

UTAH UNIFORM SECURITIES ACT

MODIFICATIONS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jim Bird

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ creates the Securities Commission;
- ▶ outlines the powers and duties of the Securities Commission, including modifying the powers and duties of the Division of Securities and its director;
- ▶ modifies definitions including the definition of a security;
- ▶ addresses disciplinary proceedings;
- ▶ addresses language related to licensing;
- ▶ addresses requirements related to associations between licensed and unlicensed persons;
- ▶ requires the identification of a principal or designated official;
- ▶ expands the scope of criminal pleas considered to determine if disciplinary action or licensing restrictions should be taken;
- ▶ addresses disciplinary action or licensing restrictions for entities that are materially the same;
- ▶ addresses civil actions that could result in disciplinary action;



- 28 ▶ repeals registration by notification;
- 29 ▶ modifies the automatic effectiveness related to registration;
- 30 ▶ updates language related to means of providing notices;
- 31 ▶ addresses provisions related to an issuer agent;
- 32 ▶ modifies provisions related to exemptions and registration of securities;
- 33 ▶ modifies remedies available for enforcement;
- 34 ▶ modifies provisions related to private causes of action;
- 35 ▶ provides that prosecutors may bring criminal proceedings without referral from the
- 36 division;
- 37 ▶ deletes outdated language including references to repealed federal law; and
- 38 ▶ makes technical and conforming changes.

39 **Monies Appropriated in this Bill:**

40 None

41 **Other Special Clauses:**

42 None

43 **Utah Code Sections Affected:**

44 AMENDS:

- 45 **31A-5-302**, as last amended by Laws of Utah 1987, Chapter 91
- 46 **61-1-3**, as last amended by Laws of Utah 1997, Chapter 160
- 47 **61-1-4**, as last amended by Laws of Utah 2008, Chapter 382
- 48 **61-1-6**, as last amended by Laws of Utah 2008, Chapter 382
- 49 **61-1-9**, as last amended by Laws of Utah 1991, Chapter 161
- 50 **61-1-11**, as last amended by Laws of Utah 1994, Chapter 12
- 51 **61-1-11.1**, as last amended by Laws of Utah 2008, Chapter 382
- 52 **61-1-12**, as last amended by Laws of Utah 2008, Chapter 382
- 53 **61-1-13**, as last amended by Laws of Utah 2008, Chapter 382
- 54 **61-1-14**, as last amended by Laws of Utah 2008, Chapter 382
- 55 **61-1-15.5**, as last amended by Laws of Utah 2008, Chapter 382
- 56 **61-1-18**, as last amended by Laws of Utah 2006, Chapter 139
- 57 **61-1-18.2**, as enacted by Laws of Utah 1983, Chapter 284
- 58 **61-1-18.3**, as enacted by Laws of Utah 1983, Chapter 284

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

70 REPEALS:

- 71 **61-1-8**, as last amended by Laws of Utah 1991, Chapter 161
- 72 **61-1-30**, as last amended by Laws of Utah 2008, Chapter 250



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

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

76 **31A-5-302. Registration of securities.**

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

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

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

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

83 (2) The commissioner has the powers specified in Sections 61-1-12, 61-1-15, 61-1-19,
84 61-1-20, and 61-1-24.

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

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

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

90 **61-1-3. Licensing of broker-dealers, agents, and investment advisers.**

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

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

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

97 (ii) a particular issuer.

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

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

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

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

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

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

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

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

114 (I) under this chapter;

115 (II) of the Securities and Exchange Commission;

116 (III) of a self-regulatory organization; or

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

118 (ii) A broker-dealer or issuer does not violate this Subsection (2)(d) if the broker-dealer
119 or issuer did not know and in the exercise of reasonable care could not have known, of the
120 suspension, revocation, or bar.

121 (iii) An order under this chapter may modify or waive, in whole or in part, the
 122 application of Subsection (2)(d)(i) to a broker-dealer or issuer.

123 (3) It is unlawful for [~~any~~] a person to transact business in this state as an investment
 124 adviser or as an investment adviser representative unless:

125 (a) the person is licensed under this chapter; [~~or~~]

126 (b) the person's only clients in this state are:

127 (i) one or more of the following whether acting for itself or as a trustee with investment
 128 control:

129 (A) an investment [~~companies~~] company as defined in the Investment Company Act of
 130 1940[~~, other~~];

131 (B) another investment [~~advisers,~~] adviser;

132 (C) a federal covered [~~advisers, broker-dealers, banks, trust companies, savings and~~
 133 loan associations,] adviser;

134 (D) a broker-dealer;

135 (E) a depository institution;

136 (F) a trust company;

137 (G) an insurance [~~companies,~~] company;

138 (H) an employee benefit [~~plans~~] plan with assets of not less than \$1,000,000[~~, and~~]; or

139 (I) a governmental [~~agencies or instrumentalities, whether acting for themselves or as~~
 140 trustees with investment control,] agency or instrumentality; or

141 (ii) other institutional investors as are designated by rule or order of the director; or

142 (c) the person has no place of business in this state and during the preceding 12-month
 143 period has had not more than five clients, other than those specified in Subsection (3)(b), who
 144 are residents of this state.

145 (4) (a) It is unlawful for [~~any~~]:

146 (i) a person required to be licensed as an investment adviser under this chapter to
 147 employ an investment adviser representative unless the investment adviser representative is
 148 licensed under this chapter, [~~provided~~] except that the license of an investment adviser
 149 representative is not effective during any period when the person is not employed by an
 150 investment adviser licensed under this chapter; [~~or~~]

151 (ii) a federal covered adviser to employ, supervise, or associate with an investment

152 adviser representative having a place of business located in this state, unless ~~[such]~~ the
153 investment adviser representative is:

154 (A) licensed under this chapter; or [is]
155 (B) exempt from licensing[-]; or
156 (iii) an investment adviser, directly or indirectly, to employ or associate with an
157 individual to engage in an activity related to providing investment advice in this state if:
158 (A) (I) the license of the individual is suspended or revoked; or
159 (II) the individual is barred from employment or association with a state or federal
160 covered investment adviser, broker-dealer, or issuer; and
161 (B) the suspension, revocation, or bar is by an order:
162 (I) under this chapter;
163 (II) of the Securities and Exchange Commission;
164 (III) a self-regulatory organization; or
165 (IV) a securities administrator of a state other than Utah.
166 (b) (i) An investment adviser does not violate Subsection (4)(a)(iii) if the investment
167 adviser did not know, and in the exercise of reasonable care could not have known, of the
168 suspension, revocation, or bar.
169 (ii) An order under this chapter may waive, in whole or in part, the application of
170 Subsection (4)(a)(iii) to an investment adviser.
171 ~~[(b)]~~ (c) When an investment adviser representative required to be licensed under this
172 chapter begins or terminates employment with an investment adviser, the investment adviser
173 shall promptly notify the division.
174 (d) An investment adviser representative who terminates association with an
175 investment adviser is considered unlicensed until the day on which the division:
176 (i) approves the investment adviser representative's association with a different
177 investment adviser; and
178 (ii) notifies the investment adviser representative of the division's approval of the
179 association.
180 (5) Except with respect to an investment ~~[advisers]~~ adviser whose only clients are those
181 described under Subsections (3)(b) or (3)(c), it is unlawful for ~~[any]~~ a federal covered adviser
182 to conduct advisory business in this state unless ~~[such]~~ the person complies with ~~[the~~

183 ~~provisions of]~~ Section 61-1-4.

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

185 **61-1-4. Licensing and notice filing procedure.**

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

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

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

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

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

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

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

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

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

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

203 (ii) An applicant's Social Security number is a private record under Subsection
204 63G-2-302(1)(h).

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

208 ~~(d) [Licenses or notice filings of broker-dealers, agents, investment advisers, and~~
209 ~~investment adviser representatives shall expire] A license or notice filing of a broker-dealer,~~

210 agent, investment adviser, or investment adviser representative expires on December 31 of
211 each year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

275 (i) the expiration of ~~[four]~~ five years after the act or transaction constituting the

276 violation; or

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

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

280 **61-1-6. Denial, suspension, revocation, cancellation, or withdrawal of license --**
281 **Sanctions.**

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

285 (a) the commission may issue an order:

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

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

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

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

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

295 (b) the director may deny a license.

296 (2) (a) The [~~director~~] commission may impose [~~the sanctions~~] a sanction in accordance
297 with Subsection (1)(a) or the director may impose a sanction in accordance with Subsection
298 (1)(b) if the commission or director finds;

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

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

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

306 (I) was incomplete in [~~any~~] a material respect; or

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

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

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

313 (I) a misdemeanor involving:

314 (Aa) fraud or dishonesty; or

315 (Bb) a security or any aspect of the securities business~~[-];~~ or ~~[any]~~

316 (II) a felony;

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

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

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

325 ~~[(f)]~~ (F) subject to Subsection (2)(b), is the subject of:

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

329 (Aa) the Securities Act of 1933~~[-];~~

330 (Bb) the Securities Exchange Act of 1934~~[-];~~

331 (Cc) the Investment Advisers Act of 1940~~[-];~~

332 (Dd) the Investment Company Act of 1940~~[-];~~

333 (Ee) the Commodity Exchange Act~~[-];~~ or

334 (Ff) the securities or commodities law of ~~[any other]~~ another state; or

335 ~~[(ii)]~~ (II) an order;

336 (Aa) entered within the past five years by the securities administrator of ~~[any]~~ a state or
 337 Canadian province or territory or by the Securities and Exchange Commission denying or

338 revoking a license as a broker-dealer, agent, investment adviser, or investment adviser
 339 representative, or the substantial equivalent of those terms; ~~[or is the subject of an order]~~
 340 (Bb) of the Securities and Exchange Commission suspending or expelling the person
 341 from a national securities exchange or national securities association registered under the
 342 Securities Exchange Act of 1934~~[-];~~; or ~~[is the subject of]~~
 343 (Cc) that is a United States post office fraud order; ~~[except that]~~
 344 ~~[(iii) the division may not commence agency action to revoke or suspend any license~~
 345 ~~under Subsection (2)(f) more than one year from the date of the order relied on, and the director~~
 346 ~~may not enter an order under Subsection (2)(f) on the basis of an order under another state's~~
 347 ~~law unless that order was based on facts that would currently constitute a ground for an agency~~
 348 ~~action under this section;]~~
 349 ~~[(g)]~~ (G) has engaged in dishonest or unethical practices in the securities business;
 350 ~~[(h)]~~ (H) is insolvent, either in the sense that liabilities exceed assets or in the sense
 351 that obligations cannot be met as they mature, except that the director or commission may not
 352 enter an order against a broker-dealer or investment adviser under this Subsection
 353 ~~(2)[(h)](a)(ii)(H)~~ without a finding of insolvency as to the broker-dealer or investment adviser;
 354 ~~[(i)]~~ (I) is not qualified on the basis of the lack of training, experience, and knowledge
 355 of the securities business, except as otherwise provided in Subsection ~~[(6)]~~ (5);
 356 ~~[(j)]~~ (J) has failed reasonably to supervise the person's;
 357 (L) agents or employees, if the person is a broker-dealer~~[-];~~; or [his]
 358 (M) investment adviser representatives or employees, if the person is an investment
 359 adviser; ~~[or]~~
 360 ~~[(k)]~~ (K) has failed to pay the proper filing fee within 30 days after being notified by
 361 the division of a deficiency~~[-];~~
 362 ~~[(3) Before the director may issue an order under Subsection (1) that: revokes any~~
 363 ~~license; bars or censures any licensee or any officer, director, partner, or person occupying a~~
 364 ~~similar status or performing similar functions for a licensee from employment with a licensed~~
 365 ~~broker-dealer or investment adviser; or imposes a fine, the Securities Advisory Board shall:]~~
 366 ~~[(a) review the order; and]~~
 367 ~~[(b) if a majority of the Securities Advisory Board approves the order, authorize the~~
 368 ~~director to issue it.]~~

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

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

373 (I) fraud;

374 (II) embezzlement;

375 (III) misrepresentation; or

376 (IV) deceit.

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

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

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

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

388 (B) the entity conducts operations in the same location as the prior entity;

389 (C) the entity employs two or more agents from the prior entity;

390 (D) the entity solicits or serves two or more customers of the prior entity;

391 (E) the entity has a name similar to the prior entity; or

392 (F) another factor showing a relationship between the entity and the prior entity.

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

396 (A) limit the license of the entity; or

397 (B) require additional disclosures to the customers or employees of the entity.

398 ~~(4)~~ (3) The ~~[division]~~ director may enter a denial order under Subsection (2)~~(j)~~ or
399 ~~(k)~~(a)(ii)(K), but shall vacate the order when the deficiency ~~[has been]~~ is corrected.

400 ~~[(5)]~~ (4) The division may not institute a suspension or revocation proceeding on the
401 basis of a fact or transaction known to ~~[it]~~ the division when the license became effective
402 unless the proceeding is instituted within the ~~[next]~~ 120 days after the day on which the license
403 takes effect.

404 ~~[(6)]~~ (5) The following provisions govern the application of Subsection
405 (2)~~[(+)]~~(a)(ii)(I):

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

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

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

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

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

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

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

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

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

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

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

429 (ii) The division may by rule or order waive the examination requirement as to a person
430 or class of persons if the division determines that the examination is not necessary for the

431 protection of investors.

432 ~~[(7)]~~ (6) If the director finds that ~~[any]~~ a licensee or applicant for a license is no longer
433 in existence, has ceased to do business as a broker-dealer, agent, investment adviser, or
434 investment adviser representative, or is subject to an adjudication of mental incompetence or to
435 the control of a committee, conservator, or guardian, or cannot be located after reasonable
436 search, the division may summarily cancel or deny the license or application according to the
437 procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

438 ~~[(8)]~~ (7) (a) Withdrawal from license as a broker-dealer, agent, investment adviser, or
439 investment adviser representative becomes effective 30 days after receipt of an application to
440 withdraw or within a shorter period of time as determined by the director, unless:

- 441 (i) a revocation or suspension proceeding is pending when the application is filed;
442 (ii) a proceeding to revoke or suspend or to impose conditions upon the withdrawal is
443 instituted within 30 days after the application is filed; or
444 (iii) additional information is requested by the division regarding the withdrawal
445 application.

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

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

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

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

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

457 **61-1-9. Registration by coordination.**

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

461 (2) A registration statement under this section shall contain the following information

462 and be accompanied by the following documents in addition to the information specified in
463 Subsection 61-1-11(3) and the consent to service of process required by Section 61-1-26:

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

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

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

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

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

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

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

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

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

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

488 (ii) file a posteffective amendment containing the information and documents in the
489 price amendment.

490 (b) "Price amendment" means the final federal amendment [~~which~~] that includes a
491 statement of the;

492 (i) offering price[;];

493 (ii) underwriting and selling discounts or commissions[;];

494 (iii) amount of proceeds[;];

495 (iv) conversion rates[;];

496 (v) call prices[;]; and

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

498 (5) (a) Upon failure to receive the required notification and posteffective amendment
499 with respect to the price amendment, the division may enter a stop order, without notice or
500 hearing, retroactively denying effectiveness to the registration statement or suspending its
501 effectiveness until compliance with Subsection (4), if [it] the division promptly notifies the
502 registrant [~~by telephone or telegram and promptly confirms by letter or telegram when it~~
503 ~~notifies by telephone~~] in a record of the issuance of the order.

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

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

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

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

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

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

520 **61-1-11. Provisions applicable to registration generally.**

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

523 (2) [~~Every~~] A person filing a registration statement shall pay a filing fee as determined

524 under Section 61-1-18.4.

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

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

527 (b) the states in which a registration statement or similar document in connection with
528 the offering ~~has been~~ is or is to be filed; and

529 (c) ~~any~~ an adverse order, judgment, or decree entered in connection with the offering
530 by the regulatory authorities in each state or by ~~any~~ a court or the Securities and Exchange
531 Commission.

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

535 (5) The division may permit the omission of ~~any~~ an item of information or document
536 from ~~any~~ a registration statement.

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

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

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

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

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

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

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

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

555 (ii) between the 30th day after the entry of ~~[any]~~ a stop order suspending or revoking
556 the effectiveness of the registration statement under Section 61-1-12, if the registration
557 statement did not relate in whole or in part to a nonissuer distribution, and one year from the
558 effective date of the registration statement.

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

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

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

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

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

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

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

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

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

585 ~~[(12)]~~ (11) (a) ~~[Any]~~ A security that is offered or sold under Section 4(5) of the

586 Securities Act of 1933 or that is a "mortgage related security" as defined in Section 3(a)(41) of
587 the Securities Exchange Act of 1934 [~~shall~~] may not be exempt under Subsection 61-1-14(1)(a)
588 to the same extent as [~~any~~] an obligation issued by or guaranteed as to principal and interest by
589 the United States or an agency or instrumentality of the United States. Accordingly, any such
590 security shall comply with the applicable registration and qualification requirements set forth in
591 this chapter.

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

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

596 **61-1-11.1. Hearings for certain exchanges of securities.**

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

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

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

602 (2) The director may:

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

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

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

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

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

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

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

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

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

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

623 (a) exempt from registration; or

624 (b) not required to be registered.

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

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

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

632 **61-1-12. Denial, suspension, and revocation of registration.**

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

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

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

646 (i) the person filing the registration statement;

647 (ii) the issuer, ~~[any]~~ a partner, officer, or director of the issuer, ~~[any]~~ a person

648 occupying a similar status or performing similar functions, or ~~[any]~~ a person directly or
649 indirectly controlling or controlled by the issuer, but only if the person filing the registration
650 statement is directly or indirectly controlled by or acting for the issuer; or

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

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

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

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

665 (f) the offering ~~[has been]~~ is or would be made with unreasonable amounts of
666 underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits
667 or participation, or unreasonable amounts or kinds of options;

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

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

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

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

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

679 which the registration statement becomes effective.

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

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

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

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

692 **61-1-13. Definitions.**

693 (1) As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

717 (A) an agent;

718 (B) an issuer;

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

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

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

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

724 (Bb) other broker-dealers; ~~[or]~~

725 ~~[(Cc) banks, savings institutions, trust companies, insurance companies, investment~~
726 ~~companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts,~~
727 ~~or other financial institutions or institutional buyers, whether acting for themselves or as~~
728 ~~trustees; or]~~

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

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

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

732 (Ff) an investment company, as defined in the Investment Company Act of 1940,
733 whether acting for itself or as a trustee;

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

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

737 (II) during any period of 12 consecutive months the person does not direct more than
738 15 offers to sell or buy into this state in any manner to persons other than those specified in
739 Subsection (1)(c)(ii)(D)(I), whether or not the offeror or ~~[any of the offerees]~~ an offeree is then
740 present in this state;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

771 ~~(f)~~ (g) (i) "Commodity contract" means ~~any~~ an account, agreement, or contract for

772 the purchase or sale, primarily for speculation or investment purposes and not for use or
773 consumption by the offeree or purchaser, of one or more commodities, whether for immediate
774 or subsequent delivery or whether delivery is intended by the parties, and whether characterized
775 as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures
776 contract, installment or margin contract, leverage contract, or otherwise.

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

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

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

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

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

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

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

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

798 ~~[(h)]~~ (j) "Director" means the director of the ~~[Division of Securities charged with the~~
799 ~~administration and enforcement of this chapter]~~ division appointed in accordance with Section
800 61-1-18.

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

802 ~~[(j)]~~ (l) "Executive director" means the executive director of the Department of

803 Commerce.

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

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

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

808 ~~[(h)]~~ (n) "Federal covered security" means ~~[any]~~ a security that is a covered security
809 under Section 18(b) of the Securities Act of 1933 or rules or regulations promulgated under
810 Section 18(b) of the Securities Act of 1933.

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

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

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

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

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

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

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

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

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

829 (A) an investment adviser representative;

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

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

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

834 incidental to the conduct of its business as a broker-dealer and who receives no special
835 compensation for the services;

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

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

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

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

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

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

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

852 (B) does any of the following:

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

855 (II) manages accounts or portfolios of clients;

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

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

858 or

859 (V) supervises employees who perform any of the acts described in this Subsection
860 (1)~~(p)~~(r)(i)(B).

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

863 (s) "Investment contract" includes:

864 (i) an investment in a common enterprise with the expectation of profit to be derived

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

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

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

898 (i) an individual;

899 (ii) a corporation;

900 (iii) a partnership;

901 (iv) a limited liability company;

902 (v) an association;

903 (vi) a joint-stock company;

904 (vii) a joint venture;

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

906 (ix) an unincorporated organization;

907 (x) a government; or

908 (xi) a political subdivision of a government.

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

910 (i) silver;

911 (ii) gold;

912 (iii) platinum;

913 (iv) palladium;

914 (v) copper; and

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

916 ~~[(u)]~~ (y) "Promoter" means ~~[any]~~ a person who, acting alone or in concert with one or

917 more persons, takes initiative in founding or organizing the business or enterprise of a person.

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

919 (A) inscribed in a tangible medium; or

920 (B) (I) stored in an electronic or other medium; and

921 (II) retrievable in perceivable form.

922 (ii) This Subsection (1)(z) does not apply when the context requires otherwise,

923 including when "record" is used in the following phrases:

924 (A) "of record";

925 (B) "official record"; or

926 (C) "public record."

927 ~~(v)~~ (aa) (i) "Sale" or "sell" includes ~~every~~ a contract for sale of, contract to sell, or
928 disposition of, a security or interest in a security for value.

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

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

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

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

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

941 (D) ~~any~~ a conversion or exchange of one security for another ~~shall constitute~~
942 constitutes an offer or sale of the security received in a conversion or exchange, and the offer to
943 buy or the purchase of the security converted or exchanged;

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

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

948 (G) the issuance of a security under a merger, consolidation, reorganization,
949 recapitalization, reclassification, or acquisition of assets ~~shall constitute~~ constitutes the offer
950 or sale of the security issued as well as the offer to buy or the purchase of ~~any~~ a security
951 surrendered in connection therewith, unless the sole purpose of the transaction is to change the
952 issuer's domicile.

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

954 (A) a good faith gift;

955 (B) a transfer by death;

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

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

958 (E) a securities split or reverse split~~[-or]~~.

959 ~~[(F) any act incident to a judicially approved reorganization in which a security is~~

960 ~~issued in exchange for one or more outstanding securities, claims, or property interests, or~~

961 ~~partly in such exchange and partly for cash.]~~

962 ~~[(w)]~~ (bb) "Securities Act of 1933," "Securities Exchange Act of 1934," [~~"Public~~

963 ~~Utility Holding Company Act of 1935,"~~] and "Investment Company Act of 1940" mean the

964 federal statutes of those names as amended before or after the effective date of this chapter.

965 (cc) "Securities Exchange Commission" means the United States Securities Exchange

966 Commission created by the Securities Exchange Act of 1934.

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

968 (A) note;

969 (B) stock;

970 (C) treasury stock;

971 (D) bond;

972 (E) debenture;

973 (F) evidence of indebtedness;

974 (G) certificate of interest or participation in ~~[any]~~ a profit-sharing agreement;

975 (H) collateral-trust certificate;

976 (I) preorganization certificate or subscription;

977 (J) transferable share;

978 (K) investment contract;

979 (L) burial certificate or burial contract;

980 (M) voting-trust certificate;

981 (N) certificate of deposit for a security;

982 (O) certificate of interest or participation in an oil, gas, or mining title or lease or in

983 payments out of production under such a title or lease;

984 (P) commodity contract or commodity option;

985 (Q) interest in a limited liability company;

986 (R) viatical settlement interest; or

987 (S) in general, ~~[any]~~ an interest or instrument commonly known as a "security," or

988 ~~[any]~~ a certificate of interest or participation in, temporary or interim certificate for, receipt for,

989 guarantee of, or warrant or right to subscribe to or purchase ~~[any of the foregoing]~~ an item
990 listed in Subsections (1)(dd)(i)(A) through (R).

991 (ii) "Security" does not include ~~[any]~~:

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

995 (B) an interest in a limited liability company in which the limited liability company is
996 formed as part of an estate plan where all of the members are related by blood or marriage,
997 ~~[there are five or fewer members,]~~ or the person claiming this exception can prove that all of
998 the members are actively engaged in the management of the limited liability company; or

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

1000 (II) an undivided fractionalized long-term estate in real property that consists of ten or
1001 fewer owners; or

1002 (III) an undivided fractionalized long-term estate in real property that consists of more
1003 than ten owners if, when the real property estate is subject to a management agreement:

1004 (Aa) the management agreement permits a simple majority of owners of the real
1005 property estate to not renew or to terminate the management agreement at the earlier of the end
1006 of the management agreement's current term, or 180 days after the day on which the owners
1007 give notice of termination to the manager;

1008 (Bb) the management agreement prohibits, directly or indirectly, the lending of the
1009 proceeds earned from the real property estate or the use or pledge of its assets to ~~[any]~~ a person
1010 or entity affiliated with or under common control of the manager; and

1011 (Cc) the management agreement complies with any other requirement imposed by rule
1012 by the Real Estate Commission under Section 61-2-26.

1013 (iii) For purposes of Subsection (1)~~(x)~~(dd)(ii)(B), evidence that members vote or
1014 have the right to vote, or the right to information concerning the business and affairs of the
1015 limited liability company, or the right to participate in management, ~~[shall]~~ may not establish,
1016 without more, that all members are actively engaged in the management of the limited liability
1017 company.

1018 ~~(y)~~ (ee) "State" means ~~[any]~~ a state, territory, or possession of the United States, the
1019 District of Columbia, and Puerto Rico.

1020 [~~z~~] (ff) (i) "Undivided fractionalized long-term estate" means an ownership interest in
1021 real property by two or more persons that is a:

1022 (A) tenancy in common; or

1023 (B) any other legal form of undivided estate in real property including:

1024 (I) a fee estate;

1025 (II) a life estate; or

1026 (III) other long-term estate.

1027 (ii) "Undivided fractionalized long-term estate" does not include a joint tenancy.

1028 [~~aa~~] (gg) (i) "Viatical settlement interest" means the entire interest or [~~any~~] a
1029 fractional interest in any of the following that is the subject of a viatical settlement:

1030 (A) a life insurance policy; or

1031 (B) the death benefit under a life insurance policy.

1032 (ii) "Viatical settlement interest" does not include the initial purchase from the viator
1033 by a viatical settlement provider.

1034 [~~bb~~] (hh) "Whole long-term estate" means a person owns or persons through joint
1035 tenancy [~~owns~~] own real property through:

1036 (i) a fee estate;

1037 (ii) a life estate; or

1038 (iii) other long-term estate.

1039 [~~cc~~] (ii) "Working days" means 8 a.m. to 5 p.m., Monday through Friday, exclusive
1040 of legal holidays listed in Section 63G-1-301.

1041 (2) A term not defined in this section shall have the meaning as established by division
1042 rule. The meaning of a term neither defined in this section nor by rule of the division shall be
1043 the meaning commonly accepted in the business community.

1044 (3) (a) This Subsection (3) applies to:

1045 (i) the offer or sale of a real property estate exempted from the definition of security
1046 under Subsection (1)[~~x~~](dd)(ii)(C); or

1047 (ii) the offer or sale of an undivided fractionalized long-term estate that is the offer of a
1048 security.

1049 (b) A person who, directly or indirectly receives compensation in connection with the
1050 offer or sale as provided in this Subsection (3) of a real property estate is not an agent,

1051 broker-dealer, investment adviser, or ~~[investor]~~ investment adviser representative under this
 1052 chapter if that person is licensed under Chapter 2, Division of Real Estate, as:

1053 (i) a principal real estate broker;

1054 (ii) an associate real estate broker; or

1055 (iii) a real estate sales agent.

1056 (4) The list of real property estates excluded from the definition of securities under
 1057 Subsection (1)~~[(x)]~~(dd)(ii)(C) is not an exclusive list of real property estates or interests that are
 1058 not a security.

1059 Section 10. Section **61-1-14** is amended to read:

1060 **61-1-14. Exemptions.**

1061 (1) The following securities are ~~[exempted]~~ exempt from Sections 61-1-7 and 61-1-15:

1062 (a) ~~[any]~~ a security, including a revenue obligation, issued or guaranteed by the United
 1063 States, ~~[any]~~ a state, ~~[any]~~ a political subdivision of a state, or ~~[any]~~ an agency or corporate or
 1064 other instrumentality of one or more of the foregoing, or ~~[any]~~ a certificate of deposit for any of
 1065 the foregoing;

1066 (b) ~~[any]~~ a security issued or guaranteed by Canada, ~~[any]~~ a Canadian province, ~~[any]~~ a
 1067 political subdivision of ~~[any]~~ a Canadian province, ~~[any]~~ an agency or corporate or other
 1068 instrumentality of one or more of the foregoing, or ~~[any other]~~ another foreign government with
 1069 which the United States currently maintains diplomatic relations, if the security is recognized
 1070 as a valid obligation by the issuer or guarantor;

1071 (c) ~~[any]~~ a security issued by and representing an interest in or a debt of, or guaranteed
 1072 by, ~~[any bank]~~ a depository institution organized under the laws of the United States, or ~~[any~~
 1073 ~~bank, savings institution,]~~ a depository institution or trust company supervised under the laws
 1074 of ~~[any]~~ a state;

1075 ~~[(d) any security issued by and representing an interest in or a debt of, or guaranteed~~
 1076 ~~by, any federal savings and loan association, or any building and loan or similar association~~
 1077 ~~organized under the laws of any state and authorized to do business in this state;]~~

1078 ~~[(e) any security issued or guaranteed by any federal credit union or any credit union,~~
 1079 ~~industrial loan association, or similar association organized and supervised under the laws of~~
 1080 ~~this state;]~~

1081 ~~[(f) any]~~ (d) a security issued or guaranteed by ~~[any]~~ a public utility ~~[or holding~~

1082 company which is a registered holding company under the Public Utility Holding Company
1083 Act of 1935 or a subsidiary of such a company within the meaning of that act,] or [any] a
1084 security regulated in respect of its rates or in its issuance by a governmental authority of the
1085 United States, [any] a state, Canada, or [any] a Canadian province;

1086 ~~[(g) any security listed on the National Association of Securities Dealers Automated~~
1087 ~~Quotation National Market System, the New York Stock Exchange, the American Stock~~
1088 ~~Exchange, or on any other stock exchange or medium approved by the division, except that the~~
1089 ~~director may at any time suspend or revoke this exemption for any particular stock exchange,~~
1090 ~~medium, security, or securities under Subsection (4); any other security of the same issuer~~
1091 ~~which is of senior or substantially equal rank to any security so listed and approved by the~~
1092 ~~director, any security called for by subscription rights or warrants so listed or approved, or any~~
1093 ~~warrant or right to purchase or subscribe to any of the foregoing;]~~

1094 (e) (i) a federal covered security specified in the Securities Act of 1933, Section
1095 18(b)(1), 15 U.S.C. Section 77r(b)(1), or by rule adopted under that provision;

1096 (ii) a security listed or approved for listing on another securities market specified by
1097 rule under this chapter;

1098 (iii) any of the following with respect to a security described in Subsection (1)(e)(i) or
1099 (ii):

1100 (A) a put or a call option contract;

1101 (B) a warrant; or

1102 (C) a subscription right on or with respect to the security;

1103 (iv) an option or similar derivative security on a security or an index of securities or
1104 foreign currencies issued by a clearing agency that is:

1105 (A) registered under the Securities Exchange Act of 1934; and

1106 (B) listed or designated for trading on a national securities exchange, or a facility of a
1107 national securities association registered under the Securities Exchange Act of 1934;

1108 (v) an offer or sale, of the underlying security in connection with the offer, sale, or
1109 exercise of an option or other security that was exempt when the option or other security was
1110 written or issued; or

1111 (vi) an option or a derivative security designated by the Securities and Exchange
1112 Commission under Securities Exchange Act of 1934, Section 9(b), 15 U.S.C. Section 78i(b);

1113 ~~(h)~~ (f) (i) [any] a security issued by [any] a person organized and operated not for
1114 private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social,
1115 athletic, or reformatory purposes, or as a chamber of commerce or trade or professional
1116 association; and

1117 (ii) [any] a security issued by a corporation organized under Title 3, Chapter 1, General
1118 Provisions Relating to Agricultural Cooperative Associations, and [any] a security issued by a
1119 corporation to which ~~[the provisions of]~~ that chapter ~~[are]~~ is made applicable by compliance
1120 with ~~[the requirements of]~~ Section 3-1-21;

1121 ~~[(i) a promissory note, draft, bill of exchange, or banker's acceptance that evidences an~~
1122 ~~obligation to pay cash within nine months after the date of issuance, exclusive of days of grace,~~
1123 ~~or a renewal of such an obligation that is likewise limited, or a guarantee of such an obligation~~
1124 ~~or of a renewal:]~~

1125 ~~[(i) issued in denominations of at least \$50,000; and]~~

1126 ~~[(ii) either:]~~

1127 ~~[(A) receives a rating in one of the three highest rating categories from a nationally~~
1128 ~~recognized statistical rating organization; or]~~

1129 ~~[(B) the issuer satisfies requirements established by rule or order of the division;]~~

1130 ~~[(j) any]~~ (g) an investment contract issued in connection with an employees' stock
1131 purchase, option, savings, pension, profit-sharing, or similar benefit plan;

1132 ~~[(k) a security issued by an issuer registered as an open-end management investment~~
1133 ~~company or unit investment trust under Section 8 of the Investment Company Act of 1940, if:]~~

1134 ~~[(i) (A) the issuer is advised by an investment adviser that is a depository institution~~
1135 ~~exempt from registration under the Investment Advisers Act of 1940 or that is currently~~
1136 ~~registered as an investment adviser, and has been registered, or is affiliated with an adviser that~~
1137 ~~has been registered, as an investment adviser under the Investment Advisers Act of 1940 for at~~
1138 ~~least three years next preceding an offer or sale of a security claimed to be exempt under this~~
1139 ~~subsection; and]~~

1140 ~~[(B) the adviser has acted, or is affiliated with an investment adviser that has acted as~~
1141 ~~investment adviser to one or more registered investment companies or unit investment trusts~~
1142 ~~for at least three years next preceding an offer or sale of a security claimed to be exempt under~~
1143 ~~this subsection; or]~~

1144 ~~[(ii) the issuer has a sponsor that has at all times throughout the three years before an~~
1145 ~~offer or sale of a security claimed to be exempt under this subsection sponsored one or more~~
1146 ~~registered investment companies or unit investment trusts the aggregate total assets of which~~
1147 ~~have exceeded \$100,000,000;]~~

1148 ~~[(iii) in addition to Subsection (i) or (ii), the division has received prior to any sale~~
1149 ~~exempted herein:]~~

1150 ~~[(A) a notice of intention to sell which has been executed by the issuer which sets forth~~
1151 ~~the name and address of the issuer and the title of the securities to be offered in this state; and]~~

1152 ~~[(B) a filing fee as determined under Section 61-1-18.4;]~~

1153 ~~[(iv) in the event any offer or sale of a security of an open-end management investment~~
1154 ~~company is to be made more than 12 months after the date on which the notice and fee under~~
1155 ~~Subsection (iii) is received by the director, another notice and payment of the applicable fee~~
1156 ~~shall be required;]~~

1157 ~~[(v) for the purpose of this subsection, an investment adviser is affiliated with another~~
1158 ~~investment adviser if it controls, is controlled by, or is under common control with the other~~
1159 ~~investment adviser; and]~~

1160 (h) a security issued by an investment company that is registered, or that has filed a
1161 registration statement, under the Investment Company Act of 1940; and

1162 ~~[(†) (i) [any] a security as to which the director, by rule or order, finds that registration~~
1163 ~~is not necessary or appropriate for the protection of investors.~~

1164 (2) The following transactions are ~~[exempted]~~ exempt from Sections 61-1-7 and
1165 61-1-15:

1166 (a) ~~[any]~~ an isolated nonissuer transaction, whether effected through a broker-dealer or
1167 not;

1168 (b) ~~[any]~~ a nonissuer transaction in an outstanding security, if as provided by rule of the
1169 division:

1170 (i) information about the issuer of the security as required by the division is currently
1171 listed in a securities manual recognized by the division, and the listing is based upon such
1172 information as required by rule of the division; or

1173 (ii) the security has a fixed maturity or a fixed interest or dividend provision and there
1174 ~~[has been]~~ is no default during the current fiscal year or within the three preceding fiscal years,

1175 or during the existence of the issuer and any predecessors if less than three years, in the
1176 payment of principal, interest, or dividends on the security;

1177 (c) ~~[any]~~ a nonissuer transaction effected by or through a registered broker-dealer
1178 pursuant to an unsolicited order or offer to buy;

1179 (d) ~~[any]~~ a transaction between the issuer or other person on whose behalf the offering
1180 is made and an underwriter, or among underwriters;

1181 (e) ~~[any]~~ a transaction in a bond or other evidence of indebtedness secured by a real or
1182 chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the
1183 entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of
1184 indebtedness secured thereby, is offered and sold as a unit;

1185 (f) ~~[any]~~ a transaction by an executor, administrator, sheriff, marshal, receiver, trustee
1186 in bankruptcy, guardian, or conservator;

1187 (g) ~~[any]~~ a transaction executed by a bona fide pledgee without ~~[any]~~ a purpose of
1188 evading this chapter;

1189 (h) ~~[any]~~ an offer or sale to one of the following whether the purchaser is acting for
1190 itself or in a fiduciary capacity:

1191 (i) a ~~[bank, savings institution,]~~ depository institution;

1192 (ii) a trust company[;];

1193 (iii) an insurance company[;];

1194 (iv) an investment company as defined in the Investment Company Act of 1940[;];

1195 (v) a pension or profit-sharing trust[,-or];

1196 (vi) other financial institution or institutional investor[;]; or [to]

1197 (vii) a broker-dealer[,-whether the purchaser is acting for itself or in some fiduciary
1198 capacity];

1199 (i) ~~[any]~~ an offer or sale of a preorganization certificate or subscription if:

1200 (i) no commission or other remuneration is paid or given directly or indirectly for
1201 soliciting ~~[any]~~ a prospective subscriber;

1202 (ii) the number of subscribers acquiring ~~[any]~~ a legal or beneficial interest therein does
1203 not exceed ten; ~~[and]~~

1204 (iii) there is no general advertising or solicitation in connection with the offer or sale;
1205 and

1206 (iv) no payment is made by a subscriber;
1207 (j) ~~[any]~~ subject to Subsection (6), a transaction pursuant to an offer by an issuer of its
1208 securities to its existing securities holders, if:
1209 (i) no commission or other remuneration, other than a standby commission is paid or
1210 given directly or indirectly for soliciting ~~[any]~~ a security ~~[holders]~~ holder in this state; and
1211 (ii) the transaction constitutes [either]:
1212 (A) the conversion of convertible securities;
1213 (B) the exercise of nontransferable rights or warrants;
1214 (C) the exercise of transferable rights or warrants if the rights or warrants are
1215 exercisable not more than 90 days after their issuance; or
1216 (D) the purchase of securities under a preemptive right; ~~[and]~~ or
1217 ~~[(ii) the exemption created by Subsection (2)(j) is not available for an offer or sale of~~
1218 ~~securities to existing securities holders who have acquired their securities from the issuer in a~~
1219 ~~transaction in violation of Section 61-1-7;]~~
1220 (E) a transaction other than one specified in Subsections (2)(j)(ii)(A) through (D) if:
1221 (I) the division is furnished with:
1222 (Aa) a general description of the transaction;
1223 (Bb) the disclosure materials to be furnished to the issuer's securities holders in the
1224 transaction; and
1225 (Cc) a non-refundable fee; and
1226 (II) the division does not, by order, deny or revoke the exemption within 20 working
1227 days after the day on which the filing required by Subsection (2)(j)(ii)(E)(I) is complete;
1228 (k) ~~[any]~~ an offer, but not a sale, of a security for which a registration ~~[statements have~~
1229 ~~been]~~ statement is filed under both this chapter and the Securities Act of 1933 if no stop order
1230 or refusal order is in effect and no public proceeding or examination looking toward such an
1231 order is pending;
1232 (l) a distribution of securities as a dividend if the person distributing the dividend is the
1233 issuer of the securities distributed;
1234 (m) ~~[any]~~ a nonissuer transaction effected by or through a registered broker-dealer
1235 where the broker-dealer or issuer files with the division, and the broker-dealer maintains in the
1236 broker-dealer's records, and makes reasonably available upon request to ~~[any]~~ a person

1237 expressing an interest in a proposed transaction in the security with the broker-dealer
1238 information prescribed by the division under its rules;

1239 (n) ~~[any transactions]~~ a transaction not involving a public offering;

1240 (o) ~~[any]~~ an offer or sale of "condominium units" or "time period units" as those terms
1241 are defined in ~~[the]~~ Title 57, Chapter 8, Condominium Ownership Act, whether or not to be
1242 sold by installment contract, if the ~~[provisions of the]~~ following are complied with:

1243 (i) Title 57, Chapter 8, Condominium Ownership Act, or if the units are located in
1244 another state, the condominium act of that state~~[-the]~~;

1245 (ii) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act~~[-the Utah]~~;

1246 (iii) Title 57, Chapter 19, Timeshare and Camp Resort Act~~[-]~~; and ~~[the]~~

1247 (iv) Title 70C, Utah [Uniform] Consumer Credit Code ~~[are complied with]~~;

1248 (p) ~~[any]~~ a transaction or series of transactions involving a merger, consolidation,
1249 reorganization, recapitalization, reclassification, or sale of assets, if the consideration for
1250 which, in whole or in part, is the issuance of securities of a person or persons, and if:

1251 (i) the transaction or series of transactions is incident to a vote of the securities holders
1252 of each person involved or by written consent or resolution of some or all of the securities
1253 holders of each person involved;

1254 (ii) the vote, consent, or resolution is given under a provision in:

1255 (A) the applicable corporate statute or other controlling statute;

1256 (B) the controlling articles of incorporation, trust indenture, deed of trust, or
1257 partnership agreement; or

1258 (C) the controlling agreement among securities holders;

1259 (iii) (A) one person involved in the transaction is required to file proxy or
1260 informational materials under Section 14(a) or (c) of the Securities Exchange Act of 1934 or
1261 Section 20 of the Investment Company Act of 1940 and has so filed;

1262 (B) one person involved in the transaction is an insurance company ~~[which]~~ that is
1263 exempt from filing under Section 12(g)(2)(G) of the Securities Exchange Act of 1934, and has
1264 filed proxy or informational materials with the appropriate regulatory agency or official of its
1265 domiciliary state; or

1266 (C) all persons involved in the transaction are exempt from filing under Section
1267 12(g)(1) of the Securities Exchange Act of 1934, and file with the division such proxy or

1268 informational material as the division requires by rule;

1269 (iv) the proxy or informational material is filed with the division and distributed to all
1270 securities holders entitled to vote in the transaction or series of transactions at least ten working
1271 days prior to any necessary vote by the securities holders or action on any necessary consent or
1272 resolution; and

1273 (v) the division does not, by order, deny or revoke the exemption within ten working
1274 days after filing of the proxy or informational materials;

1275 (q) ~~any~~ subject to Subsection (7), a transaction pursuant to an offer to sell securities
1276 of an issuer if:

1277 (i) the transaction is part of an issue in which there are not more than 15 purchasers in
1278 this state, other than those designated in Subsection (2)(h), during any 12 consecutive months;

1279 (ii) no general solicitation or general advertising is used in connection with the offer to
1280 sell or sale of the securities;

1281 (iii) no commission or other similar compensation is given, directly or indirectly, to a
1282 person other than a broker-dealer or agent licensed under this chapter, for soliciting a
1283 prospective purchaser in this state;

1284 (iv) the seller reasonably believes that all the purchasers in this state are purchasing for
1285 investment; and

1286 (v) the transaction is part of an aggregate offering that does not exceed [~~\$500,000~~
1287 \$1,000,000, or a greater amount as prescribed by a division rule, during any 12 consecutive
1288 months; ~~and~~]

1289 [~~(vi) the director, as to a security or transaction, or a type of security or transaction,~~
1290 ~~may withdraw or further condition this exemption or waive one or more of the conditions in~~
1291 ~~Subsection (q);]~~

1292 (r) ~~any~~ a transaction involving a commodity contract or commodity option; ~~and~~

1293 (s) a transaction in a security, whether or not the security or transaction is otherwise
1294 exempt if:

1295 (i) the transaction is:

1296 (A) in exchange for one or more outstanding securities, claims, or property interests; or

1297 (B) partly for cash and partly in exchange for one or more outstanding securities,
1298 claims, or property interests; and

1299 (ii) the terms and conditions are approved by the director after a hearing under Section
 1300 61-1a-408;

1301 (t) a transaction incident to a judicially approved reorganization in which a security is
 1302 issued:

1303 (i) in exchange for one or more outstanding securities, claims, or property interests; or

1304 (ii) partly for cash and partly in exchange for one or more outstanding securities,
 1305 claims, or property interests;

1306 (u) a nonissuer transaction by a federal covered investment adviser with investments
 1307 under management in excess of \$100,000,000 acting in the exercise of discretionary authority
 1308 in a signed record for the account of others; and

1309 ~~[(s) any]~~ (v) a transaction as to which the division finds that registration is not
 1310 necessary or appropriate for the protection of investors.

1311 (3) ~~[Every]~~ A person filing an exemption notice or application shall pay a filing fee as
 1312 determined under Section 61-1-18.4.

1313 (4) Upon approval by a majority of the ~~[Securities Advisory Board]~~ commission, the
 1314 director, by means of an adjudicative proceeding conducted in accordance with Title 63G,
 1315 Chapter 4, Administrative Procedures Act, may deny or revoke ~~[any]~~ an exemption specified in
 1316 Subsection (1)~~[(g), (h), or (j)]~~ (f) or (g) or in Subsection (2) with respect to:

1317 (a) a specific security, transaction, or series of transactions; or

1318 (b) ~~[any]~~ a person or issuer, ~~[any]~~ an affiliate or successor to a person or issuer, or
 1319 ~~[any]~~ an entity subsequently organized by or on behalf of a person or issuer generally and may
 1320 impose a fine if the ~~[person]~~ director finds that the order is in the public interest and that:

1321 (i) the application for or notice of exemption filed with the division is incomplete in
 1322 ~~[any]~~ a material respect or contains ~~[any]~~ a statement which was, in the light of the
 1323 circumstances under which it was made, false or misleading with respect to ~~[any]~~ a material
 1324 fact;

1325 (ii) ~~[any provision of]~~ this chapter, or ~~[any]~~ a rule, order, or condition lawfully imposed
 1326 under this chapter has been willfully violated in connection with the offering or exemption by:

1327 (A) the person filing ~~[any]~~ an application for or notice of exemption;

1328 (B) the issuer, ~~[any]~~ a partner, officer, or director of the issuer, ~~[any]~~ a person
 1329 occupying a similar status or performing similar functions, or ~~[any]~~ a person directly or

1330 indirectly controlling or controlled by the issuer, but only if the person filing the application for
1331 or notice of exemption is directly or indirectly controlled by or acting for the issuer; or

1332 (C) ~~[any]~~ an underwriter;

1333 (iii) subject to Subsection (8), the security for which the exemption is sought is the
1334 subject of an administrative stop order or similar order, or a permanent or temporary injunction
1335 or ~~[any]~~ a court of competent jurisdiction entered under ~~[any other]~~ another federal or state act
1336 applicable to the offering or exemption; ~~[the division may not institute a proceeding against an~~
1337 ~~effective exemption under this subsection more than one year from the date of the order or~~
1338 ~~injunction relied on, and it may not enter an order under this subsection on the basis of an order~~
1339 ~~or injunction entered under any other state act unless that order or injunction was based on~~
1340 ~~facts that would currently constitute a ground for a stop order under this section;]~~

1341 (iv) the issuer's enterprise or method of business includes or would include activities
1342 that are illegal where performed;

1343 (v) the offering has worked, has tended to work, or would operate to work a fraud upon
1344 purchasers;

1345 (vi) the offering ~~[has been]~~ is or was made with unreasonable amounts of underwriters'
1346 and sellers' discounts, commissions, or other compensation, or promoters' profits or
1347 participation, or unreasonable amounts or kinds of options;

1348 (vii) an exemption is sought for a security or transaction ~~[which]~~ that is not eligible for
1349 the exemption; or

1350 (viii) the proper filing fee, if required, has not been paid.

1351 (5) (a) ~~[No]~~ An order under Subsection (4) may not operate retroactively.

1352 (b) ~~[No]~~ A person may not be considered to have violated Section 61-1-7 or 61-1-15 by
1353 reason of ~~[any]~~ an offer or sale effected after the entry of an order under this ~~[subsection]~~
1354 Subsection (5) if the person sustains the burden of proof that the person did not know, and in
1355 the exercise of reasonable care could not have known, of the order.

1356 (6) The exemption created by Subsection (2)(j) is not available for an offer or sale of a
1357 security to an existing securities holder who has acquired the holder's security from the issuer
1358 in a transaction in violation of Section 61-1-7.

1359 (7) As to a security, a transaction, or a type of security or transaction, the division may:

1360 (a) withdraw or further condition the exemption described in Subsection (2)(q); or

1361 (b) waive one or more of the conditions described in Subsection (2)(q).

1362 (8) (a) The director may not institute a proceeding against an effective exemption under
1363 Subsection (4)(b) more than one year from the day on which the order or injunction on which
1364 the director relies is issued.

1365 (b) The director may not enter an order under Subsection (4)(b) on the basis of an order
1366 or injunction entered under another state act unless that order or injunction is issued on the
1367 basis of facts that would constitute a ground for a stop order under this section at the time the
1368 director enters the order.

1369 Section 11. Section **61-1-15.5** is amended to read:

1370 **61-1-15.5. Federal covered securities.**

1371 (1) The division by rule or order may require the filing of any of the following
1372 documents with respect to a covered security under Section 18(b)(2) of the Securities Act of
1373 1933:

1374 (a) prior to the initial offer of federal covered security in this state, a notice form as
1375 prescribed by the division or all documents that are part of a federal registration statement filed
1376 with the [~~U.S.~~] Securities and Exchange Commission under the Securities Act of 1933,
1377 together with a consent to service of process signed by the issuer and a filing fee as determined
1378 under Section 61-1-18.4;

1379 (b) after the initial offer of such federal covered security in this state, all documents
1380 that are part of an amendment to a federal registration statement filed with the U.S. Securities
1381 and Exchange Commission under the Securities Act of 1933, which shall be filed concurrently
1382 with the division;

1383 (c) a report of the value of federal covered securities offered or sold in this state,
1384 together with a filing fee as determined under Section 61-1-18.4; and

1385 (d) a notice filing under this section shall be effective for one year and shall be
1386 renewed annually in order to continue to offer or sell the federal covered securities for which
1387 the notice was filed.

1388 (2) With respect to [~~any~~] a security that is a covered security under Section 18(b)(4)(D)
1389 of the Securities Act of 1933, the division by rule or order may require the issuer to file a notice
1390 on SEC Form D and a consent to service of process signed by the issuer no later than 15 days
1391 after the first sale of such covered security in this state, together with a filing fee as determined

1392 under Section 61-1-18.4.

1393 (3) The division by rule or order may require the filing of [~~any~~] a document filed with
1394 the [~~U.S.~~] Securities and Exchange Commission under the Securities Act of 1933, with respect
1395 to a covered security under [~~Section 18(b)(3) or (4) of the~~] Securities Act of 1933, Section
1396 18(b)(3) or (4), together with a filing fee as determined under Section 61-1-18.4.

1397 (4) Upon approval by a majority of the [~~Securities Advisory Board~~] commission, the
1398 director, by means of an adjudicative [~~proceedings~~] proceeding conducted in accordance with
1399 Title 63G, Chapter 4, Administrative Procedures Act, may issue a stop order suspending the
1400 offer and sale of [~~any~~] a federal covered security, except a covered security under Section
1401 18(b)(1) of the Securities Act of 1933, if the director finds that the order is in the public interest
1402 and there is a failure to comply with any condition established under this section.

1403 (5) The division by rule or order may waive any or all of the provisions of this section.

1404 Section 12. Section **61-1-18** is amended to read:

1405 **61-1-18. Division of Securities established -- Director -- Investigators.**

1406 (1) (a) There is established within the Department of Commerce a Division of
1407 Securities.

1408 (b) The division [~~shall be~~] is under the direction and control of a director[~~, appointed~~
1409 ~~by the~~]. The executive director shall appoint the director with the governor's approval.

1410 (c) [~~The director shall be responsible for the administration and enforcement of~~]
1411 Subject to Section 61-1-18.5, the division shall administer and enforce this chapter.

1412 (d) The director shall hold office at the pleasure of the governor.

1413 (2) The director, with the approval of the executive director, may employ [~~such~~] the
1414 staff [~~as~~] necessary to discharge the duties of the division or commission at salaries to be fixed
1415 by the director according to standards established by the Department of Human Resource
1416 Management.

1417 (3) An investigator employed pursuant to Subsection (2) who meets the training
1418 requirements of Subsection 53-13-105(3) may be designated a special function officer, as
1419 defined in Section 53-13-105, by the director, but is not eligible for retirement benefits under
1420 the Public Safety Employee's Retirement System.

1421 Section 13. Section **61-1-18.2** is amended to read:

1422 **61-1-18.2. Budget -- Annual report.**

1423 The director shall annually prepare and submit to the executive director:

1424 (1) a budget for the expenses of the division and commission for the administration and
1425 enforcement of this chapter for the next fiscal year; and

1426 (2) a report outlining the division's and commission's work for the preceding fiscal
1427 year.

1428 Section 14. Section **61-1-18.3** is amended to read:

1429 **61-1-18.3. Information obtained by division or commission -- Use for personal**
1430 **benefit prohibited -- Disclosure.**

1431 (1) It is unlawful for [~~any of the division's employees~~] an employee of the division or
1432 [~~any~~] a member of the [Securities Advisory Board] commission to use for personal benefit any
1433 non-public information [~~which~~] that is filed with or obtained by the division or commission.
1434 [~~No provision of this~~]

1435 (2) This chapter [~~authorizes~~] does not authorize the division, an employee of the
1436 division, the commission, or [~~any of its officers or employees~~] a member of the commission to
1437 disclose [~~any such~~] information described in Subsection (1), except among themselves or when
1438 necessary or appropriate in a proceeding or investigation under this chapter.

1439 (3) No provision of this chapter either creates or derogates from [~~any~~] a privilege
1440 [~~which~~] that exists at common law or otherwise when documentary or other evidence is sought
1441 under subpoena directed to:

1442 (a) the division;

1443 (b) the commission; or [~~any of its employees~~]

1444 (c) a member of the commission; or

1445 (d) an employee of the division.

1446 Section 15. Section **61-1-18.5** is amended to read:

1447 **61-1-18.5. Securities Commission -- Transition.**

1448 (1) (a) There is [~~hereby established~~] created a Securities [~~Advisory Board~~]
1449 Commission.

1450 [~~(b) Members of the board shall be appointed by the governor with the consent of the~~
1451 Senate.]

1452 (b) The division shall provide staffing to the commission.

1453 [(c)] (2) (a) The [~~board~~] commission shall [~~have the following duties~~]:

- 1454 (i) formulate and make recommendations to the director regarding policy and
1455 budgetary matters;
- 1456 (ii) submit recommendations regarding registration requirements [~~and division rules~~];
- 1457 (iii) formulate and make recommendations to the director regarding the establishment
1458 of reasonable fees; [~~and~~]
- 1459 (iv) [~~generally~~] act in an advisory capacity to the director with respect to the exercise of
1460 [~~his~~] the director's duties, powers, and responsibilities[-];
- 1461 (v) conduct an administrative hearing under this chapter that is not:
- 1462 (A) delegated by the commission to an administrative law judge or the division relating
1463 to a violation of this chapter; or
- 1464 (B) expressly delegated to the division under this chapter;
- 1465 (vi) except as provided in Subsection (2)(b), impose a sanction as provided in this
1466 chapter;
- 1467 (vii) review rules made by the division for purposes of concurrence in accordance with
1468 Section 61-1-24; and
- 1469 (viii) perform other duties as this chapter provides.
- 1470 (b) (i) The commission may delegate to the division the authority to impose a sanction
1471 under this chapter.
- 1472 (ii) If under Subsection (2)(b)(i) the commission delegates to the division the authority
1473 to impose a sanction, a person who is subject to the sanction may petition the commission for
1474 review of the sanction.
- 1475 (iii) A person who is sanctioned by the division in accordance with this Subsection
1476 (2)(b) may seek agency review by the executive director only after the commission reviews the
1477 division's action.
- 1478 [~~(2)~~] (3) (a) The [~~Securities Advisory Board shall be comprised of~~] governor shall
1479 appoint five members [who shall be appointed in accordance with the following] to the
1480 commission with the consent of the Senate as follows:
- 1481 (i) two members from the securities brokerage community;
- 1482 (A) who are not from the same broker-dealer or affiliate; and
- 1483 (B) who have at least five years prior experience in securities matters;
- 1484 (ii) one member from the securities section of the Utah State Bar [~~Association~~];

1485 (A) whose practice primarily involves:
 1486 (I) corporate securities; or
 1487 (II) representation of plaintiffs in securities cases;
 1488 (B) who does not routinely represent clients involved in:
 1489 (I) civil or administrative litigation with the division; or
 1490 (II) criminal cases brought under this chapter; and
 1491 (C) who has at least five years prior experience in securities matters;
 1492 (iii) one member who is an officer or director of a ~~[corporation]~~ business entity not
 1493 subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of
 1494 1934 ; and
 1495 (iv) one member from the public at large who has no active participation in the
 1496 securities business.
 1497 (b) ~~[No]~~ A member may not serve more than two consecutive terms.
 1498 ~~[(3)]~~ (4) (a) Except as required by Subsection [(3)] (4)(b) and subject to Subsection
 1499 (4)(c), as terms of current [board] members expire, the governor shall appoint [each] a new
 1500 member or reappointed member to a four-year term.
 1501 (b) Notwithstanding ~~[the requirements of]~~ Subsection ~~[(3)]~~ (4)(a), the governor shall, at
 1502 the time of appointment or reappointment, adjust the length of terms to ensure that the terms of
 1503 commission members are staggered so that approximately half of the ~~[board]~~ commission is
 1504 appointed every two years.
 1505 (c) For purposes of making an appointment to the commission, the governor:
 1506 (i) shall as of the effective date of this bill:
 1507 (A) appoint all five members of the commission; and
 1508 (B) stagger the terms of the five members of the commission to comply with
 1509 Subsection (4)(b); and
 1510 (ii) may not consider the commission an extension of the previous Securities Advisory
 1511 Board.
 1512 ~~[(4)-(a)]~~ (d) When a vacancy occurs in the membership for any reason, the governor
 1513 shall appoint a replacement [shall be appointed] member for the unexpired term.
 1514 ~~[(b)]~~ (e) [All members] A member shall serve until [their] the member's respective
 1515 [successors are] successor is appointed and qualified.

1516 (f) The commission shall annually select one member to serve as chair of the
1517 commission.

1518 (5) (a) The [~~board~~] commission shall meet;

1519 (i) at least quarterly on a regular date to be fixed by the [~~board~~] commission; and

1520 (ii) at such other times at the call of:

1521 (A) the director; or

1522 (B) any two members of the [~~board~~] commission.

1523 (b) A majority of the [~~board~~] commission shall constitute a quorum for the transaction
1524 of business. [~~Actions of the board shall require~~]

1525 (c) An action of the commission requires a vote of a majority of [~~those~~] members
1526 present.

1527 (6) [~~Each~~] A member of the [~~board~~] commission shall, by sworn and written statement
1528 filed with the Department of Commerce and the lieutenant governor, disclose any position of
1529 employment or ownership interest that the member has with respect to [~~any~~] an entity or
1530 business subject to the jurisdiction of the division or commission. This statement shall be filed
1531 upon appointment and must be appropriately amended whenever significant changes occur in
1532 matters covered by the statement.

1533 (7) (a) [~~Members shall receive no~~] A member may not receive compensation or
1534 benefits for [~~their~~] the member's services, but may receive per diem and expenses incurred in
1535 the performance of the member's official duties at the rates established by the Division of
1536 Finance under Sections 63A-3-106 and 63A-3-107.

1537 (b) [~~Members~~] A member may decline to receive per diem and expenses for [~~their~~] the
1538 member's service.

1539 (8) (a) A rule or form made by the division under this section that is in effect on May
1540 11, 2009, is considered to have been concurred with by the commission as of May 12, 2009,
1541 until the commission acts on the rule or form.

1542 (b) For a civil or administrative action pending under this chapter as of May 12, 2009,
1543 brought under the authority of division under this chapter as in effect May 11, 2009 that may be
1544 brought only by the commission under this chapter as in effect on May 12, 2009:

1545 (i) the action shall be considered brought by the commission; and

1546 (ii) the commission may take any act authorized under this chapter regarding that

1547 action.

1548 Section 16. Section **61-1-18.6** is amended to read:

1549 **61-1-18.6. Procedures -- Adjudicative proceedings.**

1550 The [~~Division of Securities~~] commission and division shall comply with the procedures
1551 and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in [its] an
1552 adjudicative [~~proceedings~~] proceeding under this chapter.

1553 Section 17. Section **61-1-18.7** is amended to read:

1554 **61-1-18.7. Funding of securities investor education and training.**

1555 (1) (a) There is created a restricted special revenue fund known as the "Securities
1556 Investor Education and Training Fund" to provide revenue for educating the public and the
1557 securities industry as provided in this section.

1558 (b) For purposes of this section, "fund" means the Securities Investor Education and
1559 Training Fund.

1560 (2) All money received by the state by reason of civil penalties ordered and
1561 administrative fines collected pursuant to this chapter shall be deposited in the [~~Securities~~
1562 ~~Investor Education and Training Fund~~] fund, and subject to the requirements of Title 51,
1563 Chapter 5, Funds Consolidation Act.

1564 (3) [~~The special revenue fund may include any fines~~] A fine collected by the division
1565 after July 1, 1989, pursuant to a voluntary [~~settlements~~] settlement or administrative [~~orders~~]
1566 order shall be deposited into the fund.

1567 (4) (a) The fund shall earn interest.

1568 (b) All interest earned on fund monies shall be deposited into the fund.

1569 (5) Notwithstanding Title 63J, Chapter 1, Budgetary Procedures Act, the director may
1570 use [~~special revenue fund~~] monies in the fund, upon concurrence of the [~~Securities Advisory~~
1571 ~~Board~~] commission and the executive director of the Department of Commerce, in a manner
1572 consistent with the duties of the division and commission under this chapter and only for any or
1573 all of the following and the expense of providing them:

1574 (a) education and training of Utah residents in matters concerning securities laws and
1575 investment decisions, by publications or presentations;

1576 (b) education of registrants and licensees under this chapter, by:

1577 (i) publication of this chapter and rules and policy statements and opinion letters [~~of~~

1578 ~~the division~~ issued under this chapter; and

1579 (ii) sponsorship of seminars or meetings to educate registrants and licensees as to the
1580 requirements of this chapter; and

1581 (c) investigation and litigation.

1582 (6) If the balance in the fund exceeds \$100,000 at the close of any fiscal year, the
1583 excess shall be transferred to the General Fund.

1584 Section 18. Section **61-1-19** is amended to read:

1585 **61-1-19. Investigations authorized.**

1586 (1) (a) The division [~~in its discretion~~] may make any public or private investigations
1587 within or without this state as [~~it~~] the division considers necessary to determine whether [~~any~~] a
1588 person has violated, is violating, or is about to violate [~~any provision of~~] this chapter or [~~any~~] a
1589 rule or order [~~hereunder~~] issued under this chapter.

1590 (b) To aid in the enforcement of this chapter or in the prescribing of rules and forms
1591 [~~hereunder~~] issued under this chapter, the division may require or permit [~~any~~] a person to file a
1592 statement in writing, under oath or otherwise as to all the facts and circumstances concerning
1593 the matter to be investigated.

1594 (c) The division may publish information concerning [~~any~~] a violation of this chapter
1595 or the violation of [~~any~~] a rule or order [~~hereunder~~] issued under this chapter.

1596 (2) For the purpose of [~~any~~] an investigation or proceeding under this chapter, the
1597 division, the commission, or [~~any~~] an employee designated by [~~it~~] the division may:

1598 (a) administer [~~oaths and affirmations~~] an oath or affirmation;

1599 (b) subpoena [~~witnesses~~] a witness and compel [~~their~~] the attendance of the witness;

1600 (c) take evidence; and

1601 (d) require the production of any books, papers, correspondence, memoranda,
1602 agreements, or other documents or records relevant or material to the investigation.

1603 Section 19. Section **61-1-20** is amended to read:

1604 **61-1-20. Enforcement.**

1605 Whenever it appears to the director that [~~any~~] a person has engaged, is engaging, or is
1606 about to engage in [~~any~~] an act or practice constituting a violation of this chapter or [~~any~~] a rule
1607 or order under this chapter, in addition to [~~any~~] specific powers granted in this chapter:

1608 (1) (a) the director may issue an order directing the person to appear before the

1609 ~~[division]~~ commission and show cause why an order should not be issued directing the person
 1610 to cease and desist from engaging in the act or practice, or doing ~~[any]~~ an act in furtherance of
 1611 the activity;

1612 (b) the order to show cause shall state the reasons for the order and the date of the
 1613 hearing;

1614 (c) the director shall promptly serve a copy of the order to show cause upon ~~[each]~~ a
 1615 person named in the order;

1616 (d) the ~~[director]~~ commission shall hold a hearing on the order to show cause no sooner
 1617 than ten business days after the order is issued;

1618 (e) after a hearing, the ~~[director]~~ commission may issue an order to cease and desist
 1619 from engaging in ~~[any]~~ an act or practice constituting a violation of this chapter or ~~[any]~~ a rule
 1620 or order under this chapter~~[-. The order shall be accompanied by written findings of fact and~~
 1621 ~~conclusions of law];~~

1622 (f) the ~~[director]~~ commission may impose a fine; ~~[and]~~

1623 (g) the ~~[director]~~ commission may bar or suspend that person from associating with a
 1624 licensed broker-dealer or investment adviser in this state~~[-]; and~~

1625 (h) the commission may impose a combination of sanctions in Subsections (1)(e)
 1626 through (g).

1627 (2) (a) The director may bring an action in the appropriate district court of this state or
 1628 the appropriate court of another state to enjoin ~~[the acts or practices]~~ an act or practice and to
 1629 enforce compliance with this chapter or ~~[any]~~ a rule or order under this chapter;

1630 (b) upon a proper showing in an action brought under this section, the court may:

1631 (i) issue a permanent or temporary, prohibitory or mandatory injunction;

1632 (ii) issue a restraining order or writ of mandamus;

1633 (iii) enter a declaratory judgment;

1634 (iv) appoint a receiver or conservator for the defendant or the defendant's assets;

1635 (v) order disgorgement;

1636 (vi) order rescission;

1637 (vii) order restitution;

1638 ~~[(vii)]~~ (viii) impose a fine of not more than ~~[\$500]~~ \$10,000 for each violation of the
 1639 ~~[act]~~ chapter; and

1640 [~~(viii)~~] (iv) enter any other relief the court considers just; and
 1641 (c) the court may not require the division to post a bond in an action brought under this
 1642 [~~subsection~~] Subsection (2).

1643 (3) An order issued under Subsection (1) shall be accompanied by written findings of
 1644 fact and conclusions of law.

1645 Section 20. Section **61-1-21** is amended to read:

1646 **61-1-21. Penalties for violations.**

1647 (1) A person is guilty of a third degree felony who willfully violates [~~any~~]:

1648 (a) a provision of this chapter except Sections 61-1-1 and 61-1-16[~~, or who willfully~~
 1649 ~~violates any~~];

1650 (b) a rule or order issued under this chapter[~~;~~]; or [~~who willfully violates~~]

1651 (c) Section 61-1-16 knowing the statement made [~~to be~~] is false or misleading in [~~any~~]
 1652 a material respect.

1653 (2) A person who willfully violates Section 61-1-1:

1654 (a) is guilty of a third degree felony if, at the time the crime was committed, the
 1655 property, money, or thing unlawfully obtained or sought to be obtained was worth less than
 1656 \$10,000;

1657 (b) is guilty of a second degree felony if:

1658 (i) at the time the crime was committed, the property, money, or thing unlawfully
 1659 obtained or sought to be obtained was worth \$10,000 or more; or

1660 (ii) (A) at the time the crime was committed, the property, money, or thing unlawfully
 1661 obtained or sought to be obtained was worth less than \$10,000; and

1662 (B) in connection with that violation, the violator knowingly accepted any money
 1663 representing:

1664 (I) equity in a person's [~~home~~] primary residence;

1665 (II) a withdrawal from [~~any~~] an individual retirement account; or

1666 (III) a withdrawal from [~~any~~] a qualified retirement plan as defined in the Internal
 1667 Revenue Code; or

1668 (c) is guilty of [~~a~~] an enhanced second degree felony punishable by imprisonment for
 1669 an indeterminate term of not less than three years or more than 15 years if:

1670 (i) at the time the crime was committed, the property, money, or thing unlawfully

1671 obtained or sought to be obtained was worth \$10,000 or more; and

1672 (ii) in connection with that violation, the violator knowingly accepted any money
1673 representing:

1674 (A) equity in a person's ~~[home]~~ primary residence;

1675 (B) a withdrawal from ~~[any]~~ an individual retirement account; or

1676 (C) a withdrawal from ~~[any]~~ a qualified retirement plan as defined in the Internal
1677 Revenue Code.

1678 (3) ~~[No]~~ A person may not be imprisoned for the violation of ~~[any]~~ a rule or order
1679 issued under this chapter if ~~[he]~~ the person proves that ~~[he]~~ the person had no knowledge of the
1680 rule or order.

1681 (4) In addition to any other penalty for a criminal violation of this chapter, the
1682 sentencing judge may impose ~~[any]~~ a penalty or remedy provided for in Subsection
1683 61-1-20(2)(b).

1684 Section 21. Section **61-1-21.5** is amended to read:

1685 **61-1-21.5. Legal counsel -- Prosecutions.**

1686 (1) The attorney general shall advise and represent the division, the commission, and
1687 ~~[its]~~ the staff of the division in all civil matters, administrative or judicial, requiring legal
1688 counsel or services in:

1689 (a) the exercise or defense of the division's or commission's power; or

1690 (b) the performance of ~~[its]~~ the division's or commission's duties.

1691 (2) With the concurrence of the attorney general, the staff of the division may represent
1692 the division in hearings conducted during the course of adjudicative proceedings of the
1693 commission or the division.

1694 (3) (a) In the prosecution of all criminal actions under this chapter, the attorney general,
1695 county attorney, or district attorney of the appropriate jurisdiction, shall provide all legal
1696 services for the division, the commission, and ~~[its]~~ the staff of the division.

1697 (b) The division or commission may refer ~~[such]~~ evidence ~~[as]~~ that is available
1698 concerning ~~[violations]~~ a violation of this chapter for criminal prosecution to:

1699 (i) the attorney general; or

1700 (ii) the appropriate county attorney ~~[or]~~, district attorney ~~[for criminal prosecution]~~, or
1701 United States Attorney's Office.

1702 (4) The attorney general, a county attorney, or a district attorney of the appropriate
 1703 jurisdiction may institute a criminal proceeding under this chapter, with or without referral
 1704 from the division.

1705 Section 22. Section **61-1-22** is amended to read:

1706 **61-1-22. Sales and purchases in violation -- Remedies -- Limitation of actions.**

1707 (1) (a) [~~A~~] This Subsection (1) applies to a person who:

1708 (i) offers or sells a security in violation of:

1709 (A) Subsection 61-1-3(1)[;];

1710 (B) Section 61-1-7[;];

1711 (C) Subsection 61-1-17(2)[, any]; or

1712 (D) a rule or order under Section 61-1-15, which requires the affirmative approval of
 1713 sales literature before it is used[; any]; or

1714 (E) a condition imposed under Subsection 61-1-10(4) or 61-1-11(7)[;]; or

1715 (ii) offers, sells, or purchases a security in violation of Subsection 61-1-1(2).

1716 (b) A person described in Subsection (1)(a) is liable to [the] a person selling the
 1717 security to or buying the security from [him, who] the person described in Subsection (1)(a).

1718 The person to whom the person described in Subsection (1)(a) is liable may sue either at law or
 1719 in equity to recover the consideration paid for the security, together with interest at 12% per
 1720 year from the date of payment, costs, and reasonable [attorney's] attorney fees, less the amount
 1721 of [any] income received on the security, upon the tender of the security or for damages if [he]
 1722 the person no longer owns the security.

1723 [~~(b)~~] (c) Damages are [the] an amount calculated as follows:

1724 (i) subtract from the amount that would be recoverable upon a tender [less] under
 1725 Subsection (7)(b) the value of the security when the buyer disposed of [it and interest at] the
 1726 security; and

1727 (ii) add to the amount calculated under Subsection (1)(c)(i) interest at:

1728 (A) 12% per year [from];

1729 (I) beginning the day on which the security is purchased by the buyer; and

1730 (II) ending on the date of disposition[;]; and

1731 (B) after the period described in Subsection (1)(c)(ii)(A), 12% per year on the amount
 1732 lost at disposition.

1733 (2) The court in a suit brought under Subsection (1) may award an amount equal to
1734 three times the consideration paid for the security, together with interest, costs, and [attorney's]
1735 attorney fees, less any amounts, all as specified in Subsection (1) upon a showing that the
1736 violation was reckless or intentional.

1737 (3) A person who offers or sells a security in violation of Subsection 61-1-1(2) is not
1738 liable under Subsection (1)(a) if the purchaser knew of the untruth or omission, or the seller did
1739 not know and in the exercise of reasonable care could not have known of the untrue statement
1740 or misleading omission.

1741 (4) (a) Every person who directly or indirectly controls a seller or buyer liable under
1742 Subsection (1), every partner, officer, or director of such a seller or buyer, every person
1743 occupying a similar status or performing similar functions, every employee of such a seller or
1744 buyer who materially aids in the sale or purchase, and every broker-dealer or agent who
1745 materially aids in the sale or purchase are also liable jointly and severally with and to the same
1746 extent as the seller or purchaser, unless the nonseller or nonpurchaser who is so liable sustains
1747 the burden of proof that [~~he~~] the nonseller or nonpurchaser did not know, and in exercise of
1748 reasonable care could not have known, of the existence of the facts by reason of which the
1749 liability is alleged to exist.

1750 (b) There is contribution as in cases of contract among the several persons so liable.

1751 (5) [~~Any~~] A tender specified in this section may be made at any time before entry of
1752 judgment.

1753 (6) A cause of action under this section survives the death of [~~any~~] a person who might
1754 have been a plaintiff or defendant.

1755 (7) (a) [~~No~~] An action [~~shall~~] may not be maintained to enforce [~~any~~] liability under
1756 this section unless brought before the earlier of:

1757 (i) the expiration of [~~four~~] five years after the act or transaction constituting the
1758 violation; or

1759 (ii) the expiration of two years after the discovery by the plaintiff of the facts
1760 constituting the violation[~~, whichever expires first~~].

1761 (b) [~~No~~] A person may not sue under this section if:

1762 (i) the buyer or seller received a written offer, before suit and at a time when [~~he~~] the
1763 buyer or seller owned the security, to refund the consideration paid together with interest at

1764 12% per year from the date of payment, less the amount of any income received on the security,
 1765 and ~~he~~ the buyer or seller failed to accept the offer within 30 days of its receipt; or

1766 (ii) the buyer or seller received such an offer before suit and at a time when ~~he~~ the
 1767 buyer or seller did not own the security, unless ~~he~~ the buyer or seller rejected the offer in
 1768 writing within 30 days of its receipt.

1769 (8) ~~No~~ A person who has made or engaged in the performance of any contract in
 1770 violation of this chapter or any rule or order ~~hereunder~~ issued under this chapter, or who has
 1771 acquired ~~any~~ a purported right under any such contract with knowledge of the facts by reason
 1772 of which its making or performance was in violation, may not base ~~any~~ a suit on the contract.

1773 (9) A condition, stipulation, or provision binding a person acquiring a security to waive
 1774 compliance with this chapter or a rule or order ~~hereunder~~ issued under this chapter is void.

1775 (10) (a) The rights and remedies provided by this chapter are in addition to any other
 1776 rights or remedies that may exist at law or in equity.

1777 (b) This chapter does not create ~~any~~ a cause of action not specified in this section or
 1778 Subsection 61-1-4(6).

1779 Section 23. Section **61-1-23** is amended to read:

1780 **61-1-23. Review of orders.**

1781 ~~Any~~ A person aggrieved by a final order ~~of the director~~ under this chapter
 1782 determining all of the issues of an adjudicative proceeding may obtain review of the order by
 1783 the executive director in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

1784 Section 24. Section **61-1-24** is amended to read:

1785 **61-1-24. Rules, forms, and orders.**

1786 (1) (a) ~~The~~ Subject to Subsection (1)(c), the division may make, amend, ~~and~~ or
 1787 rescind ~~rules, forms, and orders~~ a rule, form, or order when necessary to carry out ~~the~~
 1788 provisions of this chapter.

1789 (b) For the purpose of ~~rules and forms~~ a rule or form, the division may:

1790 (i) classify securities, persons, and matters within ~~its~~ the jurisdiction~~;~~ of the
 1791 commission or division; and

1792 (ii) prescribe different requirements for different classes.

1793 ~~(2) (a) The division may not make, amend, or rescind any rule, form, or order unless~~
 1794 ~~it finds that the action is in the public interest, for the protection of investors, and consistent~~

1795 ~~with the purposes of this chapter.]~~

1796 (c) The division shall make rules in accordance with Title 63G, Chapter 3, Utah
 1797 Administrative Rulemaking Act, except that the division may not make, amend, or rescind a
 1798 rule or form under this chapter without the concurrence of the commission.

1799 ~~[(b)]~~ (d) In prescribing ~~[rules and forms]~~ a rule or form, the division may cooperate
 1800 with the securities administrators of the other states and the Securities and Exchange
 1801 Commission to achieve maximum uniformity in the form and content of registration
 1802 statements, applications, and reports wherever practicable.

1803 ~~[(3)]~~ (2) (a) The division may prescribe:

1804 (i) the form and content of a financial ~~[statements]~~ statement required under this
 1805 chapter;

1806 (ii) the circumstances under which a consolidated financial ~~[statements]~~ statement shall
 1807 be filed; and

1808 (iii) whether or not ~~[any]~~ a required financial ~~[statements]~~ statement shall be certified
 1809 by an independent public ~~[accountants]~~ accountant.

1810 (b) ~~[All financial statements]~~ A financial statement under this chapter shall be prepared
 1811 in accordance with generally accepted accounting principles.

1812 ~~[(4) All rules and forms of the division shall be published.]~~

1813 ~~[(5) No]~~ (3) A provision of this chapter ~~[imposing any]~~ that imposes liability ~~[applies]~~
 1814 does not apply to ~~[any]~~ an act done or omitted in good faith in conformity with ~~[any]~~ a rule,
 1815 form, or order of the division or an order of the commission, notwithstanding that the rule,
 1816 form, or order may later be amended or rescinded or be determined by judicial or other
 1817 authority to be invalid for any reason.

1818 ~~[(6)]~~ (4) The division may by rule classify a specific ~~[acts]~~ act as unlawful within the
 1819 meaning of Sections 61-1-1 and 61-1-2 if it finds that:

1820 (a) the ~~[acts]~~ act could operate as a fraud or part of a device, scheme, or artifice to
 1821 defraud ~~[any]~~ a person~~[-];~~ and ~~[that]~~

1822 (b) the rule is not inconsistent with this chapter.

1823 Section 25. Section **61-1-25** is amended to read:

1824 **61-1-25. Record of registrations.**

1825 (1) A document is filed when it is received by the division.

1826 (2) (a) The division shall keep a register of:
1827 (i) all applications for registration and registration statements [~~which~~] that are or have
1828 ever been effective under this chapter; and

1829 (ii) all denial, suspension, or revocation orders [~~which may have been~~] entered under
1830 this chapter.

1831 (b) The register shall be open for public inspection.

1832 (3) The information contained in or filed with [~~any~~] a registration statement,
1833 application, or report may be made available to the public under [~~such~~] the rules [~~as~~] the
1834 division prescribes.

1835 (4) (a) [~~Upon request and at such reasonable charges as it prescribes, the~~] The division
1836 shall furnish to [~~any~~] a person a photostatic or other [~~copies~~] copy, certified under seal if
1837 requested, of [~~any~~] an entry in the register or any document [~~which~~] that is a matter of public
1838 record[-];

1839 (i) upon request; and

1840 (ii) at a reasonable charge prescribed by the division.

1841 (b) In [~~any~~] a proceeding or prosecution under this chapter, [~~any~~] a copy [~~so~~] certified
1842 under this Subsection (4) is prima facie evidence of the contents of the entry or document
1843 certified.

1844 (5) The division [~~in its discretion~~] may [~~honor requests from interested persons for~~]
1845 issue an interpretative [~~opinions~~] opinion requested by an interested person if the commission
1846 concurs in the interpretative opinion.

1847 Section 26. **Repealer.**

1848 This bill repeals:

1849 Section **61-1-8, Registration by notification.**

1850 Section **61-1-30, Prior law repealed -- Savings clause.**

Legislative Review Note
as of 12-18-08 1:07 PM

Office of Legislative Research and General Counsel

H.B. 78 - Utah Uniform Securities Act Modifications

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

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