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SECURITIES AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rich Cunningham

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the Utah Uniform Securities Act.

Highlighted Provisions:

This bill:

- ▶ amends an exemption from licensing as an investment adviser in the state;
- ▶ grants rulemaking authority to impose continuing education requirements for investment adviser representatives;
- ▶ expands the sanctions that may be imposed by the Securities Commission;
- ▶ clarifies that the division commences agency action;
- ▶ provides that it is an unlawful act for a person to make a false or misleading statement during an examination or investigation;
- ▶ modifies provisions applicable to registration by coordination;
- ▶ repeals the cap on fines for violations that may be imposed by a court;
- ▶ allows the aggregation of amounts of property, money, or other things unlawfully obtained through a series of acts or continuing course of business;
- ▶ imposes a 10 year statute of limitation for administrative actions;
- ▶ for a series of acts or continuing course of business, provides that the statute of limitations begins to run after the last act in the series of acts or course of business;
- ▶ codifies factors that the commission or a court may consider when determining the amount of a fine; and



28 ▶ makes technical changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **61-1-3**, as last amended by Laws of Utah 2011, Chapter 317

36 **61-1-5**, as last amended by Laws of Utah 2007, Chapter 292

37 **61-1-6**, as last amended by Laws of Utah 2009, Chapter 351

38 **61-1-9**, as last amended by Laws of Utah 2009, Chapter 351

39 **61-1-16**, as last amended by Laws of Utah 1983, Chapter 284

40 **61-1-20**, as last amended by Laws of Utah 2011, Chapter 319

41 **61-1-21**, as last amended by Laws of Utah 2011, Chapter 319

42 **61-1-21.1**, as last amended by Laws of Utah 2008, Chapter 3

43 **61-1-24**, as last amended by Laws of Utah 2009, Chapters 347 and 351

44 ENACTS:

45 **61-1-31**, Utah Code Annotated 1953



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

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

49 **61-1-3. Licensing of broker-dealers, agents, investment advisers, and investment**
50 **adviser representatives.**

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

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

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

57 (ii) a particular issuer.

58 (b) When an agent begins or terminates an association with a broker-dealer or issuer, or

59 begins or terminates activities as an agent, the agent and the broker-dealer or issuer shall
60 promptly notify the division.

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

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

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

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

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

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

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

74 (I) under this chapter;

75 (II) of the Securities and Exchange Commission;

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

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

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

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

83 (3) It is unlawful for a person to transact business in this state as an investment adviser
84 or as an investment adviser representative unless:

85 (a) the person is licensed under this chapter;

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

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

89 (A) an investment company as defined in the Investment Company Act of 1940;

- 90 (B) another investment adviser;
- 91 (C) a federal covered adviser;
- 92 (D) a broker-dealer;
- 93 (E) a depository institution;
- 94 (F) a trust company;
- 95 (G) an insurance company;
- 96 (H) an employee benefit plan with assets of not less than \$1,000,000; or
- 97 (I) a governmental agency or instrumentality; or
- 98 (ii) other institutional investors as are designated by rule or order of the director; or
- 99 (c) the person:
 - 100 (i) (A) is licensed in another state as an investment adviser or an investment adviser
 - 101 representative; or
 - 102 (B) is exempt from licensing under Section 222(d) of the Investment Advisers Act of
 - 103 1940;
 - 104 (ii) has no place of business in this state; and
 - 105 (iii) during the preceding 12-month period has had not more than five clients, other
 - 106 than those specified in Subsection (3)(b), who are residents of this state.
- 107 (4) (a) It is unlawful for:
 - 108 (i) a person required to be licensed as an investment adviser under this chapter to
 - 109 employ an investment adviser representative unless the investment adviser representative is
 - 110 licensed under this chapter, except that the license of an investment adviser representative is
 - 111 not effective during any period when the person is not employed by an investment adviser
 - 112 licensed under this chapter;
 - 113 (ii) a federal covered adviser to employ, supervise, or associate with an investment
 - 114 adviser representative having a place of business located in this state, unless the investment
 - 115 adviser representative is:
 - 116 (A) licensed under this chapter; or
 - 117 (B) exempt from licensing; or
 - 118 (iii) an investment adviser, directly or indirectly, to employ or associate with an
 - 119 individual to engage in an activity related to providing investment advice in this state if:
 - 120 (A) (I) the license of the individual is suspended or revoked; or

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

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

124 (I) under this chapter;

125 (II) of the Securities and Exchange Commission;

126 (III) a self-regulatory organization; or

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

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

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

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

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

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

140 (ii) notifies the investment adviser representative of the division's approval of the
141 association.

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

145 Section 2. Section 61-1-5 is amended to read:

146 **61-1-5. Postlicensing provisions.**

147 (1) (a) ~~Every~~ A licensed broker-dealer and investment adviser shall make and keep
148 such accounts, correspondence, memoranda, papers, books, and other records as the division by
149 rule prescribes, except as provided in:

150 (i) Section 15 of the Securities Exchange Act of 1934 in the case of a broker-dealer;
151 and

152 (ii) Section 222 of the Investment Advisers Act of 1940 in the case of an investment
153 adviser.

154 (b) [~~All required records regarding~~] A record required to be made and kept by an
155 investment adviser shall be preserved for the period as the division prescribes by rule or order.

156 (2) (a) [~~Every~~] A licensed broker-dealer shall, within 24 hours after demand, furnish to
157 any customer or principal for whom the broker-dealer has executed any order for the purchase
158 or sale of any securities, either for immediate or future delivery, a written statement showing:

159 (i) the time when the securities were bought and sold;

160 (ii) the place where the securities were bought and sold; and

161 (iii) the price at which the securities were bought and sold.

162 (b) With respect to investment advisers, the division may require that certain
163 information be furnished or disseminated as necessary or appropriate in the public interest or
164 for the protection of investors and advisory clients.

165 (c) To the extent determined by the director, information furnished to clients or
166 prospective clients of an investment adviser who would be in compliance with the Investment
167 Advisers Act of 1940 and the rules under the Investment Advisers Act of 1940 may be
168 considered to satisfy this requirement.

169 (3) [~~Every~~] A licensed broker-dealer and investment adviser shall file financial reports
170 as the division by rule prescribes, except as provided in:

171 (a) Section 15 of the Securities Exchange Act of 1934 in the case of a broker-dealer;
172 and

173 (b) Section 222 of the Investment Advisers Act of 1940 in the case of an investment
174 adviser.

175 (4) If the information contained in any document filed with the division is or becomes
176 inaccurate or incomplete in any material respect, the licensee or federal covered adviser shall
177 promptly file a correcting amendment if the document is filed with respect to a licensee, or
178 when such amendment is required to be filed with the Securities and Exchange Commission if
179 the document is filed with respect to a federal covered adviser, unless notification of the
180 correction has been given under Section [61-1-3](#).

181 (5) (a) [~~All the records~~] A record referred to in Subsection (1) [~~are~~] is subject at any
182 time or from time to time to reasonable periodic, special, or other examinations by

183 representatives of the division, within or without this state, as the division considers necessary
184 or appropriate in the public interest or for the protection of investors.

185 (b) For the purpose of avoiding unnecessary duplication of examination, the division
186 may cooperate with:

187 (i) the securities administrators of other states;

188 (ii) the Securities and Exchange Commission; and

189 (iii) national securities exchanges or national securities associations registered under
190 the Securities Exchange Act of 1934.

191 (6) An investment adviser representative licensed under this chapter shall meet a
192 continuing education requirement if a continuing education requirement is established by the
193 division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
194 Rulemaking Act.

195 Section 3. Section **61-1-6** is amended to read:

196 **61-1-6. Sanctions.**

197 (1) Subject to the other provisions of this section and by means of an adjudicative
198 proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act:

199 (a) the commission may issue an order:

200 (i) suspending or revoking a license;

201 (ii) barring or censuring a licensee or an officer, director, partner, or person occupying
202 a similar status or performing similar functions for a licensee from employment with a licensed
203 broker-dealer or investment adviser;

204 (iii) restricting or limiting a licensee as to a function or activity of the business for
205 which a license is required in this state;

206 (iv) imposing a fine in an amount determined after considering the factors set forth in
207 Section 61-1-31; [or]

208 (v) requiring disgorgement;

209 (vi) requiring restitution;

210 (vii) requiring rescission; or

211 [~~v~~] (viii) taking any combination of actions under this Subsection (1)(a); or

212 (b) the director may deny a license.

213 (2) (a) The commission may impose a sanction in accordance with Subsection (1)(a) or

214 the director may impose a sanction in accordance with Subsection (1)(b) if the commission or
215 director finds:

216 (i) that it is in the public interest; and

217 (ii) with respect to the applicant or licensee or, in the case of a broker-dealer or
218 investment adviser, a partner, officer, or director, or a person occupying a similar status or
219 performing similar functions, or a person directly or indirectly controlling the broker-dealer or
220 investment adviser, that the person:

221 (A) has filed an application for a license that, as of the effective date of the application
222 or as of any date after filing in the case of an order denying effectiveness:

223 (I) was incomplete in a material respect; or

224 (II) contained a statement that was, in light of the circumstances under which it was
225 made, false or misleading with respect to a material fact;

226 (B) has willfully violated or willfully failed to comply with this chapter or a
227 predecessor act or a rule or order under this chapter or a predecessor act;

228 (C) was convicted of, or entered a plea of guilty, a plea of no contest, a plea in
229 abeyance, or a similar plea of guilty to:

230 (I) a misdemeanor involving:

231 (Aa) fraud or dishonesty; or

232 (Bb) a security or any aspect of the securities business; or

233 (II) a felony;

234 (D) is permanently or temporarily enjoined by a court of competent jurisdiction from
235 engaging in or continuing a conduct or practice involving any aspect of the securities business;

236 (E) (I) is the subject of an order of the commission or a predecessor suspending or
237 revoking a license as a broker-dealer, agent, investment adviser, or investment adviser
238 representative; or

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

241 (F) subject to Subsection (2)(b), is the subject of:

242 (I) an adjudication or determination, within the past five years by a securities or
243 commodities agency or administrator of another state, Canadian province or territory, or a court
244 of competent jurisdiction that the person has willfully violated:

- 245 (Aa) the Securities Act of 1933;
- 246 (Bb) the Securities Exchange Act of 1934;
- 247 (Cc) the Investment Advisers Act of 1940;
- 248 (Dd) the Investment Company Act of 1940;
- 249 (Ee) the Commodity Exchange Act; or
- 250 (Ff) the securities or commodities law of another state; or
- 251 (II) an order:
- 252 (Aa) entered within the past five years by the securities administrator of a state or
- 253 Canadian province or territory or by the Securities and Exchange Commission denying or
- 254 revoking a license as a broker-dealer, agent, investment adviser, or investment adviser
- 255 representative, or the substantial equivalent of those terms;
- 256 (Bb) of the Securities and Exchange Commission suspending or expelling the person
- 257 from a national securities exchange or national securities association registered under the
- 258 Securities Exchange Act of 1934; or
- 259 (Cc) that is a United States post office fraud order;
- 260 (G) has engaged in dishonest or unethical practices in the securities business;
- 261 (H) is insolvent, either in the sense that liabilities exceed assets or in the sense that
- 262 obligations cannot be met as they mature, except that the director or commission may not enter
- 263 an order against a broker-dealer or investment adviser under this Subsection (2)(a)(ii)(H)
- 264 without a finding of insolvency as to the broker-dealer or investment adviser;
- 265 (I) is not qualified on the basis of the lack of training, experience, and knowledge of
- 266 the securities business, except as otherwise provided in Subsection (5);
- 267 (J) has failed reasonably to supervise the person's:
- 268 (I) agents or employees, if the person is a broker-dealer; or
- 269 (II) investment adviser representatives or employees, if the person is an investment
- 270 adviser;
- 271 (K) has failed to pay the proper filing fee within 30 days after being notified by the
- 272 division of a deficiency;
- 273 (L) subject to Subsection (2)(c), is a licensee or applicant that is materially the same
- 274 entity as an entity that is defunct, insolvent, statutorily disqualified, barred, or described in
- 275 Subsection (2)(a)(ii)(D); or

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

277 (I) fraud;

278 (II) embezzlement;

279 (III) misrepresentation; or

280 (IV) deceit.

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

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

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

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

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

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

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

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

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

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

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

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

302 (3) The director may enter a denial order under Subsection (2)(a)(ii)(K), but shall
303 vacate the order when the deficiency is corrected.

304 (4) The division may not institute a suspension or revocation proceeding on the basis
305 of a fact or transaction known to the division when the license became effective unless the
306 proceeding is instituted within the 120 days after the day on which the license takes effect.

- 307 (5) The following provisions govern the application of Subsection (2)(a)(ii)(I):
308 (a) The director or commission may not enter an order against a broker-dealer on the
309 basis of the lack of qualification of a person other than:
310 (i) the broker-dealer if the broker-dealer is an individual; or
311 (ii) an agent of the broker-dealer.
312 (b) The director or commission may not enter an order against an investment adviser
313 on the basis of the lack of qualification of a person other than:
314 (i) the investment adviser if the investment adviser is an individual; or
315 (ii) an investment adviser representative.
316 (c) The director or commission may not enter an order solely on the basis of lack of
317 experience if the applicant or licensee is qualified by training or knowledge.
318 (d) The director or commission shall consider that:
319 (i) an agent who will work under the supervision of a licensed broker-dealer need not
320 have the same qualifications as a broker-dealer; and
321 (ii) an investment adviser representative who will work under the supervision of a
322 licensed investment adviser need not have the same qualifications as an investment adviser.
323 (e) (i) The director or commission shall consider that an investment adviser is not
324 necessarily qualified solely on the basis of experience as a broker-dealer or agent.
325 (ii) When the director finds that an applicant for a license as a broker-dealer is not
326 qualified as an investment adviser, the director may condition the applicant's license as a
327 broker-dealer upon the applicant's not transacting business in this state as an investment
328 adviser.
329 (f) (i) The division may by rule provide for examinations, which may be written or oral
330 or both, to be taken by any class of or all applicants.
331 (ii) The division may by rule or order waive the examination requirement as to a person
332 or class of persons if the division determines that the examination is not necessary for the
333 protection of investors.
334 (6) If the director finds that a licensee or applicant for a license is no longer in
335 existence, has ceased to do business as a broker-dealer, agent, investment adviser, or
336 investment adviser representative, or is subject to an adjudication of mental incompetence or to
337 the control of a committee, conservator, or guardian, or cannot be located after reasonable

338 search, the division may summarily cancel or deny the license or application according to the
339 procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

340 (7) (a) Withdrawal from license as a broker-dealer, agent, investment adviser, or
341 investment adviser representative becomes effective 30 days after receipt of an application to
342 withdraw or within a shorter period of time as determined by the director, unless:

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

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

346 (iii) additional information is requested by the division regarding the withdrawal
347 application.

348 (b) (i) If a proceeding described in Subsection (7)(a) is pending or instituted, the
349 director shall designate by order when and under what conditions the withdrawal becomes
350 effective.

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

353 (c) (i) If no proceeding is pending or instituted, and withdrawal automatically becomes
354 effective, the director may initiate a revocation or suspension proceeding under this section
355 within one year after withdrawal becomes effective.

356 (ii) The commission shall enter an order under Subsection (2)(a)(ii)(B) as of the last
357 date on which the license is effective.

358 Section 4. Section **61-1-9** is amended to read:

359 **61-1-9. Registration by coordination.**

360 (1) A security for which a registration statement [~~or a notification under Regulation A~~
361 ~~or a successor to Regulation A~~] is filed under the Securities Act of 1933 in connection with the
362 same offering may be registered by coordination.

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

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

368 (b) if the division by rule or otherwise requires[~~;~~];

369 (i) a copy of the articles of incorporation and bylaws or their substantial equivalents
370 currently in effect[;];

371 (ii) a copy of any agreements with or among underwriters[;];

372 (iii) a copy of any indenture or other instrument governing the issuance of the security
373 to be registered; and

374 (iv) a specimen or copy of the security;

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

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

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

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

383 (b) the disclosure statement is on file with the division for at least 20 working days;

384 and

385 (c) a statement of the maximum and minimum proposed offering prices and the
386 maximum underwriting discounts and commissions is on file for two full working days or such
387 shorter period as the division permits by rule or otherwise and the offering is made within those
388 limitations.

389 (4) (a) A registrant shall promptly:

390 (i) notify the division in a record of the date and time when the disclosure statement
391 became effective and the content of the price amendment, if any; and

392 (ii) file a posteffective amendment containing the information and documents in the
393 price amendment.

394 (b) "Price amendment" means the final federal amendment that includes a statement of
395 the:

396 (i) offering price;

397 (ii) underwriting and selling discounts or commissions;

398 (iii) amount of proceeds;

399 (iv) conversion rates;

400 (v) call prices; and

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

402 (5) (a) Upon failure to receive the required notification and posteffective amendment
403 with respect to the price amendment, the division may enter a stop order, without notice or
404 hearing, retroactively denying effectiveness to the registration statement or suspending its
405 effectiveness until compliance with Subsection (4), if the division promptly notifies the
406 registrant in a record of the issuance of the order.

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

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

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

414 (8) If the registrant advises the division of the date when the disclosure statement is
415 expected to become effective, the division shall promptly advise the registrant in a record, at
416 the registrant's expense, whether all the conditions are satisfied and whether it then
417 contemplates the institution of proceedings under Section 61-1-12, but this advice by the
418 division does not preclude the institution of such a proceeding at any time.

419 (9) The division may by rule or order permit registration by coordination of a security
420 for which a notification or similar document is filed under the Securities Act of 1933 in
421 connection with the same offering.

422 Section 5. Section 61-1-16 is amended to read:

423 **61-1-16. False statements unlawful.**

424 It is unlawful for [any] a person to make or cause to be made, in any document filed
425 with the division or in any proceeding, examination, or investigation conducted under this
426 chapter, any statement [~~which~~] that is, at the time and in the light of the circumstances under
427 which it is made, false or misleading in any material respect.

428 Section 6. Section 61-1-20 is amended to read:

429 **61-1-20. Enforcement.**

430 (1) Whenever it appears to the director that a person has engaged, is engaging, or is

431 about to engage in an act or practice constituting a violation of this chapter or a rule or order
432 under this chapter, in addition to specific powers granted in this chapter:

433 (a) the director may issue an order directing the person to appear before the
434 commission and show cause why an order should not be issued directing the person to cease
435 and desist from engaging in the act or practice, or doing an act in furtherance of the activity;

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

438 (c) the director shall promptly serve a copy of the order to show cause upon a person
439 named in the order;

440 (d) the commission shall hold a hearing on the order to show cause no sooner than 10
441 business days after the order is issued;

442 (e) after a hearing, the commission may:

443 (i) issue an order to cease and desist from engaging in an act or practice constituting a
444 violation of this chapter or a rule or order under this chapter;

445 [~~(f) the commission may~~]

446 (ii) impose a fine in an amount determined after considering the factors set forth in
447 Section 61-1-31;

448 (iii) order disgorgement;

449 (iv) order restitution;

450 (v) order rescission;

451 [~~(g) the commission may~~]

452 (vi) bar or suspend that person from associating with a licensed broker-dealer or
453 investment adviser in this state; and

454 [~~(h) the commission may~~]

455 (vii) impose a combination of sanctions in [~~Subsections (1)(c) through (g)~~] this
456 Subsection (1)(e).

457 (2) (a) The director may bring an action in the appropriate district court of this state or
458 the appropriate court of another state to enjoin an act or practice and to enforce compliance
459 with this chapter or a rule or order under this chapter.

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

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

- 462 (ii) issue a restraining order or writ of mandamus;
- 463 (iii) enter a declaratory judgment;
- 464 (iv) appoint a receiver or conservator for the defendant or the defendant's assets;
- 465 (v) order disgorgement;
- 466 (vi) order rescission;
- 467 (vii) order restitution;
- 468 (viii) impose a fine [~~of not more than \$10,000 for each violation of the chapter~~] in an
- 469 amount determined after considering the factors set forth in Section 61-1-31; and

470 (ix) enter any other relief the court considers just.

471 (c) The court may not require the division to post a bond in an action brought under
472 this Subsection (2).

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

475 (4) When determining the severity of a sanction to be imposed under this section, the
476 commission or court shall consider whether:

477 (a) the person against whom the sanction is to be imposed exercised undue influence;

478 or

479 (b) the person against whom the sanction is imposed under this section knows or
480 should know that an investor in the investment that is the grounds for the sanction is a
481 vulnerable adult.

482 Section 7. Section **61-1-21** is amended to read:

483 **61-1-21. Penalties for violations.**

484 (1) A person is guilty of a third degree felony who willfully violates:

485 (a) a provision of this chapter except Sections 61-1-1 and 61-1-16;

486 (b) an order issued under this chapter; or

487 (c) Section 61-1-16 knowing the statement made is false or misleading in a material
488 respect.

489 (2) Subject to the other provisions of this section, a person who willfully violates
490 Section 61-1-1:

491 (a) is guilty of a third degree felony if, at the time the crime was committed, the
492 property, money, or thing unlawfully obtained or sought to be obtained was worth less than

493 \$10,000; or

494 (b) is guilty of a second degree felony if, at the time the crime was committed, the
495 property, money, or thing unlawfully obtained or sought to be obtained was worth \$10,000 or
496 more.

497 (3) A person who willfully violates Section 61-1-1 is guilty of a second degree felony
498 if:

499 (a) at the time the crime was committed, the property, money, or thing unlawfully
500 obtained or sought to be obtained was worth less than \$10,000; and

501 (b) in connection with that violation, the violator knowingly accepted any money
502 representing:

503 (i) equity in a person's primary residence;

504 (ii) a withdrawal from an individual retirement account;

505 (iii) a withdrawal from a qualified retirement plan as defined in the Internal Revenue
506 Code;

507 (iv) an investment by a person over whom the violator exercises undue influence; or

508 (v) an investment by a person that the violator knows is a vulnerable adult.

509 (4) A person who willfully violates Section 61-1-1 is guilty of a second degree felony
510 punishable by imprisonment for an indeterminate term of not less than three years or more than
511 15 years if:

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

514 (b) in connection with that violation, the violator knowingly accepted any money
515 representing:

516 (i) equity in a person's primary residence;

517 (ii) a withdrawal from an individual retirement account;

518 (iii) a withdrawal from a qualified retirement plan as defined in the Internal Revenue
519 Code;

520 (iv) an investment by a person over whom the violator exercises undue influence; or

521 (v) an investment by a person that the violator knows is a vulnerable adult.

522 (5) When amounts of property, money, or other things are unlawfully obtained or
523 sought to be obtained under a series of acts or continuing course of business, whether from the

524 same or several sources, the amounts may be aggregated in determining the level of offense.

525 [~~(5)~~] (6) It is an affirmative defense under this section against a claim that the person
526 violated an order issued under this chapter for the person to prove that the person had no
527 knowledge of the order.

528 [~~(6)~~] (7) In addition to any other penalty for a criminal violation of this chapter, the
529 sentencing judge may impose a penalty or remedy provided for in Subsection 61-1-20(2)(b).

530 Section 8. Section 61-1-21.1 is amended to read:

531 **61-1-21.1. Limitation of prosecutions.**

532 (1) [~~No~~] An indictment or information may not be returned or civil complaint filed
533 under this chapter more than five years after the alleged violation.

534 (2) An administrative action filed under this chapter may be commenced within 10
535 years after the violation occurs.

536 (3) When a violation is based on a series of acts or continuing course of business, the
537 conduct may be considered as one continuing offense and the period of limitation described in
538 Subsection (1) or (2) does not begin to run until the last act in the series of acts or course of
539 business is completed.

540 [~~(2)~~] (4) As to causes of action arising from violations of this chapter, the limitation of
541 prosecutions provided in this section supersedes the limitation of actions provided in Section
542 76-1-302 and Title 78B, Chapter 2, Statutes of Limitations.

543 Section 9. Section 61-1-24 is amended to read:

544 **61-1-24. Rules, forms, and orders.**

545 (1) (a) Subject to Subsection (1)(c), the division may make, amend, or rescind a rule,
546 form, or order when necessary to carry out this chapter.

547 (b) For the purpose of a rule or form, the division may:

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

550 (ii) prescribe different requirements for different classes[.]; and

551 (iii) by rule, establish a continuing education requirement for investment adviser
552 representatives.

553 (c) The division shall make rules in accordance with Title 63G, Chapter 3, Utah
554 Administrative Rulemaking Act, except that the division may not make, amend, or rescind a

555 rule or form under this chapter without the concurrence of the commission.

556 (d) In prescribing a rule or form, the division may cooperate with the securities
557 administrators of the other states and the Securities and Exchange Commission to achieve
558 maximum uniformity in the form and content of registration statements, applications, and
559 reports wherever practicable.

560 (2) (a) The division may prescribe:

561 (i) the form and content of a financial statement required under this chapter;

562 (ii) the circumstances under which a consolidated financial statement shall be filed;

563 and

564 (iii) whether or not a required financial statement shall be certified by an independent
565 public accountant.

566 (b) A financial statement under this chapter shall be prepared in accordance with
567 generally accepted accounting principles.

568 (3) A provision of this chapter that imposes liability does not apply to an act done or
569 omitted in good faith in conformity with a rule, form, or order of the division or an order of the
570 commission, notwithstanding that the rule, form, or order may later be amended or rescinded or
571 be determined by judicial or other authority to be invalid for any reason.

572 Section 10. Section **61-1-31** is enacted to read:

573 **61-1-31. Determining amount of fine.**

574 For the purpose of determining the amount of a fine imposed under this chapter, the
575 commission or court shall consider the following factors:

576 (1) the seriousness, nature, circumstances, extent, and persistence of the conduct
577 constituting the violation;

578 (2) the harm to other persons resulting either directly or indirectly from the violation;

579 (3) (a) the cooperation by the person in any inquiry conducted by the division
580 concerning the violation;

581 (b) efforts by the person to prevent future occurrences of the violation; and

582 (c) efforts by the person to mitigate the harm caused by the violation, including any
583 disgorgement or restitution made to other persons injured by the acts of the person;

584 (4) the history of previous violations by the person;

585 (5) the need to deter the person or other persons from committing the violation in the

586 future;
587 (6) whether the person exercised undue influence;
588 (7) whether the person knew or should have known that the investor was a vulnerable
589 adult; and
590 (8) such other matters as justice may require.

Legislative Review Note
Office of Legislative Research and General Counsel