

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.

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

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 oneself out as a provider of investment advice or
92 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;

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); or

100 (c) the person:

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

102 (ii) is otherwise licensed under this chapter to transact business in the state.

103 [~~4~~] (5) (a) It is unlawful for:

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

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

112 (A) licensed under this chapter; or

113 (B) exempt from licensing; or

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

116 (A) (I) the license of the individual is suspended or revoked; or
117 (II) the individual is barred from employment or association with a state or federal
118 covered investment adviser, broker-dealer, or issuer; and

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

120 (I) under this chapter;
121 (II) of the Securities and Exchange Commission;
122 (III) a self-regulatory organization; or
123 (IV) a securities administrator of a state other than Utah.

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

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

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

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

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

136 (ii) notifies the investment adviser representative of the division's approval of the
137 association.

138 [~~(5)~~] (6) Except with respect to an investment adviser whose only clients are those
139 described under Subsections (3)(b) or (3)(c)(iii), it is unlawful for a federal covered adviser to
140 conduct advisory business in this state unless the person complies with Section [61-1-4](#).

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

142 **61-1-13. Definitions.**

143 (1) As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

167 (A) an agent;

168 (B) an issuer;

169 (C) a depository institution or trust company;

- 170 (D) a person who has no place of business in this state if:
- 171 (I) the person effects transactions in this state exclusively with or through:
- 172 (Aa) the issuers of the securities involved in the transactions;
- 173 (Bb) other broker-dealers;
- 174 (Cc) a depository institution, whether acting for itself or as a trustee;
- 175 (Dd) a trust company, whether acting for itself or as a trustee;
- 176 (Ee) an insurance company, whether acting for itself or as a trustee;
- 177 (Ff) an investment company, as defined in the Investment Company Act of 1940,
- 178 whether acting for itself or as a trustee;
- 179 (Gg) a pension or profit-sharing trust, whether acting for itself or as a trustee; or
- 180 (Hh) another financial institution or institutional buyer, whether acting for itself or as a
- 181 trustee; or
- 182 (II) during any period of 12 consecutive months the person does not direct more than
- 183 15 offers to sell or buy into this state in any manner to persons other than those specified in
- 184 Subsection (1)(c)(ii)(D)(I), whether or not the offeror or an offeree is then present in this state;
- 185 (E) a general partner who organizes and effects transactions in securities of three or
- 186 fewer limited partnerships, of which the person is the general partner, in any period of 12
- 187 consecutive months;
- 188 (F) a person whose participation in transactions in securities is confined to those
- 189 transactions made by or through a broker-dealer licensed in this state;
- 190 (G) a person who is a principal broker or associate broker licensed in this state and
- 191 who effects transactions in a bond or other evidence of indebtedness secured by a real or chattel
- 192 mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire
- 193 mortgage, deed of trust, or agreement, together with all the bonds or other evidences of
- 194 indebtedness secured thereby, is offered and sold as a unit;
- 195 (H) a person effecting transactions in commodity contracts or commodity options;
- 196 (I) a person described in Subsection (3); or
- 197 (J) other persons as the division, by rule or order, may designate, consistent with the

198 public interest and protection of investors, as not within the intent of this Subsection (1)(c).

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

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

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

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

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

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

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

211 (v) a foreign currency; and

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

215 (g) (i) "Commodity contract" means an account, agreement, or contract for the
216 purchase or sale, primarily for speculation or investment purposes and not for use or
217 consumption by the offeree or purchaser, of one or more commodities, whether for immediate
218 or subsequent delivery or whether delivery is intended by the parties, and whether characterized
219 as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures
220 contract, installment or margin contract, leverage contract, or otherwise.

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

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

226 commodity to be purchased under the contract or agreement.

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

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

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

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

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

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

242 (j) "Director" means the director of the division appointed in accordance with Section
243 61-1-18.

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

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

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

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

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

250 (n) "Federal covered security" means a security that is a covered security under Section
251 18(b) of the Securities Act of 1933 or rules or regulations promulgated under Section 18(b) of
252 the Securities Act of 1933.

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

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

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

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

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

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

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

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

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

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

274 (A) an investment adviser representative;

275 (B) a depository institution or trust company;

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

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

281 (E) a publisher of a bona fide newspaper, news column, news letter, news magazine, or

282 business or financial publication or service, of general, regular, and paid circulation, whether
283 communicated in hard copy form, or by electronic means, or otherwise, that does not consist of
284 the rendering of advice on the basis of the specific investment situation of each client;

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

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

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

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

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

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

296 (B) does any of the following:

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

298 (II) manages accounts or portfolios of clients;

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

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

301 or

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

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

306 (s) "Investment contract" includes:

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

309 (ii) an investment by which:

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

338 interests therein for the purpose of sale.

339 (v) (i) "Life settlement interest" means the entire interest or a fractional interest in any
340 of the following that is the subject of a life settlement:

341 (A) a policy; or

342 (B) the death benefit under a policy.

343 (ii) "Life settlement interest" does not include the initial purchase from the owner by a
344 life settlement provider.

345 (w) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

346 (x) "Person" means:

347 (i) an individual;

348 (ii) a corporation;

349 (iii) a partnership;

350 (iv) a limited liability company;

351 (v) an association;

352 (vi) a joint-stock company;

353 (vii) a joint venture;

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

355 (ix) an unincorporated organization;

356 (x) a government; or

357 (xi) a political subdivision of a government.

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

359 (i) silver;

360 (ii) gold;

361 (iii) platinum;

362 (iv) palladium;

363 (v) copper; and

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

365 (z) "Promoter" means a person who, acting alone or in concert with one or more

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

367 (aa) (i) Except as provided in Subsection (1)(aa)(ii), "record" means information that
368 is:

369 (A) inscribed in a tangible medium; or

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

371 (II) retrievable in perceivable form.

372 (ii) This Subsection (1)(aa) does not apply when the context requires otherwise,
373 including when "record" is used in the following phrases:

374 (A) "of record";

375 (B) "official record"; or

376 (C) "public record."

377 (bb) (i) "Sale" or "sell" includes a contract for sale of, contract to sell, or disposition of,
378 a security or interest in a security for value.

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

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

382 (A) a security given or delivered with or as a bonus on account of a purchase of a
383 security or any other thing, is part of the subject of the purchase, and is offered and sold for
384 value;

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

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

391 (D) a conversion or exchange of one security for another constitutes an offer or sale of
392 the security received in a conversion or exchange, and the offer to buy or the purchase of the
393 security converted or exchanged;

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

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

398 (G) the issuance of a security under a merger, consolidation, reorganization,
399 recapitalization, reclassification, or acquisition of assets constitutes the offer or sale of the
400 security issued as well as the offer to buy or the purchase of a security surrendered in
401 connection therewith, unless the sole purpose of the transaction is to change the issuer's
402 domicile.

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

404 (A) a good faith gift;

405 (B) a transfer by death;

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

407 (D) a security dividend not within Subsection (1)(bb)(iii)(E) or (F); or

408 (E) a securities split or reverse split.

409 (cc) "Securities Act of 1933," "Securities Exchange Act of 1934," and "Investment
410 Company Act of 1940" mean the federal statutes of those names as amended before or after the
411 effective date of this chapter.

412 (dd) "Securities Exchange Commission" means the United States Securities Exchange
413 Commission created by the Securities Exchange Act of 1934.

414 (ee) (i) "Security" means a:

415 (A) note;

416 (B) stock;

417 (C) treasury stock;

418 (D) bond;

419 (E) debenture;

420 (F) evidence of indebtedness;

421 (G) certificate of interest or participation in a profit-sharing agreement;

- 422 (H) collateral-trust certificate;
- 423 (I) preorganization certificate or subscription;
- 424 (J) transferable share;
- 425 (K) investment contract;
- 426 (L) burial certificate or burial contract;
- 427 (M) voting-trust certificate;
- 428 (N) certificate of deposit for a security;
- 429 (O) certificate of interest or participation in an oil, gas, or mining title or lease or in
- 430 payments out of production under such a title or lease;
- 431 (P) commodity contract or commodity option;
- 432 (Q) interest in a limited liability company;
- 433 (R) life settlement interest; or
- 434 (S) in general, an interest or instrument commonly known as a "security," or a
- 435 certificate of interest or participation in, temporary or interim certificate for, receipt for,
- 436 guarantee of, or warrant or right to subscribe to or purchase an item listed in Subsections
- 437 (1)(ee)(i)(A) through (R).
- 438 (ii) "Security" does not include:
- 439 (A) an insurance or endowment policy or annuity contract under which an insurance
- 440 company promises to pay money in a lump sum or periodically for life or some other specified
- 441 period;
- 442 (B) an interest in a limited liability company in which the limited liability company is
- 443 formed as part of an estate plan where all of the members are related by blood or marriage, or
- 444 the person claiming this exception can prove that all of the members are actively engaged in the
- 445 management of the limited liability company; or
- 446 (C) (I) a whole long-term estate in real property;
- 447 (II) an undivided fractionalized long-term estate in real property that consists of 10 or
- 448 fewer owners; or
- 449 (III) an undivided fractionalized long-term estate in real property that consists of more

450 than 10 owners if, when the real property estate is subject to a management agreement:

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

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

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

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

464 (gg) (i) "Undivided fractionalized long-term estate" means the same as that term is
465 defined in Section [57-29-102](#).

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

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

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

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

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

472 (ii) that results in:

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

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

477 (iii) to:

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

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

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

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

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

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

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

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

495 (b) A person who, directly or indirectly receives compensation in connection with the
496 offer or sale as provided in this Subsection (3) of a real property estate is not an agent,
497 broker-dealer, investment adviser, or investment adviser representative under this chapter if
498 that person is licensed under Chapter 2f, Real Estate Licensing and Practices Act, as:

499 (i) a principal broker;

500 (ii) an associate broker; or

501 (iii) a sales agent.

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

503 **61-1-15.5. Federal covered securities.**

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

506 1933:

507 (a) before the initial offer of federal covered security in this state, a notice form as
508 prescribed by the division or all documents that are part of a federal registration statement filed
509 with the Securities and Exchange Commission under the Securities Act of 1933, together with
510 a consent to service of process signed by the issuer and a filing fee as determined under Section
511 61-1-18.4;

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

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

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

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

526 (3) The division by rule or order may require the filing of a document filed with the
527 Securities and Exchange Commission under the Securities Act of 1933, with respect to a
528 covered security under Securities Act of 1933, Section 18(b)(3) or (4), together with a filing fee
529 as determined under Section 61-1-18.4.

530 (4) With the concurrence of the commission, the director, by means of an adjudicative
531 proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act,
532 may issue a stop order suspending the offer and sale of a federal covered security, except a
533 covered security under Section 18(b)(1) of the Securities Act of 1933, if the director finds that

534 the order is in the public interest and there is a failure to comply with any condition established
535 under this section.

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

537 Section 4. Section **61-1-31** is amended to read:

538 **61-1-31. Determining amount of fine.**

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

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

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

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

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

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

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

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

552 (6) whether the person exercised undue influence;

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

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

557 ~~[(8)]~~ (9) such other matters as justice may require.