

SECURITIES AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael K. McKell

Senate Sponsor: Daniel Hemmert

LONG TITLE

General Description:

This bill amends the Utah Uniform Securities Act $\hat{H} \rightarrow$ [regarding] $\leftarrow \hat{H}$

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ prohibits a person from holding oneself out as or representing that the person is an investment adviser or an investment adviser representative unless the person is licensed, exempt from licensing, or a federal covered adviser;
- ▶ amends determining factors for fines imposed under the Utah Uniform Securities Act; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 61-1-3**, as last amended by Laws of Utah 2016, Chapter 401
- 61-1-13**, as last amended by Laws of Utah 2016, Chapter 381
- 61-1-15.5**, as last amended by Laws of Utah 2016, Chapter 25



28 **61-1-31**, as enacted by Laws of Utah 2016, Chapter 401



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

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

32 **61-1-3. Licensing of broker-dealers, agents, investment advisers, and investment**
33 **adviser representatives.**

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

36 (2) (a) (i) It is unlawful for a broker-dealer or issuer to employ or engage an agent
37 unless the agent is licensed.

38 (ii) The license of an agent is not effective during any period when the agent is not
39 associated with:

40 [(†)] (A) a particular broker-dealer licensed under this chapter; or

41 [(†)] (B) a particular issuer.

42 (b) When an agent begins or terminates an association with a broker-dealer or issuer, or
43 begins or terminates activities as an agent, the agent and the broker-dealer or issuer shall
44 promptly notify the division.

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

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

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

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

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

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

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

58 (I) under this chapter;

- 59 (II) of the Securities and Exchange Commission;
- 60 (III) of a self-regulatory organization; or
- 61 (IV) of a securities administrator of a state other than Utah.
- 62 (ii) A broker-dealer or issuer does not violate this Subsection (2)(d) if the broker-dealer
- 63 or issuer did not know and in the exercise of reasonable care could not have known, of the
- 64 suspension, revocation, or bar.
- 65 (iii) An order under this chapter may modify or waive, in whole or in part, the
- 66 application of Subsection (2)(d)(i) to a broker-dealer or issuer.
- 67 (3) It is unlawful for a person to transact business in this state as an investment adviser
- 68 or as an investment adviser representative unless:
- 69 (a) the person is licensed under this chapter;
- 70 (b) the person's only clients in this state are:
- 71 (i) one or more of the following whether acting for itself or as a trustee with investment
- 72 control:
- 73 (A) an investment company as defined in the Investment Company Act of 1940;
- 74 (B) another investment adviser;
- 75 (C) a federal covered adviser;
- 76 (D) a broker-dealer;
- 77 (E) a depository institution;
- 78 (F) a trust company;
- 79 (G) an insurance company;
- 80 (H) an employee benefit plan with assets of not less than \$1,000,000; or
- 81 (I) a governmental agency or instrumentality; or
- 82 (ii) other institutional investors as are designated by rule or order of the director; or
- 83 (c) the person:
- 84 (i) (A) is licensed in another state as an investment adviser or an investment adviser
- 85 representative; or
- 86 (B) is exempt from licensing under Section 222(d) of the Investment Advisers Act of
- 87 1940;
- 88 (ii) has no place of business in this state; and
- 89 (iii) during the preceding 12-month period has had not more than five clients, other

90 than those specified in Subsection (3)(b), who are residents of this state.

91 (4) It is unlawful for a person to hold ~~the person~~ oneself out as a provider of
 91a investment advice

92 or as a provider of investment advisory services or otherwise represent that the person is a
 93 financial planner, financial adviser, financial consultant, or holds any other similar title as the
 94 division may specify in rule made in accordance with Title 63G, Chapter 3, Utah
 95 Administrative Rulemaking Act, in any way as to imply that the person is generally engaged in
 96 an investment advisory business, unless:

97 (a) the person is a federal covered adviser; ~~the person~~ ~~or~~

98 (b) it is lawful for the person to transact business in this state as an investment adviser
 99 or as an investment adviser representative under Subsection (3) ~~the person~~ ~~or~~

99a (c) the person:

99b (i) is not an investment adviser or an investment adviser representative; and

99c (ii) is otherwise licensed under this chapter to transact business in the state. ~~the person~~

100 ~~(4)~~ (5) (a) It is unlawful for:

101 (i) a person required to be licensed as an investment adviser under this chapter to
 102 employ an investment adviser representative unless the investment adviser representative is
 103 licensed under this chapter, except that the license of an investment adviser representative is
 104 not effective during any period when the person is not employed by an investment adviser
 105 licensed under this chapter;

106 (ii) a federal covered adviser to employ, supervise, or associate with an investment
 107 adviser representative having a place of business located in this state, unless the investment
 108 adviser representative is:

109 (A) licensed under this chapter; or

110 (B) exempt from licensing; or

111 (iii) an investment adviser, directly or indirectly, to employ or associate with an
 112 individual to engage in an activity related to providing investment advice in this state if:

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

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

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

117 (I) under this chapter;

118 (II) of the Securities and Exchange Commission;

119 (III) a self-regulatory organization; or

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

121 (b) (i) An investment adviser does not violate Subsection [~~(4)(a)(iii)~~] (5)(a)(iii) if the
122 investment adviser did not know, and in the exercise of reasonable care could not have known,
123 of the suspension, revocation, or bar.

124 (ii) An order under this chapter may waive, in whole or in part, the application of
125 Subsection [~~(4)(a)(iii)~~] (5)(a)(iii) to an investment adviser.

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

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

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

133 (ii) notifies the investment adviser representative of the division's approval of the
134 association.

135 [~~(5)~~] (6) Except with respect to an investment adviser whose only clients are those
136 described under Subsections (3)(b) or (3)(c)(iii), it is unlawful for a federal covered adviser to
137 conduct advisory business in this state unless the person complies with Section 61-1-4.

138 Section 2. Section **61-1-13** is amended to read:

139 **61-1-13. Definitions.**

140 (1) As used in this chapter:

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

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

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

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

150 (I) in securities exempted by Subsection 61-1-14(1)(a), (b), (c), or (g);

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

152 (III) in a covered security as described in Sections 18(b)(3) and 18(b)(4)~~(D)~~(F) of the
153 Securities Act of 1933; or

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

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

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

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

161 (c) (i) "Broker-dealer" means a person engaged in the business of effecting transactions
162 in securities for the account of others or for the person's own account.

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

164 (A) an agent;

165 (B) an issuer;

166 (C) a depository institution or trust company;

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

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

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

170 (Bb) other broker-dealers;

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

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

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

174 (Ff) an investment company, as defined in the Investment Company Act of 1940,

175 whether acting for itself or as a trustee;

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

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

179 (II) during any period of 12 consecutive months the person does not direct more than
180 15 offers to sell or buy into this state in any manner to persons other than those specified in
181 Subsection (1)(c)(ii)(D)(I), whether or not the offeror or an offeree is then present in this state;

182 (E) a general partner who organizes and effects transactions in securities of three or

183 fewer limited partnerships, of which the person is the general partner, in any period of 12
184 consecutive months;

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

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

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

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

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

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

198 (e) "Commission" means the Securities Commission created in Section [61-1-18.5](#).

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

200 (i) an agricultural, grain, or livestock product or byproduct, except real property or a
201 timber, agricultural, or livestock product grown or raised on real property and offered or sold
202 by the owner or lessee of the real property;

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

205 (iii) a gem or gemstone, whether characterized as precious, semi-precious, or
206 otherwise;

207 (iv) a fuel, whether liquid, gaseous, or otherwise;

208 (v) a foreign currency; and

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

212 (g) (i) "Commodity contract" means an account, agreement, or contract for the
213 purchase or sale, primarily for speculation or investment purposes and not for use or

214 consumption by the offeree or purchaser, of one or more commodities, whether for immediate
215 or subsequent delivery or whether delivery is intended by the parties, and whether characterized
216 as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures
217 contract, installment or margin contract, leverage contract, or otherwise.

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

220 (iii) (A) A commodity contract may not include a contract or agreement that requires,
221 and under which the purchaser receives, within 28 calendar days from the payment in good
222 funds any portion of the purchase price, physical delivery of the total amount of each
223 commodity to be purchased under the contract or agreement.

224 (B) A purchaser is not considered to have received physical delivery of the total
225 amount of each commodity to be purchased under the contract or agreement when the
226 commodity or commodities are held as collateral for a loan or are subject to a lien of any
227 person when the loan or lien arises in connection with the purchase of each commodity or
228 commodities.

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

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

235 (A) with the Securities and Exchange Commission; or

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

238 (i) "Depository institution" means the same as that term is defined in Section 7-1-103.

239 (j) "Director" means the director of the division appointed in accordance with Section
240 61-1-18.

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

242 (l) "Executive director" means the executive director of the Department of Commerce.

243 (m) "Federal covered adviser" means a person who:

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

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

247 (n) "Federal covered security" means a security that is a covered security under Section
248 18(b) of the Securities Act of 1933 or rules or regulations promulgated under Section 18(b) of
249 the Securities Act of 1933.

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

251 (p) "Guaranteed" means guaranteed as to payment of principal or interest as to debt
252 securities, or dividends as to equity securities.

253 (q) (i) "Investment adviser" means a person who:

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

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

259 (ii) "Investment adviser" includes a financial planner or other person who:

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

263 (B) holds the person out as providing the investment advisory services described in
264 Subsection (1)(q)(i) to others [~~for compensation.]; or~~

265 (C) holds the person out as a financial adviser, financial consultant, or any other similar
266 title as the division may specify in rule made in accordance with Title 63G, Chapter 3, Utah
267 Administrative Rulemaking Act, in any way as to imply that the person is generally engaged in
268 an investment advisory business, including a person who does not hold a securities license and
269 uses a title described in this Subsection (1)(q)(ii)(C) in any advertising or marketing material.

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

271 (A) an investment adviser representative;

272 (B) a depository institution or trust company;

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

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

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

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

282 (F) a person who is a federal covered adviser;

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

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

286 (r) (i) "Investment adviser representative" means a partner, officer, director of, or a
287 person occupying a similar status or performing similar functions, or other individual, except
288 clerical or ministerial personnel, who:

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

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

293 (B) does any of the following:

294 (I) makes a recommendation or otherwise renders advice regarding securities;

295 (II) manages accounts or portfolios of clients;

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

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

298 or

299 (V) supervises employees who perform any of the acts described in this Subsection
300 (1)(r)(i)(B).

301 (ii) "Investment adviser representative" does not include a person described in
302 Subsection (3).

303 (s) "Investment contract" includes:

304 (i) an investment in a common enterprise with the expectation of profit to be derived
305 through the essential managerial efforts of someone other than the investor; or

306 (ii) an investment by which:

- 307 (A) an offeree furnishes initial value to an offerer;
- 308 (B) a portion of the initial value is subjected to the risks of the enterprise;
- 309 (C) the furnishing of the initial value is induced by the offerer's promises or
310 representations that give rise to a reasonable understanding that a valuable benefit of some kind
311 over and above the initial value will accrue to the offeree as a result of the operation of the
312 enterprise; and
- 313 (D) the offeree does not receive the right to exercise practical and actual control over
314 the managerial decisions of the enterprise.
- 315 (t) "Isolated transaction" means not more than a total of two transactions that occur
316 anywhere during six consecutive months.
- 317 (u) (i) "Issuer" means a person who issues or proposes to issue a security or has
318 outstanding a security that it has issued.
- 319 (ii) With respect to a preorganization certificate or subscription, "issuer" means the one
320 or more promoters of the person to be organized.
- 321 (iii) "Issuer" means the one or more persons performing the acts and assuming duties
322 of a depositor or manager under the provisions of the trust or other agreement or instrument
323 under which the security is issued with respect to:
- 324 (A) interests in trusts, including collateral trust certificates, voting trust certificates, and
325 certificates of deposit for securities; or
- 326 (B) shares in an investment company without a board of directors.
- 327 (iv) With respect to an equipment trust certificate, a conditional sales contract, or
328 similar securities serving the same purpose, "issuer" means the person by whom the equipment
329 or property is to be used.
- 330 (v) With respect to interests in partnerships, general or limited, "issuer" means the
331 partnership itself and not the general partner or partners.
- 332 (vi) With respect to certificates of interest or participation in oil, gas, or mining titles or
333 leases or in payment out of production under the titles or leases, "issuer" means the owner of
334 the title or lease or right of production, whether whole or fractional, who creates fractional
335 interests therein for the purpose of sale.
- 336 (v) (i) "Life settlement interest" means the entire interest or a fractional interest in any
337 of the following that is the subject of a life settlement:

- 338 (A) a policy; or
- 339 (B) the death benefit under a policy.
- 340 (ii) "Life settlement interest" does not include the initial purchase from the owner by a
- 341 life settlement provider.
- 342 (w) "Nonissuer" means not directly or indirectly for the benefit of the issuer.
- 343 (x) "Person" means:
- 344 (i) an individual;
- 345 (ii) a corporation;
- 346 (iii) a partnership;
- 347 (iv) a limited liability company;
- 348 (v) an association;
- 349 (vi) a joint-stock company;
- 350 (vii) a joint venture;
- 351 (viii) a trust where the interests of the beneficiaries are evidenced by a security;
- 352 (ix) an unincorporated organization;
- 353 (x) a government; or
- 354 (xi) a political subdivision of a government.
- 355 (y) "Precious metal" means the following, whether in coin, bullion, or other form:
- 356 (i) silver;
- 357 (ii) gold;
- 358 (iii) platinum;
- 359 (iv) palladium;
- 360 (v) copper; and
- 361 (vi) such other substances as the division may specify by rule.
- 362 (z) "Promoter" means a person who, acting alone or in concert with one or more
- 363 persons, takes initiative in founding or organizing the business or enterprise of a person.
- 364 (aa) (i) Except as provided in Subsection (1)(aa)(ii), "record" means information that
- 365 is:
- 366 (A) inscribed in a tangible medium; or
- 367 (B) (I) stored in an electronic or other medium; and
- 368 (II) retrievable in perceivable form.

- 369 (ii) This Subsection (1)(aa) does not apply when the context requires otherwise,
370 including when "record" is used in the following phrases:
- 371 (A) "of record";
372 (B) "official record"; or
373 (C) "public record."
- 374 (bb) (i) "Sale" or "sell" includes a contract for sale of, contract to sell, or disposition of,
375 a security or interest in a security for value.
- 376 (ii) "Offer" or "offer to sell" includes an attempt or offer to dispose of, or solicitation of
377 an offer to buy, a security or interest in a security for value.
- 378 (iii) The following are examples of the definitions in Subsection (1)(bb)(i) or (ii):
- 379 (A) a security given or delivered with or as a bonus on account of a purchase of a
380 security or any other thing, is part of the subject of the purchase, and is offered and sold for
381 value;
- 382 (B) a purported gift of assessable stock is an offer or sale as is each assessment levied
383 on the stock;
- 384 (C) an offer or sale of a security that is convertible into, or entitles its holder to acquire
385 or subscribe to another security of the same or another issuer is an offer or sale of that security,
386 and also an offer of the other security, whether the right to convert or acquire is exercisable
387 immediately or in the future;
- 388 (D) a conversion or exchange of one security for another constitutes an offer or sale of
389 the security received in a conversion or exchange, and the offer to buy or the purchase of the
390 security converted or exchanged;
- 391 (E) securities distributed as a dividend wherein the person receiving the dividend
392 surrenders the right, or the alternative right, to receive a cash or property dividend is an offer or
393 sale;
- 394 (F) a dividend of a security of another issuer is an offer or sale; or
- 395 (G) the issuance of a security under a merger, consolidation, reorganization,
396 recapitalization, reclassification, or acquisition of assets constitutes the offer or sale of the
397 security issued as well as the offer to buy or the purchase of a security surrendered in
398 connection therewith, unless the sole purpose of the transaction is to change the issuer's
399 domicile.

- 400 (iv) The terms defined in Subsections (1)(bb)(i) and (ii) do not include:
- 401 (A) a good faith gift;
- 402 (B) a transfer by death;
- 403 (C) a transfer by termination of a trust or of a beneficial interest in a trust;
- 404 (D) a security dividend not within Subsection (1)(bb)(iii)(E) or (F); or
- 405 (E) a securities split or reverse split.
- 406 (cc) "Securities Act of 1933," "Securities Exchange Act of 1934," and "Investment
- 407 Company Act of 1940" mean the federal statutes of those names as amended before or after the
- 408 effective date of this chapter.
- 409 (dd) "Securities Exchange Commission" means the United States Securities Exchange
- 410 Commission created by the Securities Exchange Act of 1934.
- 411 (ee) (i) "Security" means a:
- 412 (A) note;
- 413 (B) stock;
- 414 (C) treasury stock;
- 415 (D) bond;
- 416 (E) debenture;
- 417 (F) evidence of indebtedness;
- 418 (G) certificate of interest or participation in a profit-sharing agreement;
- 419 (H) collateral-trust certificate;
- 420 (I) preorganization certificate or subscription;
- 421 (J) transferable share;
- 422 (K) investment contract;
- 423 (L) burial certificate or burial contract;
- 424 (M) voting-trust certificate;
- 425 (N) certificate of deposit for a security;
- 426 (O) certificate of interest or participation in an oil, gas, or mining title or lease or in
- 427 payments out of production under such a title or lease;
- 428 (P) commodity contract or commodity option;
- 429 (Q) interest in a limited liability company;
- 430 (R) life settlement interest; or

431 (S) in general, an interest or instrument commonly known as a "security," or a
432 certificate of interest or participation in, temporary or interim certificate for, receipt for,
433 guarantee of, or warrant or right to subscribe to or purchase an item listed in Subsections
434 (1)(ee)(i)(A) through (R).

435 (ii) "Security" does not include:

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

439 (B) an interest in a limited liability company in which the limited liability company is
440 formed as part of an estate plan where all of the members are related by blood or marriage, or
441 the person claiming this exception can prove that all of the members are actively engaged in the
442 management of the limited liability company; or

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

444 (II) an undivided fractionalized long-term estate in real property that consists of 10 or
445 fewer owners; or

446 (III) an undivided fractionalized long-term estate in real property that consists of more
447 than 10 owners if, when the real property estate is subject to a management agreement:

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

452 (Bb) the management agreement prohibits, directly or indirectly, the lending of the
453 proceeds earned from the real property estate or the use or pledge of its assets to a person or
454 entity affiliated with or under common control of the manager.

455 (iii) For purposes of Subsection (1)(ee)(ii)(B), evidence that members vote or have the
456 right to vote, or the right to information concerning the business and affairs of the limited
457 liability company, or the right to participate in management, may not establish, without more,
458 that all members are actively engaged in the management of the limited liability company.

459 (ff) "State" means a state, territory, or possession of the United States, the District of
460 Columbia, and Puerto Rico.

461 (gg) (i) "Undivided fractionalized long-term estate" means the same as that term is

462 defined in Section [57-29-102](#).

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

464 (hh) "Undue influence" means that a person uses a relationship or position of authority,
465 trust, or confidence:

466 (i) that is unrelated to a relationship created:

467 (A) in the ordinary course of making investments regulated under this chapter; or

468 (B) by a licensee providing services under this chapter;

469 (ii) that results in:

470 (A) an investor perceiving the person as having heightened credibility, personal
471 trustworthiness, or dependability; or

472 (B) the person having special access to or control of an investor's financial resources,
473 information, or circumstances; and

474 (iii) to:

475 (A) exploit the trust, dependence, or fear of the investor;

476 (B) knowingly assist or cause another to exploit the trust, dependence, or fear of the
477 investor; or

478 (C) gain control deceptively over the decision making of the investor.

479 (ii) "Vulnerable adult" means [~~an individual whose age or mental or physical~~
480 ~~impairment substantially affects that individual's ability to: (i) manage the individual's~~
481 ~~resources; or (ii) comprehend the nature and consequences of making an investment decision]~~
482 the same as that term is defined in Section [62A-3-301](#).

483 (jj) "Whole long-term estate" means a person owns or persons through joint tenancy
484 own real property through a fee estate.

485 (kk) "Working days" means 8 a.m. to 5 p.m., Monday through Friday, exclusive of
486 legal holidays listed in Section [63G-1-301](#).

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

490 (3) (a) This Subsection (3) applies to the offer or sale of a real property estate
491 exempted from the definition of security under Subsection (1)(ee)(ii)(C).

492 (b) A person who, directly or indirectly receives compensation in connection with the

493 offer or sale as provided in this Subsection (3) of a real property estate is not an agent,
494 broker-dealer, investment adviser, or investment adviser representative under this chapter if
495 that person is licensed under Chapter 2f, Real Estate Licensing and Practices Act, as:

496 (i) a principal broker;

497 (ii) an associate broker; or

498 (iii) a sales agent.

499 Section 3. Section **61-1-15.5** is amended to read:

500 **61-1-15.5. Federal covered securities.**

501 (1) The division by rule or order may require the filing of any of the following
502 documents with respect to a covered security under Section 18(b)(2) of the Securities Act of
503 1933:

504 (a) before the initial offer of federal covered security in this state, a notice form as
505 prescribed by the division or all documents that are part of a federal registration statement filed
506 with the Securities and Exchange Commission under the Securities Act of 1933, together with
507 a consent to service of process signed by the issuer and a filing fee as determined under Section
508 [61-1-18.4](#);

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

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

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

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

523 (3) The division by rule or order may require the filing of a document filed with the

524 Securities and Exchange Commission under the Securities Act of 1933, with respect to a
525 covered security under Securities Act of 1933, Section 18(b)(3) or (4), together with a filing fee
526 as determined under Section 61-1-18.4.

527 (4) With the concurrence of the commission, the director, by means of an adjudicative
528 proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act,
529 may issue a stop order suspending the offer and sale of a federal covered security, except a
530 covered security under Section 18(b)(1) of the Securities Act of 1933, if the director finds that
531 the order is in the public interest and there is a failure to comply with any condition established
532 under this section.

533 (5) The division by rule or order may waive any or all of the provisions of this section.
534 Section 4. Section 61-1-31 is amended to read:

535 **61-1-31. Determining amount of fine.**

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

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

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

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

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

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

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

547 (5) the need to deter the person or other persons from committing the violation in the
548 future;

549 (6) whether the person exercised undue influence;

550 (7) whether the person knew or should have known that the investor was a vulnerable
551 adult; ~~and~~

552 (8) any direct or indirect compensation or economic benefit the person committing the
553 violation received; and

554 ~~(8)~~ (9) such other matters as justice may require.