

SECURITIES AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael K. McKell

Senate Sponsor: _____

LONG TITLE**General Description:**

This bill amends the Utah Uniform Securities Act regarding

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

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

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

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

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

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

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

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

~~[(ii)]~~ (B) a particular issuer.

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

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

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

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

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

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

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

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

(I) under this chapter;

(II) of the Securities and Exchange Commission;

(III) of a self-regulatory organization; or

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

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

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

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

(a) the person is licensed under this chapter;

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

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

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

(B) another investment adviser;

(C) a federal covered adviser;

(D) a broker-dealer;

(E) a depository institution;

(F) a trust company;

(G) an insurance company;

(H) an employee benefit plan with assets of not less than \$1,000,000; or

(I) a governmental agency or instrumentality; or

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

(c) the person:

(i) (A) is licensed in another state as an investment adviser or an investment adviser representative; or

(B) is exempt from licensing under Section 222(d) of the Investment Advisers Act of 1940;

(ii) has no place of business in this state; and

(iii) during the preceding 12-month period has had not more than five clients, other

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

(4) It is unlawful for a person to hold the person out as a provider of investment advice or as a provider of investment advisory services or otherwise represent that the person is a financial planner, financial adviser, financial consultant, or holds any other similar title as the division may specify in rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, in any way as to imply that the person is generally engaged in an investment advisory business, unless:

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

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

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

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

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

(A) licensed under this chapter; or

(B) exempt from licensing; or

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

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

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

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

(I) under this chapter;

(II) of the Securities and Exchange Commission;

(III) a self-regulatory organization; or

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

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

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

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

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

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

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

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

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

61-1-13. Definitions.

(1) As used in this chapter:

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

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

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

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

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

(II) exempted by Subsection [61-1-14](#)(2);

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

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

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

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

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

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

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

(A) an agent;

(B) an issuer;

(C) a depository institution or trust company;

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

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

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

(Bb) other broker-dealers;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) a foreign currency; and

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

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

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

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

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

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

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

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

(A) with the Securities and Exchange Commission; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) "Investment adviser" does not include:

(A) an investment adviser representative;

(B) a depository institution or trust company;

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

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

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

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

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

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

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

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

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

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

(B) does any of the following:

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

(II) manages accounts or portfolios of clients;

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

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

or

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

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

(s) "Investment contract" includes:

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

(ii) an investment by which:

(A) an offeree furnishes initial value to an offerer;

(B) a portion of the initial value is subjected to the risks of the enterprise;

(C) the furnishing of the initial value is induced by the offerer's promises or representations that give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise; and

(D) the offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.

(t) "Isolated transaction" means not more than a total of two transactions that occur anywhere during six consecutive months.

(u) (i) "Issuer" means a person who issues or proposes to issue a security or has outstanding a security that it has issued.

(ii) With respect to a preorganization certificate or subscription, "issuer" means the one or more promoters of the person to be organized.

(iii) "Issuer" means the one or more persons performing the acts and assuming duties of a depositor or manager under the provisions of the trust or other agreement or instrument under which the security is issued with respect to:

(A) interests in trusts, including collateral trust certificates, voting trust certificates, and certificates of deposit for securities; or

(B) shares in an investment company without a board of directors.

(iv) With respect to an equipment trust certificate, a conditional sales contract, or similar securities serving the same purpose, "issuer" means the person by whom the equipment or property is to be used.

(v) With respect to interests in partnerships, general or limited, "issuer" means the partnership itself and not the general partner or partners.

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

(v) (i) "Life settlement interest" means the entire interest or a fractional interest in any 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.

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

(A) "of record";

(B) "official record"; or

(C) "public record."

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

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

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

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

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

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

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

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

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

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

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

(ii) "Security" does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) that is unrelated to a relationship created:

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

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

(ii) that results in:

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

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

(iii) to:

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

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

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

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

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

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

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

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

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

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

- (i) a principal broker;
- (ii) an associate broker; or
- (iii) a sales agent.

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

61-1-15.5. Federal covered securities.

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

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

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

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

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

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

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

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

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

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

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

61-1-31. Determining amount of fine.

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

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

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

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

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

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

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

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

(6) whether the person exercised undue influence;

(7) whether the person knew or should have known that the investor was a vulnerable adult; [and]

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

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