Securities Exchange Act of 1934, and file with the division such proxy or
1277 informational material as the division requires by rule;
1278 (iv) the proxy or informational material is filed with the division and distributed to all
1279 securities holders entitled to vote in the transaction or series of transactions at least ten
1280 working days prior to any necessary vote by the securities holders or action on any necessary
1281 consent or resolution; and
1282 (v) the division does not, by order, deny or revoke the exemption within ten working
1283 days after filing of the proxy or informational materials;
1284 (q) [~~any~~] subject to Subsection (7), a transaction pursuant to an offer to sell securities
1285 of an issuer if:
1286 (i) the transaction is part of an issue in which there are not more than 15 purchasers in
1287 this state, other than those designated in Subsection (2)(h), during any 12 consecutive months;
1288 (ii) no general solicitation or general advertising is used in connection with the offer to
1289 sell or sale of the securities;
1290 (iii) no commission or other similar compensation is given, directly or indirectly, to a

1291 person other than a broker-dealer or agent licensed under this chapter, for soliciting a
1292 prospective purchaser in this state;

1293 (iv) the seller reasonably believes that all the purchasers in this state are purchasing for
1294 investment; and

1295 (v) the transaction is part of an aggregate offering that does not exceed [~~\$500,000~~]
1296 \$1,000,000, or a greater amount as prescribed by a division rule, during any 12 consecutive
1297 months; [~~and~~]

1298 [~~(vi) the director, as to a security or transaction, or a type of security or transaction,~~
1299 ~~may withdraw or further condition this exemption or waive one or more of the conditions in~~
1300 ~~Subsection (q);~~]

1301 (r) [~~any~~] a transaction involving a commodity contract or commodity option; [~~and~~]

1302 (s) a transaction in a security, whether or not the security or transaction is otherwise
1303 exempt if:

1304 (i) the transaction is:

1305 (A) in exchange for one or more outstanding securities, claims, or property interests;
1306 or

1307 (B) partly for cash and partly in exchange for one or more outstanding securities,
1308 claims, or property interests; and

1309 (ii) the terms and conditions are approved by the director after a hearing under Section
1310 61-1a-408;

1311 (t) a transaction incident to a judicially approved reorganization in which a security is
1312 issued:

1313 (i) in exchange for one or more outstanding securities, claims, or property interests; or
1314 (ii) partly for cash and partly in exchange for one or more outstanding securities,
1315 claims, or property interests;

1316 (u) a nonissuer transaction by a federal covered investment adviser with investments
1317 under management in excess of \$100,000,000 acting in the exercise of discretionary authority
1318 in a signed record for the account of others; and

1319 ~~[(s) any]~~ (v) a transaction as to which the division finds that registration is not
1320 necessary or appropriate for the protection of investors.

1321 (3) ~~[Every]~~ A person filing an exemption notice or application shall pay a filing fee as
1322 determined under Section 61-1-18.4.

1323 (4) Upon approval by a majority of the ~~[Securities Advisory Board]~~ commission, the
1324 director, by means of an adjudicative proceeding conducted in accordance with Title 63G,
1325 Chapter 4, Administrative Procedures Act, may deny or revoke ~~[any]~~ an exemption specified
1326 in Subsection (1)~~[(g), (h), or (j)]~~ (f) or (g) or in Subsection (2) with respect to:

1327 (a) a specific security, transaction, or series of transactions; or

1328 (b) ~~[any]~~ a person or issuer, ~~[any]~~ an affiliate or successor to a person or issuer, or
1329 ~~[any]~~ an entity subsequently organized by or on behalf of a person or issuer generally and may
1330 impose a fine if the ~~[person]~~ director finds that the order is in the public interest and that:

1331 (i) the application for or notice of exemption filed with the division is incomplete in
1332 ~~[any]~~ a material respect or contains ~~[any]~~ a statement which was, in the light of the
1333 circumstances under which it was made, false or misleading with respect to ~~[any]~~ a material
1334 fact;

1335 (ii) ~~[any provision of]~~ this chapter, or ~~[any]~~ a rule, order, or condition lawfully
1336 imposed under this chapter has been willfully violated in connection with the offering or
1337 exemption by:

1338 (A) the person filing ~~[any]~~ an application for or notice of exemption;

1339 (B) the issuer, ~~[any]~~ a partner, officer, or director of the issuer, ~~[any]~~ a person
1340 occupying a similar status or performing similar functions, or ~~[any]~~ a person directly or
1341 indirectly controlling or controlled by the issuer, but only if the person filing the application
1342 for or notice of exemption is directly or indirectly controlled by or acting for the issuer; or

1343 (C) ~~[any]~~ an underwriter;

1344 (iii) subject to Subsection (8), the security for which the exemption is sought is the
1345 subject of an administrative stop order or similar order, or a permanent or temporary
1346 injunction or ~~[any]~~ a court of competent jurisdiction entered under ~~[any other]~~ another federal

1347 or state act applicable to the offering or exemption; [~~the division may not institute a~~
 1348 ~~proceeding against an effective exemption under this subsection more than one year from the~~
 1349 ~~date of the order or injunction relied on, and it may not enter an order under this subsection on~~
 1350 ~~the basis of an order or injunction entered under any other state act unless that order or~~
 1351 ~~injunction was based on facts that would currently constitute a ground for a stop order under~~
 1352 ~~this section;]~~

1353 (iv) the issuer's enterprise or method of business includes or would include activities
 1354 that are illegal where performed;

1355 (v) the offering has worked, has tended to work, or would operate to work a fraud
 1356 upon purchasers;

1357 (vi) the offering [~~has been~~] is or was made with unreasonable amounts of underwriters'
 1358 and sellers' discounts, commissions, or other compensation, or promoters' profits or
 1359 participation, or unreasonable amounts or kinds of options;

1360 (vii) an exemption is sought for a security or transaction [~~which~~] that is not eligible for
 1361 the exemption; or

1362 (viii) the proper filing fee, if required, has not been paid.

1363 (5) (a) [~~No~~] An order under Subsection (4) may not operate retroactively.

1364 (b) [~~No~~] A person may not be considered to have violated Section 61-1-7 or 61-1-15
 1365 by reason of [~~any~~] an offer or sale effected after the entry of an order under this [~~subsection~~]
 1366 Subsection (5) if the person sustains the burden of proof that the person did not know, and in
 1367 the exercise of reasonable care could not have known, of the order.

1368 (6) The exemption created by Subsection (2)(j) is not available for an offer or sale of a
 1369 security to an existing securities holder who has acquired the holder's security from the issuer
 1370 in a transaction in violation of Section 61-1-7.

1371 (7) As to a security, a transaction, or a type of security or transaction, the division
 1372 may:

1373 (a) withdraw or further condition the exemption described in Subsection (2)(q); or

1374 (b) waive one or more of the conditions described in Subsection (2)(q).

1375 (8) (a) The director may not institute a proceeding against an effective exemption
1376 under Subsection (4)(b) more than one year from the day on which the order or injunction on
1377 which the director relies is issued.

1378 (b) The director may not enter an order under Subsection (4)(b) on the basis of an
1379 order or injunction entered under another state act unless that order or injunction is issued on
1380 the basis of facts that would constitute a ground for a stop order under this section at the time
1381 the director enters the order.

1382 Section 11. Section **61-1-15.5** is amended to read:

1383 **61-1-15.5. Federal covered securities.**

1384 (1) The division by rule or order may require the filing of any of the following
1385 documents with respect to a covered security under Section 18(b)(2) of the Securities Act of
1386 1933:

1387 (a) prior to the initial offer of federal covered security in this state, a notice form as
1388 prescribed by the division or all documents that are part of a federal registration statement
1389 filed with the [~~U.S.~~] Securities and Exchange Commission under the Securities Act of 1933,
1390 together with a consent to service of process signed by the issuer and a filing fee as determined
1391 under Section 61-1-18.4;

1392 (b) after the initial offer of such federal covered security in this state, all documents
1393 that are part of an amendment to a federal registration statement filed with the U.S. Securities
1394 and Exchange Commission under the Securities Act of 1933, which shall be filed concurrently
1395 with the division;

1396 (c) a report of the value of federal covered securities offered or sold in this state,
1397 together with a filing fee as determined under Section 61-1-18.4; and

1398 (d) a notice filing under this section shall be effective for one year and shall be
1399 renewed annually in order to continue to offer or sell the federal covered securities for which
1400 the notice was filed.

1401 (2) With respect to [~~any~~] a security that is a covered security under Section
1402 18(b)(4)(D) of the Securities Act of 1933, the division by rule or order may require the issuer

1403 to file a notice on SEC Form D and a consent to service of process signed by the issuer no later
1404 than 15 days after the first sale of such covered security in this state, together with a filing fee
1405 as determined under Section 61-1-18.4.

1406 (3) The division by rule or order may require the filing of ~~[any]~~ a document filed with
1407 the ~~[U.S.]~~ Securities and Exchange Commission under the Securities Act of 1933, with respect
1408 to a covered security under ~~[Section 18(b)(3) or (4) of the]~~ Securities Act of 1933, Section
1409 18(b)(3) or (4), together with a filing fee as determined under Section 61-1-18.4.

1410 (4) Upon approval by a majority of the ~~[Securities Advisory Board]~~ commission, the
1411 director, by means of an adjudicative ~~[proceedings]~~ proceeding conducted in accordance with
1412 Title 63G, Chapter 4, Administrative Procedures Act, may issue a stop order suspending the
1413 offer and sale of ~~[any]~~ a federal covered security, except a covered security under Section
1414 18(b)(1) of the Securities Act of 1933, if the director finds that the order is in the public
1415 interest and there is a failure to comply with any condition established under this section.

1416 (5) The division by rule or order may waive any or all of the provisions of this section.
1417 Section 12. Section **61-1-18** is amended to read:

1418 **61-1-18. Division of Securities established -- Director -- Investigators.**

1419 (1) (a) There is established within the Department of Commerce a Division of
1420 Securities.

1421 (b) The division ~~[shall be]~~ is under the direction and control of a director~~[, appointed~~
1422 ~~by the]~~. The executive director shall appoint the director with the governor's approval.

1423 (c) ~~[The director shall be responsible for the administration and enforcement of]~~
1424 Subject to Section 61-1-18.5, the division shall administer and enforce this chapter.

1425 (d) The director shall hold office at the pleasure of the governor.

1426 (2) The director, with the approval of the executive director, may employ ~~[such]~~ the
1427 staff ~~[as]~~ necessary to discharge the duties of the division or commission at salaries to be fixed
1428 by the director according to standards established by the Department of Human Resource
1429 Management.

1430 (3) An investigator employed pursuant to Subsection (2) who meets the training

1431 requirements of Subsection 53-13-105(3) may be designated a special function officer, as
1432 defined in Section 53-13-105, by the director, but is not eligible for retirement benefits under
1433 the Public Safety Employee's Retirement System.

1434 Section 13. Section **61-1-18.2** is amended to read:

1435 **61-1-18.2. Budget -- Annual report.**

1436 The director shall annually prepare and submit to the executive director:

1437 (1) a budget for the expenses of the division and commission for the administration
1438 and enforcement of this chapter for the next fiscal year; and

1439 (2) a report outlining the division's and commission's work for the preceding fiscal
1440 year.

1441 Section 14. Section **61-1-18.3** is amended to read:

1442 **61-1-18.3. Information obtained by division or commission -- Use for personal**
1443 **benefit prohibited -- Disclosure.**

1444 (1) It is unlawful for [~~any of the division's employees~~] an employee of the division or
1445 [~~any~~] a member of the [~~Securities Advisory Board~~] commission to use for personal benefit any
1446 non-public information [~~which~~] that is filed with or obtained by the division or commission.
1447 [~~No provision of this~~]

1448 (2) This chapter [~~authorizes~~] does not authorize the division, an employee of the
1449 division, the commission, or [~~any of its officers or employees~~] a member of the commission to
1450 disclose [~~any such~~] information described in Subsection (1), except among themselves or
1451 when necessary or appropriate in a proceeding or investigation under this chapter.

1452 (3) No provision of this chapter either creates or derogates from [~~any~~] a privilege
1453 [~~which~~] that exists at common law or otherwise when documentary or other evidence is sought
1454 under subpoena directed to:

1455 (a) the division;

1456 (b) the commission; [~~or any of its employees~~]

1457 (c) a member of the commission; or

1458 (d) an employee of the division.

1459 Section 15. Section **61-1-18.5** is amended to read:

1460 **61-1-18.5. Securities Commission -- Transition.**

1461 (1) (a) There is ~~hereby established~~ created a Securities ~~[Advisory Board]~~
1462 Commission.

1463 ~~[(b) Members of the board shall be appointed by the governor with the consent of the~~
1464 ~~Senate.]~~

1465 (b) The division shall provide staffing to the commission.

1466 ~~[(c)]~~ (2) (a) The [board] commission shall [have the following duties]:

1467 (i) formulate and make recommendations to the director regarding policy and
1468 budgetary matters;

1469 (ii) submit recommendations regarding registration requirements ~~[and division rules];~~

1470 (iii) formulate and make recommendations to the director regarding the establishment
1471 of reasonable fees; ~~[and]~~

1472 (iv) ~~[generally]~~ act in an advisory capacity to the director with respect to the exercise
1473 of ~~[his]~~ the director's duties, powers, and responsibilities~~[-];~~

1474 (v) conduct an administrative hearing under this chapter that is not:

1475 (A) delegated by the commission to an administrative law judge or the division
1476 relating to a violation of this chapter; or

1477 (B) expressly delegated to the division under this chapter;

1478 (vi) except as provided in Subsection (2)(b), impose a sanction as provided in this
1479 chapter;

1480 (vii) review rules made by the division for purposes of concurrence in accordance with
1481 Section 61-1-24; and

1482 (viii) perform other duties as this chapter provides.

1483 (b) (i) The commission may delegate to the division the authority to impose a sanction
1484 under this chapter.

1485 (ii) If under Subsection (2)(b)(i) the commission delegates to the division the authority
1486 to impose a sanction, a person who is subject to the sanction may petition the commission for

1487 review of the sanction.

1488 (iii) A person who is sanctioned by the division in accordance with this Subsection
1489 (2)(b) may seek agency review by the executive director only after the commission reviews the
1490 division's action.

1491 ~~[(2)] (3) (a) The [Securities Advisory Board shall be comprised of]~~ governor shall
1492 appoint five members ~~[who shall be appointed in accordance with the following]~~ to the
1493 commission with the consent of the Senate as follows:

1494 (i) two members from the securities brokerage community;

1495 (A) who are not from the same broker-dealer or affiliate; and

1496 (B) who have at least five years prior experience in securities matters;

1497 (ii) one member from the securities section of the Utah State Bar ~~[Association];~~

1498 (A) whose practice primarily involves:

1499 (I) corporate securities; or

1500 (II) representation of plaintiffs in securities cases;

1501 (B) who does not routinely represent clients involved in:

1502 (I) civil or administrative litigation with the division; or

1503 (II) criminal cases brought under this chapter; and

1504 (C) who has at least five years prior experience in securities matters;

1505 (iii) one member who is an officer or director of a ~~[corporation]~~ business entity not
1506 subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of
1507 1934 ; and

1508 (iv) one member from the public at large who has no active participation in the
1509 securities business.

1510 (b) ~~[No]~~ A member may not serve more than two consecutive terms.

1511 ~~[(3)] (4) (a)~~ Except as required by Subsection ~~[(3)] (4)(b)~~ and subject to Subsection
1512 (4)(c), as terms of current ~~[board]~~ members expire, the governor shall appoint ~~[each]~~ a new
1513 member or reappointed member to a four-year term.

1514 (b) Notwithstanding ~~[the requirements of]~~ Subsection ~~[(3)] (4)(a)~~, the governor shall,

1515 at the time of appointment or reappointment, adjust the length of terms to ensure that the terms
 1516 of commission members are staggered so that approximately half of the ~~[board]~~ commission is
 1517 appointed every two years.

1518 (c) For purposes of making an appointment to the commission, the governor:

1519 (i) shall as of May 12, 2009:

1520 (A) appoint all five members of the commission; and

1521 (B) stagger the terms of the five members of the commission to comply with

1522 Subsection (4)(b); and

1523 (ii) may not consider the commission an extension of the previous Securities Advisory
 1524 Board.

1525 ~~[(4)(a)]~~ (d) When a vacancy occurs in the membership for any reason, the governor
 1526 shall appoint a replacement ~~[shall be appointed]~~ member for the unexpired term.

1527 ~~[(b)]~~ (e) ~~[All members]~~ A member shall serve until ~~[their]~~ the member's respective
 1528 ~~[successors are]~~ successor is appointed and qualified.

1529 (f) The commission shall annually select one member to serve as chair of the
 1530 commission.

1531 (5) (a) The ~~[board]~~ commission shall meet;

1532 (i) at least quarterly on a regular date to be fixed by the ~~[board]~~ commission; and

1533 (ii) at such other times at the call of;

1534 (A) the director; or

1535 (B) any two members of the ~~[board]~~ commission.

1536 (b) A majority of the ~~[board]~~ commission shall constitute a quorum for the transaction
 1537 of business. ~~[Actions of the board shall require]~~

1538 (c) An action of the commission requires a vote of a majority of ~~[those]~~ members
 1539 present.

1540 (6) [Each] A member of the ~~[board]~~ commission shall, by sworn and written statement
 1541 filed with the Department of Commerce and the lieutenant governor, disclose any position of
 1542 employment or ownership interest that the member has with respect to ~~[any]~~ an entity or

1543 business subject to the jurisdiction of the division or commission. This statement shall be
1544 filed upon appointment and must be appropriately amended whenever significant changes
1545 occur in matters covered by the statement.

1546 (7) (a) [~~Members shall receive no~~] A member may not receive compensation or
1547 benefits for [~~their~~] the member's services, but may receive per diem and expenses incurred in
1548 the performance of the member's official duties at the rates established by the Division of
1549 Finance under Sections 63A-3-106 and 63A-3-107.

1550 (b) [~~Members~~] A member may decline to receive per diem and expenses for [~~their~~] the
1551 member's service.

1552 (8) (a) A rule or form made by the division under this section that is in effect on May
1553 11, 2009, is considered to have been concurred with by the commission as of May 12, 2009,
1554 until the commission acts on the rule or form.

1555 (b) For a civil or administrative action pending under this chapter as of May 12, 2009,
1556 brought under the authority of division under this chapter as in effect May 11, 2009 that may
1557 be brought only by the commission under this chapter as in effect on May 12, 2009:

1558 (i) the action shall be considered brought by the commission; and

1559 (ii) the commission may take any act authorized under this chapter regarding that
1560 action.

1561 Section 16. Section **61-1-18.6** is amended to read:

1562 **61-1-18.6. Procedures -- Adjudicative proceedings.**

1563 The [~~Division of Securities~~] commission and division shall comply with the procedures
1564 and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in [~~its~~] an
1565 adjudicative [~~proceedings~~] proceeding under this chapter.

1566 Section 17. Section **61-1-18.7** is amended to read:

1567 **61-1-18.7. Funding of securities investor education and training.**

1568 (1) (a) There is created a restricted special revenue fund known as the "Securities
1569 Investor Education and Training Fund" to provide revenue for educating the public and the
1570 securities industry as provided in this section.

1571 (b) For purposes of this section, "fund" means the Securities Investor Education and
 1572 Training Fund.

1573 (2) All money received by the state by reason of civil penalties ordered and
 1574 administrative fines collected pursuant to this chapter shall be deposited in the [~~Securities~~
 1575 ~~Investor Education and Training Fund~~] fund, and subject to the requirements of Title 51,
 1576 Chapter 5, Funds Consolidation Act.

1577 (3) [~~The special revenue fund may include any fines~~] A fine collected by the division
 1578 after July 1, 1989, pursuant to a voluntary [~~settlements~~] settlement or administrative [~~orders~~]
 1579 order shall be deposited into the fund.

1580 (4) (a) The fund shall earn interest.

1581 (b) All interest earned on fund monies shall be deposited into the fund.

1582 (5) Notwithstanding Title 63J, Chapter 1, Budgetary Procedures Act, the director may
 1583 use [~~special revenue fund~~] monies in the fund, upon concurrence of the [~~Securities Advisory~~
 1584 ~~Board~~] commission and the executive director of the Department of Commerce, in a manner
 1585 consistent with the duties of the division and commission under this chapter and only for any
 1586 or all of the following and the expense of providing them:

1587 (a) education and training of Utah residents in matters concerning securities laws and
 1588 investment decisions, by publications or presentations;

1589 (b) education of registrants and licensees under this chapter, by:

1590 (i) publication of this chapter and rules and policy statements and opinion letters [~~of~~
 1591 ~~the division~~] issued under this chapter; and

1592 (ii) sponsorship of seminars or meetings to educate registrants and licensees as to the
 1593 requirements of this chapter; and

1594 (c) investigation and litigation.

1595 (6) If the balance in the fund exceeds \$100,000 at the close of any fiscal year, the
 1596 excess shall be transferred to the General Fund.

1597 Section 18. Section **61-1-19** is amended to read:

1598 **61-1-19. Investigations authorized.**

1599 (1) (a) The division [~~in its discretion~~] may make any public or private investigations
 1600 within or without this state as [~~it~~] the division considers necessary to determine whether [~~any~~]
 1601 a person has violated, is violating, or is about to violate [~~any provision of~~] this chapter or [~~any~~]
 1602 a rule or order [~~hereunder~~] issued under this chapter.

1603 (b) To aid in the enforcement of this chapter or in the prescribing of rules and forms
 1604 [~~hereunder~~] issued under this chapter, the division may require or permit [~~any~~] a person to file
 1605 a statement in writing, under oath or otherwise as to all the facts and circumstances concerning
 1606 the matter to be investigated.

1607 (c) The division may publish information concerning [~~any~~] a violation of this chapter
 1608 or the violation of [~~any~~] a rule or order [~~hereunder~~] issued under this chapter.

1609 (2) For the purpose of [~~any~~] an investigation or proceeding under this chapter, the
 1610 division, the commission, or [~~any~~] an employee designated by [~~it~~] the division may:

- 1611 (a) administer [~~oaths and affirmations~~] an oath or affirmation;
- 1612 (b) subpoena [~~witnesses~~] a witness and compel [~~their~~] the attendance of the witness;
- 1613 (c) take evidence; and
- 1614 (d) require the production of any books, papers, correspondence, memoranda,
 1615 agreements, or other documents or records relevant or material to the investigation.

1616 Section 19. Section **61-1-20** is amended to read:

1617 **61-1-20. Enforcement.**

1618 Whenever it appears to the director that [~~any~~] a person has engaged, is engaging, or is
 1619 about to engage in [~~any~~] an act or practice constituting a violation of this chapter or [~~any~~] a
 1620 rule or order under this chapter, in addition to [~~any~~] specific powers granted in this chapter:

1621 (1) (a) the director may issue an order directing the person to appear before the
 1622 [~~division~~] commission and show cause why an order should not be issued directing the person
 1623 to cease and desist from engaging in the act or practice, or doing [~~any~~] an act in furtherance of
 1624 the activity;

1625 (b) the order to show cause shall state the reasons for the order and the date of the
 1626 hearing;

1627 (c) the director shall promptly serve a copy of the order to show cause upon ~~[each]~~ a
1628 person named in the order;

1629 (d) the ~~[director]~~ commission shall hold a hearing on the order to show cause no
1630 sooner than ten business days after the order is issued;

1631 (e) after a hearing, the ~~[director]~~ commission may issue an order to cease and desist
1632 from engaging in ~~[any]~~ an act or practice constituting a violation of this chapter or ~~[any]~~ a rule
1633 or order under this chapter~~[- The order shall be accompanied by written findings of fact and~~
1634 ~~conclusions of law];~~

1635 (f) the ~~[director]~~ commission may impose a fine; ~~[and]~~

1636 (g) the ~~[director]~~ commission may bar or suspend that person from associating with a
1637 licensed broker-dealer or investment adviser in this state~~[-]; and~~

1638 (h) the commission may impose a combination of sanctions in Subsections (1)(e)
1639 through (g).

1640 (2) (a) The director may bring an action in the appropriate district court of this state or
1641 the appropriate court of another state to enjoin ~~[the acts or practices]~~ an act or practice and to
1642 enforce compliance with this chapter or ~~[any]~~ a rule or order under this chapter;

1643 (b) upon a proper showing in an action brought under this section, the court may:

1644 (i) issue a permanent or temporary, prohibitory or mandatory injunction;

1645 (ii) issue a restraining order or writ of mandamus;

1646 (iii) enter a declaratory judgment;

1647 (iv) appoint a receiver or conservator for the defendant or the defendant's assets;

1648 (v) order disgorgement;

1649 (vi) order rescission;

1650 (vii) order restitution;

1651 ~~[(vii)]~~ (viii) impose a fine of not more than ~~[\$500]~~ \$10,000 for each violation of the
1652 ~~[act]~~ chapter; and

1653 ~~[(viii)]~~ (ix) enter any other relief the court considers just; and

1654 (c) the court may not require the division to post a bond in an action brought under

1655 this ~~[subsection]~~ Subsection (2).

1656 (3) An order issued under Subsection (1) shall be accompanied by written findings of
1657 fact and conclusions of law.

1658 Section 20. Section **61-1-21** is amended to read:

1659 **61-1-21. Penalties for violations.**

1660 (1) A person is guilty of a third degree felony who willfully violates ~~[any]~~:

1661 (a) a provision of this chapter except Sections 61-1-1 and 61-1-16~~[, or who willfully~~
1662 ~~violates any]~~;

1663 (b) a rule or order issued under this chapter~~[;]; or [who willfully violates]~~

1664 (c) Section 61-1-16 knowing the statement made ~~[to be]~~ is false or misleading in ~~[any]~~
1665 a material respect.

1666 (2) A person who willfully violates Section 61-1-1:

1667 (a) is guilty of a third degree felony if, at the time the crime was committed, the
1668 property, money, or thing unlawfully obtained or sought to be obtained was worth less than
1669 \$10,000;

1670 (b) is guilty of a second degree felony if:

1671 (i) at the time the crime was committed, the property, money, or thing unlawfully
1672 obtained or sought to be obtained was worth \$10,000 or more; or

1673 (ii) (A) at the time the crime was committed, the property, money, or thing unlawfully
1674 obtained or sought to be obtained was worth less than \$10,000; and

1675 (B) in connection with that violation, the violator knowingly accepted any money
1676 representing:

1677 (I) equity in a person's ~~[home]~~ primary residence;

1678 (II) a withdrawal from ~~[any]~~ an individual retirement account; or

1679 (III) a withdrawal from ~~[any]~~ a qualified retirement plan as defined in the Internal
1680 Revenue Code; or

1681 (c) is guilty of ~~[a]~~ an enhanced second degree felony punishable by imprisonment for
1682 an indeterminate term of not less than three years or more than 15 years if:

1683 (i) at the time the crime was committed, the property, money, or thing unlawfully
1684 obtained or sought to be obtained was worth \$10,000 or more; and

1685 (ii) in connection with that violation, the violator knowingly accepted any money
1686 representing:

1687 (A) equity in a person's ~~[home]~~ primary residence;

1688 (B) a withdrawal from ~~[any]~~ an individual retirement account; or

1689 (C) a withdrawal from ~~[any]~~ a qualified retirement plan as defined in the Internal
1690 Revenue Code.

1691 (3) ~~[No]~~ A person may not be imprisoned for the violation of ~~[any]~~ a rule or order
1692 issued under this chapter if ~~[he]~~ the person proves that ~~[he]~~ the person had no knowledge of
1693 the rule or order.

1694 (4) In addition to any other penalty for a criminal violation of this chapter, the
1695 sentencing judge may impose ~~[any]~~ a penalty or remedy provided for in Subsection
1696 61-1-20(2)(b).

1697 Section 21. Section **61-1-21.5** is amended to read:

1698 **61-1-21.5. Legal counsel -- Prosecutions.**

1699 (1) The attorney general shall advise and represent the division, the commission, and
1700 ~~[its]~~ the staff of the division in all civil matters, administrative or judicial, requiring legal
1701 counsel or services in:

1702 (a) the exercise or defense of the division's or commission's power; or

1703 (b) the performance of ~~[its]~~ the division's or commission's duties.

1704 (2) With the concurrence of the attorney general, the staff of the division may
1705 represent the division in hearings conducted during the course of adjudicative proceedings of
1706 the commission or the division.

1707 (3) (a) In the prosecution of all criminal actions under this chapter, the attorney
1708 general, county attorney, or district attorney of the appropriate jurisdiction, shall provide all
1709 legal services for the division, the commission, and ~~[its]~~ the staff of the division.

1710 (b) The division or commission may refer ~~[such]~~ evidence ~~[as]~~ that is available

1711 concerning ~~[violations]~~ a violation of this chapter for criminal prosecution to:

1712 (i) the attorney general; or

1713 (ii) the appropriate county attorney ~~[or]~~, district attorney ~~[for criminal prosecution]~~, or

1714 United States Attorney's Office.

1715 (4) The attorney general, a county attorney, or a district attorney of the appropriate

1716 jurisdiction may institute a criminal proceeding under this chapter, with or without referral

1717 from the division.

1718 Section 22. Section **61-1-22** is amended to read:

1719 **61-1-22. Sales and purchases in violation -- Remedies -- Limitation of actions.**

1720 (1) (a) ~~[A]~~ This Subsection (1) applies to a person who:

1721 (i) offers or sells a security in violation of:

1722 (A) Subsection 61-1-3(1)~~;~~;

1723 (B) Section 61-1-7~~;~~;

1724 (C) Subsection 61-1-17(2)~~;~~~~any~~;

1725 (D) a rule or order under Section 61-1-15, which requires the affirmative approval of

1726 sales literature before it is used~~;~~~~any~~; or

1727 (E) a condition imposed under Subsection 61-1-10(4) or 61-1-11(7)~~;~~;

1728 (ii) offers, sells, or purchases a security in violation of Subsection 61-1-1(2).

1729 (b) A person described in Subsection (1)(a) is liable to ~~the~~ a person selling the

1730 security to or buying the security from ~~him, who~~ the person described in Subsection (1)(a).

1731 The person to whom the person described in Subsection (1)(a) is liable may sue either at law

1732 or in equity to recover the consideration paid for the security, together with interest at 12% per

1733 year from the date of payment, costs, and reasonable ~~attorney's~~ attorney fees, less the amount

1734 of ~~any~~ income received on the security, upon the tender of the security or for damages if ~~he~~

1735 the person no longer owns the security.

1736 ~~[(b)]~~ (c) Damages are ~~the~~ an amount calculated as follows:

1737 (i) subtract from the amount that would be recoverable upon a tender ~~less~~ under

1738 Subsection (7)(b) the value of the security when the buyer disposed of ~~it and interest at~~ the

1739 security; and
1740 (ii) add to the amount calculated under Subsection (1)(c)(i) interest at:
1741 (A) 12% per year [from]:
1742 (I) beginning the day on which the security is purchased by the buyer; and
1743 (II) ending on the date of disposition[-]; and
1744 (B) after the period described in Subsection (1)(c)(ii)(A), 12% per year on the amount
1745 lost at disposition.

1746 (2) The court in a suit brought under Subsection (1) may award an amount equal to
1747 three times the consideration paid for the security, together with interest, costs, and
1748 ~~attorney's~~ attorney fees, less any amounts, all as specified in Subsection (1) upon a showing
1749 that the violation was reckless or intentional.

1750 (3) A person who offers or sells a security in violation of Subsection 61-1-1(2) is not
1751 liable under Subsection (1)(a) if the purchaser knew of the untruth or omission, or the seller
1752 did not know and in the exercise of reasonable care could not have known of the untrue
1753 statement or misleading omission.

1754 (4) (a) Every person who directly or indirectly controls a seller or buyer liable under
1755 Subsection (1), every partner, officer, or director of such a seller or buyer, every person
1756 occupying a similar status or performing similar functions, every employee of such a seller or
1757 buyer who materially aids in the sale or purchase, and every broker-dealer or agent who
1758 materially aids in the sale or purchase are also liable jointly and severally with and to the same
1759 extent as the seller or purchaser, unless the nonseller or nonpurchaser who is so liable sustains
1760 the burden of proof that ~~he~~ the nonseller or nonpurchaser did not know, and in exercise of
1761 reasonable care could not have known, of the existence of the facts by reason of which the
1762 liability is alleged to exist.

1763 (b) There is contribution as in cases of contract among the several persons so liable.

1764 (5) ~~Any~~ A tender specified in this section may be made at any time before entry of
1765 judgment.

1766 (6) A cause of action under this section survives the death of ~~any~~ a person who

1767 might have been a plaintiff or defendant.

1768 (7) (a) ~~[No]~~ An action ~~[shall]~~ may not be maintained to enforce ~~[any]~~ liability under
1769 this section unless brought before the earlier of:

1770 (i) the expiration of ~~[four]~~ five years after the act or transaction constituting the
1771 violation; or

1772 (ii) the expiration of two years after the discovery by the plaintiff of the facts
1773 constituting the violation~~[-, whichever expires first].~~

1774 (b) ~~[No]~~ A person may not sue under this section if:

1775 (i) the buyer or seller received a written offer, before suit and at a time when ~~[he]~~ the
1776 buyer or seller owned the security, to refund the consideration paid together with interest at
1777 12% per year from the date of payment, less the amount of any income received on the
1778 security, and ~~[he]~~ the buyer or seller failed to accept the offer within 30 days of its receipt; or

1779 (ii) the buyer or seller received such an offer before suit and at a time when ~~[he]~~ the
1780 buyer or seller did not own the security, unless ~~[he]~~ the buyer or seller rejected the offer in
1781 writing within 30 days of its receipt.

1782 (8) ~~[No]~~ A person who has made or engaged in the performance of any contract in
1783 violation of this chapter or any rule or order ~~[hereunder]~~ issued under this chapter, or who has
1784 acquired ~~[any]~~ a purported right under any such contract with knowledge of the facts by
1785 reason of which its making or performance was in violation, may not base ~~[any]~~ a suit on the
1786 contract.

1787 (9) A condition, stipulation, or provision binding a person acquiring a security to
1788 waive compliance with this chapter or a rule or order ~~[hereunder]~~ issued under this chapter is
1789 void.

1790 (10) (a) The rights and remedies provided by this chapter are in addition to any other
1791 rights or remedies that may exist at law or in equity.

1792 (b) This chapter does not create ~~[any]~~ a cause of action not specified in this section or
1793 Subsection 61-1-4(6).

1794 Section 23. Section **61-1-23** is amended to read:

1795 **61-1-23. Review of orders.**

1796 ~~[Any]~~ A person aggrieved by a final order ~~[of the director]~~ under this chapter
 1797 determining all of the issues of an adjudicative proceeding may obtain review of the order by
 1798 the executive director in accordance with Title 63G, Chapter 4, Administrative Procedures
 1799 Act.

1800 Section 24. Section **61-1-24** is amended to read:

1801 **61-1-24. Rules, forms, and orders.**

1802 (1) (a) ~~[The]~~ Subject to Subsection (1)(c), the division may make, amend, ~~[and]~~ or
 1803 rescind ~~[rules, forms, and orders]~~ a rule, form, or order when necessary to carry out ~~[the~~
 1804 ~~provisions of]~~ this chapter.

1805 (b) For the purpose of ~~[rules and forms]~~ a rule or form, the division may:

1806 (i) classify securities, persons, and matters within ~~[its]~~ the jurisdiction[;] of the
 1807 commission or division; and

1808 (ii) prescribe different requirements for different classes.

1809 ~~[(2) (a) The division may not make, amend, or rescind any rule, form, or order unless~~
 1810 ~~it finds that the action is in the public interest, for the protection of investors, and consistent~~
 1811 ~~with the purposes of this chapter.]~~

1812 (c) The division shall make rules in accordance with Title 63G, Chapter 3, Utah
 1813 Administrative Rulemaking Act, except that the division may not make, amend, or rescind a
 1814 rule or form under this chapter without the concurrence of the commission.

1815 ~~[(b)]~~ (d) In prescribing ~~[rules and forms]~~ a rule or form, the division may cooperate
 1816 with the securities administrators of the other states and the Securities and Exchange
 1817 Commission to achieve maximum uniformity in the form and content of registration
 1818 statements, applications, and reports wherever practicable.

1819 ~~[(3)]~~ (2) (a) The division may prescribe:

1820 (i) the form and content of a financial [statements] statement required under this
 1821 chapter;

1822 (ii) the circumstances under which a consolidated financial [statements] statement

1823 shall be filed; and

1824 (iii) whether or not ~~[any]~~ a required financial ~~[statements]~~ statement shall be certified
1825 by an independent public ~~[accountants]~~ accountant.

1826 (b) ~~[All financial statements]~~ A financial statement under this chapter shall be
1827 prepared in accordance with generally accepted accounting principles.

1828 ~~[(4) All rules and forms of the division shall be published.]~~

1829 ~~[(5) No]~~ (3) A provision of this chapter ~~[imposing any]~~ that imposes liability ~~[applies]~~
1830 does not apply to ~~[any]~~ an act done or omitted in good faith in conformity with ~~[any]~~ a rule,
1831 form, or order of the division or an order of the commission, notwithstanding that the rule,
1832 form, or order may later be amended or rescinded or be determined by judicial or other
1833 authority to be invalid for any reason.

1834 ~~[(6)]~~ (4) The division may by rule classify a specific ~~[acts]~~ act as unlawful within the
1835 meaning of Sections 61-1-1 and 61-1-2 if it finds that:

1836 (a) the ~~[acts]~~ act could operate as a fraud or part of a device, scheme, or artifice to
1837 defraud ~~[any]~~ a person~~;~~; and ~~[that]~~

1838 (b) the rule is not inconsistent with this chapter.

1839 Section 25. Section **61-1-25** is amended to read:

1840 **61-1-25. Record of registrations.**

1841 (1) A document is filed when it is received by the division.

1842 (2) (a) The division shall keep a register of:

1843 (i) all applications for registration and registration statements ~~[which]~~ that are or have
1844 ever been effective under this chapter; and

1845 (ii) all denial, suspension, or revocation orders ~~[which may have been]~~ entered under
1846 this chapter.

1847 (b) The register shall be open for public inspection.

1848 (3) The information contained in or filed with ~~[any]~~ a registration statement,
1849 application, or report may be made available to the public under ~~[such]~~ the rules ~~[as]~~ the
1850 division prescribes.

1851 (4) ~~(a) [Upon request and at such reasonable charges as it prescribes, the]~~ The division
1852 shall furnish to ~~[any]~~ a person a photostatic or other ~~[copies]~~ copy, certified under seal if
1853 requested, of ~~[any]~~ an entry in the register or any document ~~[which]~~ that is a matter of public
1854 record[-];

1855 (i) upon request; and

1856 (ii) at a reasonable charge prescribed by the division.

1857 (b) In [any] a proceeding or prosecution under this chapter, [any] a copy [so] certified
1858 under this Subsection (4) is prima facie evidence of the contents of the entry or document
1859 certified.

1860 (5) The division ~~[in its discretion]~~ may ~~[honor requests from interested persons for]~~
1861 issue an interpretative [opinions] opinion requested by an interested person if the commission
1862 concur in the interpretative opinion.

1863 Section 26. **Repealer.**

1864 This bill repeals:

1865 Section **61-1-8, Registration by notification.**

1866 Section **61-1-30, Prior law repealed -- Savings clause.**