

**51-3.5 Notice of Intention to Sell in Reliance on Investment Company Exemption under Section 11-51-307(1)(k), C.R.S.**

Notice of intention to sell in reliance on the exemption for securities of qualifying investment companies under section 11-51-307(1)(k), C.R.S., and for subsequent claims of exemption, shall be made by filing Form NF (Uniform Investment Company Notice Filing Form), and the appropriate fee with the Securities Commissioner. A claim of exemption and any amendments filed electronically with an approved designee shall be deemed filed with the Securities Commissioner.

**51-3.7 Notification of Exemption under Section 11-51-308(1)(p), C.R.S., for Certain Securities or Transactions Exempt from Registration under the 33 Act**

- A. The notification of exemption required under section 11-51-308(1)(p), C.R.S., is made by filing with the Securities Commissioner, or his or her designee, a paper copy, or electronic copy if electronic filing is permitted, of the forms which must be filed with the SEC pursuant to rules and regulations promulgated under the 33 Act in connection with reliance on a securities or transactional exemption from registration created by said rules or regulations under the 33 Act relevant to the Colorado exemption, and by paying a filing fee.
- B. The required filings must be made with the Securities Commissioner no later than the time when such filings in connection with the federal exemption would have to be made with the SEC.
- C. An issuer may file an amendment to a previously filed notice of sales on Form D at any time.
- D. An issuer must file an amendment to a previously filed notice of sales on Form D for an offering:
  - 1. To correct a material mistake of fact or error in the previously filed notice of sales on Form D, as soon as practicable after discovery of the mistake or error;
  - 2. To reflect a change in the information provided in the previously filed notice of sales on Form D, as soon as practicable after the change, except that no amendment is required to reflect a change that occurs after the offering terminates or a change that occurs solely in the following information:
    - a. The address or relationship of the issuer of a related person identified in response to Item 3 of the notice of sales on Form D;
    - b. An issuer's revenues or aggregate net asset value;
    - c. The minimum investment amount, if the change is an increase, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in a decrease of more than ten percent;
    - d. Any address or state(s) of solicitation shown in response to Item 12 of the notice of sales on Form D;
    - e. The total offering amount, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than ten percent;
    - f. The amount of securities sold in the offering or the amount remaining to be sold;

- g. The number of non-accredited investors who have invested in the offering, as long as the change does not increase the number to more than thirty-five;
  - h. The total number of investors who have invested in the offering;
  - i. The amount of sales commissions, or use of proceeds for payment to executive officers, directors or promoters, if the change is a decrease, or if the change, together with all the other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than ten percent; and
  - j. Annually, on or before the first anniversary of the filing of the notice of sales on Form D or the filing of the most recent amendment to the notice of sales on Form D, if the offering is continuing at that time.
3. An issuer that files an amendment to a previously filed notice of sales on Form D must provide current information in response to all requirements of the notice of sales on Form D regardless of why the amendment is filed.

#### **51-4.7 Unfair and Dishonest Dealings**

**The following practices shall be deemed to be “unfair and dishonest dealings” for purposes of section 11-51-410(1)(g), C.R.S.:**

H.

- 1. The use of a senior specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be a dishonest and unethical practice in the securities, commodities, and investment business within the meaning of the Colorado Securities Act. The prohibited use of such certifications or professional designation includes, but is not limited to, the following:
  - a. use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;
  - b. use of a nonexistent or self-conferred certification or professional designation;
  - c. use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and
  - d. use of a certification or professional designation that was obtained from a designating or certifying organization that:
    - (1) is primarily engaged in the business of instruction in sales and/or marketing;

- (2) does not have reasonable standards or procedures for assuring the competency of its designees or certificants;
  - (3) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or
  - (4) does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.
2. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of paragraph 1(d) above when the organization has been accredited by:
  - (1) The American National Standards Institute; or
  - (2) The National Commission for Certifying Agencies; or
  - (3) an organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.
3. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:
  - a. use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and
  - b. the manner in which those words are combined.
4. For purposes of this rule, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:
  - a. indicates seniority or standing within the organization; or
  - b. specifies an individual's area of specialization within the organization

For purposes of this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.
5. Nothing in this rule shall limit the Securities Commissioner's authority to enforce existing provisions of law.

## Introduction

**A person who is an investment adviser or an investment adviser representative is a fiduciary and has a duty to act primarily for the benefit of its clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser and its clients and the circumstances of each case, an investment adviser or investment adviser representative shall not engage in dishonest or unethical conduct including the following:**

V.

1. The use of a senior specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be a dishonest and unethical practice in the securities, commodities, and investment business within the meaning of the Colorado Securities Act. The prohibited use of such certifications or professional designation includes, but is not limited to, the following:
  - a. use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;
  - b. use of a nonexistent or self-conferred certification or professional designation;
  - c. use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and
  - d. use of a certification or professional designation that was obtained from a designating or certifying organization that:
    - (1) is primarily engaged in the business of instruction in sales and/or marketing;
    - (2) does not have reasonable standards or procedures for assuring the competency of its designees or certificants;
    - (3) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or
    - (4) does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.
2. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of paragraph 1(d) above when the organization has been accredited by:
  - (1) The American National Standards Institute; or

- (2) The National Commission for Certifying Agencies; or
  - (3) an organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.
3. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:
  - a. use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and
  - b. the manner in which those words are combined.
4. For purposes of this rule, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:
  - a. indicates seniority or standing within the organization; or
  - b. specifies an individual's area of specialization within the organization

For purposes of this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.
5. Nothing in this rule shall limit the Securities Commissioner's authority to enforce existing provisions of law.