

ARTICLE 51
COLORADO SECURITIES ACT

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ARTICLE 51

COLORADO SECURITIES ACT

PART 1

SHORT TITLE, PURPOSE, AND SCOPE

11-51-101. Short title and purpose.

(1) This article shall be known and may be cited as the "Colorado Securities Act".

(2) The purposes of this article are to protect investors and maintain public confidence in securities markets while avoiding unreasonable burdens on participants in capital markets. This article is remedial in nature and is to be broadly construed to effectuate its purposes.

(3) The provisions of this article and rules made under this article shall be coordinated with the federal acts and statutes to which references are made in this article and rules and regulations promulgated under those federal acts and statutes, to the extent coordination is consistent with both the purposes and the provisions of this article.

11-51-102. Scope of article.

(1) Except as provided in subsection (7) of this section, sections 11-51-301, 11-51-401 (1) and (2), 11-51-501, and 11-51-503 apply to persons who sell or offer to sell when an offer to sell is made in this state or when an offer to purchase is made and accepted in this state.

(2) Sections 11-51-401 (1) and (2), 11-51-501, and 11-51-503 apply to persons who purchase or offer to purchase when an offer to purchase is made in this state or when an offer to sell is made and accepted in this state.

(3) For the purpose of this section, an offer to sell or to purchase is made in this state, whether or not either party is then present in this state, when the offer originates from this state or is directed by the offeror to this state and is received at the place to which it is directed or, in the case of a mailed offer, at any post office in this state.

(4) For the purpose of this section, an offer to purchase or to sell is accepted in this state when acceptance is communicated to the offeror in this state and has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror is to be in this state and it is received at the place to which it is directed or, in the case of a mailed acceptance, at any post office in this state.

(5) (a) For the purpose of subsections (1) to (4) of this section, an offer to sell or to purchase made in a newspaper or other publication of general, regular, and paid circulation is not made in this state if the publication:

(I) Is not published in this state; or

(II) Is published in this state, but has had more than two-thirds of its circulation outside this state during the past twelve months.

(b) For the purpose of this subsection (5), if a publication is published in editions, each edition is a separate publication except for material common to all editions.

(6) (a) For the purpose of subsections (1) to (4) of this section, an offer to sell or to purchase made in a radio or television broadcast or other publicly distributed electronic communication received in this state which originates outside this state is not made in this state. For the purpose of subsection (8) of this section, investment advisory services limited to holding oneself out as an investment adviser or financial planner or similar type of adviser or consultant, but not the transaction of any further business, in a radio or television broadcast or other publicly distributed electronic communication received in this state in a manner originating outside this state shall not be construed as investment advisory services provided in this state.

(b) For the purpose of this subsection (6), a radio or television broadcast or other publicly distributed electronic communication originates in this state if either the broadcast studio or the originating source of transmission is located in this state, unless:

(I) The broadcast or communication is syndicated and distributed from outside this state for redistribution to the general public in this state;

(II) The broadcast or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside this state for redistribution to the general public in this state;

(III) The broadcast or communication is an electronic signal that originates outside this state and is captured for redistribution to the general public in this state by a community antenna or cable, radio, cable television, or other electronic system; or

(IV) The broadcast or communication consists of an electronic signal that originates in this state, but which is not intended for redistribution to the general public in this state.

(7) Section 11-51-301 and section 11-51-604, to the extent such section relates to section 11-51-301, do not apply to any person with respect to a sale or offer to sell where the sale or offer to sell is directed to another person not located in this state, does not violate a securities registration requirement or its equivalent in the laws of the jurisdiction in which the other person is located, and is not made for the purpose of evading the provisions of this article.

(8) For purposes of section 11-51-401 (1.5), (1.6), and (2.5), "transacting business in this state" includes engaging in any of the activities enumerated in section 11-51-201 (9.5) (a) or holding oneself out as an investment adviser, financial planner, or similar type of adviser or consultant if such activities are engaged in, or the holding out occurs, within the state regardless of whether a person to whom services are provided or to whom such holding out is made is physically present within the state. "Transacting business in this state" also includes engaging in the services or so holding oneself out whenever a person to whom such services are provided or to whom such holding out is made is both a resident of, and physically present within, the state.

(9) Section 11-51-501 (2) and (3) apply if:

(a) Any of the proscribed conduct occurs within this state regardless of whether a client or prospective client is present within the state when such conduct occurs; or

(b) A client or prospective client is physically present within the state when any of the proscribed conduct occurs in this state.

PART 2 DEFINITIONS AND REFERENCES TO FEDERAL STATUTES AND RULES

11-51-201. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Bank" means a banking institution organized under the laws of the United States, a member bank of the federal reserve system, any other banking institution or trust company, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the comptroller of the currency, which is supervised and examined by a state or federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of the federal "Securities Act of 1933", and a receiver, conservator, or other liquidating agent of any institution or firm described in this subsection (1).

(2) "Broker-dealer" means a person engaged in the business of effecting purchases or sales of securities for the accounts of others or in the business of purchasing and selling securities for the person's own account. The term does not include the following:

(a) A sales representative;

(b) An issuer with respect to purchasing and selling the issuer's own securities;

(c) A bank; or

(d) Any other person or class of persons the securities commissioner designates by rule or order.

(3) "Central registration depository" means the computer registration system known as the central registration depository which is maintained by the national association of securities dealers and the states that participate in that system or any successor system.

(4) "Commodity futures trading commission" means the commission established by the federal "Commodity Exchange Act".

(5) "Depository institution" means:

(a) A person that is organized or chartered, or is doing business or holds an authorization certificate, under the laws of a state or of the United States which authorize the person to receive deposits, including deposits in savings, share, certificate, or other deposit accounts, and that is supervised and examined for the protection of depositors by an official or agency of a state or the United States; and

(b) A trust company or other institution that is authorized by federal or state law to exercise fiduciary powers of the type a national bank is permitted to exercise under the authority of the comptroller of the currency and is supervised and examined by an official or agency of a state or the United States. The term does not include an insurance company or other organization primarily engaged in the insurance business.

(5.5) (a) "Federal covered adviser" means a person who is registered or required to be registered under section 203 of the federal "Investment Advisers Act of 1940".

(b) "Federal covered adviser" does not include either a person excepted from the definition of "investment adviser" or exempt from registration under the federal "Investment Advisers Act of 1940" solely by reason of the fact such person advises a local government investment pool trust fund under article 75 of title 24, C.R.S.

(6) "Financial or institutional investor" means any of the following, whether acting for itself or others in a fiduciary capacity:

(a) A depository institution;

(b) An insurance company;

(c) A separate account of an insurance company;

(d) An investment company registered under the federal "Investment Company Act of 1940";

(e) A business development company as defined in the federal "Investment Company Act of 1940";

(f) Any private business development company as defined in the federal "Investment Advisers Act of 1940";

(g) An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of five million dollars or its investment decisions are made by a named fiduciary, as defined in the federal "Employee Retirement Income Security Act of 1974", that is a broker-dealer registered under the federal "Securities Exchange Act of 1934", an investment adviser registered or exempt from registration under the federal "Investment Advisers Act of 1940", a depository institution, or an insurance company;

(h) An entity, but not an individual, a substantial part of whose business activities consist of investing, purchasing, selling, or trading in securities of more than one issuer and not of its own issue and that has total assets in excess of five million dollars as of the end of its latest fiscal year;

(i) A small business investment company licensed by the federal small business administration under the federal "Small Business Investment Act of 1958"; and

(j) Any other institutional buyer.

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

(8) "Fraudulent conduct" means, for the purposes of section 11-51-410, conduct within this state which constitutes a willful violation of section 11-51-501 or conduct outside this state which would constitute a willful violation of section 11-51-501 if it had occurred within this state.

(9) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(9.5) (a) (I) "Investment adviser" means any person who, 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 who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities.

(II) "Investment adviser" includes financial planners or other persons who, as an integral component of other financially related services, provide investment advisory services to others for compensation and as a part of a business or who hold themselves out as providing investment advisory services to others for compensation.

(b) "Investment adviser" does not include:

(I) A federal covered adviser;

(II) A publisher of a bona fide newspaper, magazine, or business or financial publication with a regular paid circulation;

(III) A publisher of a securities advisory newsletter with a regular and paid circulation who does not provide advice to subscribers on their specific investment situations;

(IV) An author of material included in a newspaper, magazine, publication, or newsletter who does not otherwise come within the definition of an investment adviser or investment adviser representative;

(V) An investment adviser representative;

(VI) A licensed broker-dealer or sales representative for a licensed broker-dealer whose performance of investment advisory services is solely incidental to the conduct of the person's business as a broker-dealer and who receives no special compensation for such services;

(VII) A depository institution or a person employed by or directly associated with a depository institution;

(VIII) Any lawyer, accountant, engineer, or teacher whose performance of such services is solely incidental to the practice of that person's profession;

(IX) A person who provides investment advisory services solely while acting as an investment banker or business broker on behalf of one or more parties to, and in connection with, a transaction or proposed transaction for the transfer of a controlling interest in a business enterprise;

(X) An official, employee, or representative of the United States, an individual state, a political subdivision of an individual state, or an agency or a corporate or other instrumentality of the United States or an individual state, while acting in such person's official capacity on behalf of such entity;

(XI) A licensed real estate broker or salesperson whose advice to clients relates only to the investment or acquisition of real property or an interest in real property; or

(XII) Any other person or class of persons excluded by rule or order of the securities commissioner.

(9.6) (a) "Investment adviser representative" with respect to an investment adviser means an individual who has a place of business in this state; who is a partner, officer, or director of an investment adviser; who occupies a status similar to or performs functions similar to those of a partner, officer, or director for an investment adviser; or who is employed or otherwise associated with an investment adviser who:

(I) Makes recommendations or otherwise renders advice to clients regarding securities;

(II) Manages securities accounts or portfolios for clients;

(III) Determines which recommendation or advice regarding securities should be given to clients; or

(IV) Supervises employees of, or persons otherwise associated with, an investment adviser or a federal covered adviser who perform any of the duties specified in this paragraph (a).

(b) "Investment adviser representative" for a federal covered adviser means any individual with a place of business in this state who is an "investment adviser representative" as defined by the securities and exchange commission in rule 203A-3 promulgated under the federal "Investment Advisers Act of 1940".

(c) The term "investment adviser representative" does not include:

(I) A licensed sales representative for a licensed broker-dealer whose performance of investment advisory services is solely incidental to the conduct of business as a sales representative and who receives no special consideration in connection with providing such services; or

(II) Any other individual or class of individuals excluded by rule or order of the securities commissioner.

(9.7) "Investment advisory services" means those activities performed by a person in connection with such person's engaging in any of the activities described in paragraph (a) of subsection (9.5) of this section, including such activities by a federal covered adviser or an investment adviser representative for a federal covered adviser.

(10) "Issuer" means any person who issues or proposes to issue any security; except that, with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the term "issuer" means the person performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; except that, in the case of an unincorporated association which provides by its articles for limited liability of any or all of its members or in the case of a trust, committee, or other legal entity, the trustees or members thereof shall not be individually liable as issuers of any security issued by the association, trust, committee, or other legal

entity; except that, with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is or is to be used; and except that, with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of any interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of offering them for sale.

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

(12) "Person" means an individual, a corporation, a partnership, an association, an estate, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, a governmental subdivision or agency, or any other legal entity.

(12.5) "Place of business" for investment adviser representatives shall have the same meaning as defined by the securities and exchange commission in rule 203A-3 promulgated under the federal "Investment Advisers Act of 1940".

(13) (a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value. "Offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(b) "Purchase" or "buy" includes every contract of purchase of, contract to buy, or acquisition of a security or interest in a security for value. "Offer to purchase" includes every attempt or offer to acquire, or solicitation of an offer to sell, a security or interest in a security for value.

(c) "Offer" means an offer to sell or an offer to purchase.

(d) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered, sold, and purchased for value.

(e) A purported gift of assessable stock is considered to involve an offer, sale, and purchase.

(f) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(g) An "offer", "offer to sell", "offer to purchase", "sale", and "purchase" shall be deemed to be involved so far as the security holders of a corporation or other person are concerned where, pursuant to statutory provisions of the jurisdiction under which such corporation or other person is organized, or pursuant to provisions contained in its articles of incorporation or similar controlling instruments, or otherwise, there is submitted for the vote or consent of such security holders a plan or agreement for the following:

(I) A reclassification of securities of such corporation or other person, other than a stock split, reverse stock split, or change in par value, which involves the substitution of a security for another security;

(II) A statutory merger or consolidation or similar plan of acquisition in which securities of such corporation or other person held by such security holders will become or be exchanged for securities of any other person, except where the sole purpose of the transaction is to change an issuer's domicile; or

(III) A transfer of assets of such corporation or other person to another person, in consideration of the issuance of securities of such other person or any of its affiliates, if:

(A) Such plan or agreement provides for dissolution of the corporation or other person whose security holders are voting or consenting;

(B) Such plan or agreement provides for a pro rata or similar distribution of such securities to the security holders voting or consenting;

(C) The board of directors or similar representative of such corporation or other person adopts resolutions relative to sub-subparagraph (A) or (B) of this subparagraph (III) within one year after taking of such vote or consent; or

(D) The transfer of assets is a part of a preexisting plan for distribution of such securities, notwithstanding the provisions of sub-subparagraph (A), (B), or (C) of this subparagraph (III).

(h) The terms defined in this subsection (13) do not include any bona fide pledge or loan or any dividend payable by an issuer only in its own securities if nothing of value is given by stockholders for the dividend.

(14) "Sales representative" means an individual, other than a broker-dealer, either authorized to act and acting for a broker-dealer in effecting or attempting to effect purchases or sales of securities or authorized to act and acting for an issuer in effecting or attempting to effect purchases or sales of the issuer's own securities. An individual so acting for an issuer is not a sales representative if the individual primarily performs, or is intended primarily to perform upon completion of an offering of the issuer's own securities, substantial duties for or on behalf of the issuer otherwise than in connection with transactions in the issuer's own securities and the individual's compensation is not based, in whole or in part, upon the

amount of purchases or sales of the issuer's own securities effected for the issuer. A partner, officer, or director of a broker-dealer or issuer, or an individual occupying a similar status or performing similar functions, is a sales representative only if the individual otherwise comes within the definition.

(15) "Securities and exchange commission" means the commission established by the federal "Securities Exchange Act of 1934".

(16) "Securities commissioner" means the commissioner of securities created by section 11-51-701.

(17) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate of subscription; transferable share; investment contract; viatical settlement investment; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security" or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money either in a lump sum or periodically for life or some other specified period. For purposes of this article, an "investment contract" need not involve more than one investor nor be limited to those circumstances wherein there are multiple investors who are joint participants in the same enterprise.

(18) "Self-regulatory organization" means a national securities exchange registered under section 6 of the federal "Securities Exchange Act of 1934", a national securities association of broker-dealers registered under section 15A of the federal "Securities Exchange Act of 1934", a clearing agency registered under section 17A of the federal "Securities Exchange Act of 1934", the municipal securities rule-making board established under section 15B of the federal "Securities Exchange Act of 1934", or a futures association registered under section 21 of the federal "Commodity Exchange Act".

(19) "State" means any state, territory, or possession of the United States, the District of Columbia, or Puerto Rico.

11-51-201.5. Investment adviser registration depository - definition.

As used in this article, unless the context otherwise requires:

(1) "Investment adviser registration depository" means the electronic computer registration system known as the investment adviser registration depository that is operated and maintained by the national association of securities dealers and by the states that participate in such system, and the term includes any successor system.

11-51-202. References to federal statutes.

(1) Each reference in this article to a federal act or statute means, unless the context otherwise requires, that act or statute as in effect on January 1, 1990, together with all rules and regulations under such act or statute as in effect on that date, except as subsequent amendments may become applicable under this article pursuant to subsection (2) of this section.

(2) (a) Whenever an amendment to any federal act or statute to which reference is made in this article is enacted with an effective date on or after January 1, 1990, or whenever an amendment to any rule or regulation under any such federal act or statute is promulgated with an effective date on or after such date, the securities commissioner shall determine whether giving effect to such amendment is inconsistent with the purposes of this article set forth in section 11-51-101 (2), any other provision of this article, or any rule under this article. If the securities commissioner determines that an inconsistency exists, the securities commissioner shall commence rule-making proceedings for the purpose of making, amending, or rescinding such rules under this article as may be appropriate to carry out the policy stated in section 11-51-101 (3). If no rule-making proceeding with respect to such amendment is commenced within ninety days after the effective date of such amendment (or within ninety days after the effective date of this article as set forth in section 11-51-801, if later), such amendment shall apply to this article and the rules under this article. If a rule-making proceeding with respect to such amendment is commenced within ninety days after the effective date of such amendment (or within ninety days after the effective date of this article as set forth in section 11-51-801, if later), such amendment shall not apply to this article or any rule under this article except as may be provided by rule upon completion of such rule-making proceeding.

(b) No provision of this article imposing any liability upon a person or providing a basis for any sanction against a person applies to any act done or omitted by such person in good faith and in conformity with the provisions of this article and the rules under this article, as in effect prior to the effective date of any amendment to any federal act or statute to which reference is made in this article or any amendment to any rule or regulation under any such federal act or statute during the period commencing upon the effective date of such amendment and ending on the date determined by the following:

(I) If no rule-making proceeding with respect to such amendment is commenced under this subsection (2) within ninety days after its effective date (or within ninety days after the effective date of this article as set forth in section 11-51-801, if later), ending on the ninetieth day after such effective date; or

(II) If such a rule-making proceeding is commenced within such period of ninety days, ending upon completion of such rule-making proceeding.

(3) Each reference in this article to the federal "Investment Advisers Act of 1940" means that act in effect on April 30, 1998, together with all rules and regulations under such federal act as in effect on that date, except as subsequent amendments may become applicable under this article pursuant to subsection (2) of this section.

PART 3 REGISTRATION OF SECURITIES AND EXEMPTIONS

11-51-301. Requirement for registration of securities.

It is unlawful for any person to offer to sell or sell any security in this state unless it is registered under this article or unless the security or transaction is exempted under sections 11-51-307, 11-51-308, or 11-51-309.

11-51-302. General registration provisions.

(1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a broker-dealer licensed or exempt under this article.

(2) Every registration statement filed under section 11-51-303 or 11-51-304 shall be accompanied by a registration fee, which shall be determined and collected pursuant to section 11-51-707.

(3) Any document or portion thereof filed with the securities commissioner under this article or a predecessor law within five years preceding the filing of a registration statement may be incorporated by reference in a registration statement to the extent that such document or portion thereof is accurate at the time of such incorporation by reference.

(4) The securities commissioner may, by rule or order, permit the omission of any item of information or document from any registration statement.

(5) The securities commissioner may, by rule or order, require as a condition of registration under section 11-51-304 that the proceeds from the sale of the registered security be held in escrow until the issuer receives a specified amount. The securities commissioner may, by rule or order, determine the conditions of any escrow required under this subsection (5), but the securities commissioner may not reject a depository solely because of its location in another state. Improper release by a depository of such escrow in violation of this subsection (5) is punishable pursuant to section 11-51-603 (2).

(6) (a) In the case of any offering registered under section 11-51-303 or 11-51-304 where less than seventy-five percent of the net proceeds from the sale of the registered securities are committed for use in one or more specific lines of business, eighty percent of the net proceeds received by the issuer shall be placed into escrow until:

(I) The completion of a transaction or series of transactions whereby at least fifty percent of the gross proceeds received from the sale of registered securities (including any amounts actually received by the issuer upon exercise of registered warrants or rights to purchase or subscribe to another security) are committed for use in one or more specific lines of business; and

(II) The lapse of no more than ten days after receipt by the securities commissioner of notice of the proposed release of funds from such escrow.

(b) Such notice must contain the information and be in the form the securities commissioner by rule requires. If an escrow is released and warrants or rights which were once registered remain outstanding, then this subsection (6) shall apply separately to the proceeds from any subsequent exercise of such warrants or rights. Proceeds received from the exercise of such warrants or rights shall then be subject to release upon the conditions stated in this subsection (6), and this subsection (6) shall then each time apply separately with respect to proceeds from the exercise of warrants or rights which were once registered and still remain outstanding. The securities commissioner may, by rule or order, determine the conditions of any escrow required under this subsection (6), but the securities commissioner may not reject a depository solely because of its location in another state. Improper release by a depository of such escrow in violation of this subsection (6), is punishable pursuant to section 11-51-603 (2). The securities commissioner may, by rule or order, waive the requirements of this subsection (6), in whole or in part, with respect to any class of registrations or any specific

registration if the securities commissioner finds that such waiver is in the public interest and that compliance with the requirements of this subsection (6) is not necessary for the protection of investors.

(7) (a) Except as provided in paragraph (b) of this subsection (7), a registration statement filed and effective under section 11-51-303 is effective for one year after its effective date and thereafter is effective during the period or periods, but only those periods, when the prospectus contained in the registration statement filed under the federal "Securities Act of 1933" meets the requirements of subsection (a) of section 10 of such federal "Securities Act of 1933".

(b) (I) A registration statement filed and effective under section 11-51-303 or 11-51-304 on behalf of an investment company registered under the federal "Investment Company Act of 1940" is effective for one year after its effective date and may be renewed by filing a renewal notice with the securities commissioner.

(II) Any person filing a renewal notice pursuant to this paragraph (b) shall pay a renewal fee pursuant to section 11-51-707.

(c) A registration statement filed and effective under section 11-51-304 is effective for one year after its effective date unless the securities commissioner by rule or order extends the period of effectiveness.

(d) A registration statement effective under section 11-51-303 or 11-51-304 may be terminated or withdrawn upon the request of the issuer or the person who filed the registration statement and with the consent of the securities commissioner.

(e) All outstanding securities of the same class as a registered security are considered to be registered for the purpose of a nonissuer transaction or series of transactions while the registration statement is effective.

(8) So long as a registration statement under section 11-51-304 is effective, the securities commissioner may, by rule or order, require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

(9) A registration statement under section 11-51-303 or 11-51-304 may be amended after its effective date so as to increase the quantity of securities specified as being offered. Every person filing such an amendment shall pay a registration fee, which shall be determined and collected pursuant to section 11-51-707, with respect to the additional securities being registered. Such an amendment becomes effective when the securities commissioner so orders. If the additional securities being registered have been sold before such amendment is filed and the person filing the amendment provides such information as the securities commissioner may request to show that the failure to register the additional securities prior to their sale was in good faith and not for the purpose of avoiding compliance with this article, the securities commissioner may by order provide that the effectiveness of the amendment shall relate back to the first date of sale of the additional securities.

11-51-303. Registration by Coordination.

(1) Securities for which a registration statement has been filed under the federal "Securities Act of 1933" in connection with the offering of the securities may be registered by coordination. A registration statement and accompanying records shall be filed with the securities commissioner pursuant to this section and shall contain the following information and be accompanied by the consent to service of process required by section 11-51-706:

(a) A copy of the latest form of prospectus filed under the federal "Securities Act of 1933";

(b) (I) A current copy of the issuer's articles of incorporation and bylaws or, if so determined by the commissioner, the substantial equivalent of such articles of incorporation and bylaws;

(II) A copy of any agreement with or among the underwriters of the security to be registered;

(III) A copy of any indenture or other instrument governing the issuance of the security to be registered;

(IV) A specimen, copy, or description of the security that is required by rule promulgated by the securities commissioner or order issued pursuant to this article; and

(c) A copy of other information or records filed by the issuer under the federal "Securities Act of 1933" that may be requested by the securities commissioner.

(2) Any amendments to the federal prospectus shall be promptly filed with the securities commissioner after the amended prospectus is filed with the federal securities and exchange commission; except that an amendment to the prospectus that only delays the effective date of the registration statement shall not be filed with the securities commissioner.

(3) A registration statement required to be filed with the securities commissioner pursuant to this section shall be considered effective simultaneously with or subsequent to the federal registration statement when all of the following conditions are satisfied:

(a) A stop order under subsection (4) of this section or section 11-51-306, or issued by the federal securities and exchange commission, is not in effect and a proceeding is not pending against the issuer under section 11-51-410; and

(b) The registration statement has been on file with the securities commissioner for at least twenty days; except that the securities commissioner may establish, pursuant to rule or order, a period less than twenty days.

(4) The registrant shall promptly notify the securities commissioner of the date when the federal registration statement becomes effective and the content of any price amendment. The registrant shall promptly file the notice containing the price amendment with the securities commissioner. If the notice is not timely received, the securities commissioner may, without prior notice or hearing, issue a stop order, which shall retroactively deny the effectiveness of a registration statement or suspend the effectiveness of the registration statement until the registrant complies with the provisions of this section. The securities commissioner shall promptly notify the registrant of a stop order by telegram, telephone, or electronic means. The securities commissioner shall be able to confirm that notice of the stop order was given to the registrant. If the registrant subsequently complies with the notice requirements of this section, the stop order shall become void as of the date of its issuance.

(5) If the federal registration statement becomes effective before all of the conditions of this section are satisfied, or if a condition of this section is waived by the securities commissioner, the registration statement shall be effective when all of the conditions of this section are either satisfied or waived by the securities commissioner. If the registrant notifies the securities commissioner of the date when the federal registration statement is expected to become effective, the securities commissioner shall promptly notify the registrant by telegram, telephone, or electronic means whether all of the conditions of this section have been satisfied by the registrant or the securities commissioner is waiving one or all of the conditions. The securities commissioner shall also notify the registrant if the commissioner intends to institute a proceeding against the registrant pursuant to section 11-51-306. The securities commissioner shall be able to confirm that such notice was provided to the registrant. Failure of the securities commissioner to notify the registrant of the commissioner's intent to institute an action pursuant to section 11-51-306 shall not invalidate or preclude the institution of such action.

(6) The commissioner shall promulgate a rule that defines the prompt filing and notification provisions of this section.

11-51-304. Registration by Qualification.

(1) A security may be registered by qualification.

(2) A registration statement under this section shall contain full and fair disclosure of all material facts respecting the investment offered, including the following information, shall state the title of the security and the number or amount being registered under this article, and shall be accompanied by the following documents in addition to the consent to service of process required by section 11-51-706:

(a) With respect to the issuer, its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(b) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions, the name, address, and principal occupation for the past five years; the amount of securities of the issuer held as of a specified date within thirty days of the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected;

(c) With respect to persons covered by paragraph (b) of this subsection (2), the remuneration paid during the past twelve months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer (together with all predecessors, parents, subsidiaries, and affiliates) to all such persons in the aggregate;

(d) With respect to any person owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in paragraph (b) of this subsection (2) other than the occupation;

(e) With respect to every promoter, if the issuer was organized within the past three years, the information specified in paragraph (b) of this subsection (2), any amount paid within that period or intended to be paid to that person, and the consideration for any such payment;

(f) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution, the name and address, the amount of securities of the issuer held as of the date of the filing of the registration statement, a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected, and a statement of the person's reasons for making the offering;

(g) The capitalization and long-term debt on both a current and pro forma basis of the issuer, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration whether in the form of cash, physical assets, services, patents, goodwill, or anything else for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;

(h) The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any proportion is to be made to any person or class of persons, other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(i) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; and the amounts of any funds to be raised; and, if any part of the proceeds is to be used to acquire any property including goodwill otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, and the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expenses in connection with the acquisition including the cost of borrowing money to finance the acquisition;

(j) A description of any stock options or other security options outstanding or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in paragraph (b), (d), (e), (f), or (h) of this subsection (2) and by any person who holds or will hold ten percent or more in the aggregate of any such options;

(k) The date of, parties to, and general effect concisely stated of every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years, together with a copy of every such contract, and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets including any litigation or proceeding known to be contemplated by governmental authorities;

(l) A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of its effective date to be used in connection with the offering;

(m) A specimen or copy of the security being registered, a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, as currently in effect, and a copy of any indenture or other instrument covering the security to be registered;

(n) A signed or conformed copy of an opinion of counsel as to the legality of the security being registered, which shall state whether the security when sold will be legally issued, fully paid, and non-assessable and, if a debt security, a binding obligation of the issuer;

(o) The written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if any such person is named as having prepared or certified a report or valuation other than a public and official document or statement which is used in connection with the registration statement;

(p) The balance sheet of the issuer as of a date within four months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant; and

(q) Such additional information as the securities commissioner requires by rule or order and as is required for full and fair disclosure respecting the investment offered.

(3) A registration statement under this section becomes effective when the securities commissioner so orders or twenty-eight calendar days from the date of filing if the securities commissioner does not request changes in the registration statement or if the registration statement is not subject to a stop order under section 11-51-306.

(4) The securities commissioner may, by rule or order, require as a condition of registration under this section that an offering circular containing any designated part of the information specified in subsection (2) of this section be sent or given to each person to whom an offer is made before or concurrently with: The first written offer made to such person otherwise than by means of a public advertisement by or for the account of the issuer or any other person on whose behalf the offering is being made or by any broker-dealer or underwriter who is offering part of an unsold allotment or subscription taken as a participant in the distribution; the confirmation of any sale made by or for the account of any person; or a payment made pursuant to any such sale or the delivery of the security pursuant to any such sale, whichever first occurs.

(5) The date of filing shall be the date that the registration statement or an amendment to the registration statement is received by the securities commissioner.

(6) The securities commissioner shall by rule prescribe a limited offering registration procedure for any offering of securities by an issuer if the issuer has its principal office and the majority of its full-time employees in Colorado; if the issuer provides in its offering document that at least eighty percent of the net proceeds from the offering shall be used in connection with the operations of such issuer in this state; if the gross proceeds from such offering of securities and any other offering of securities will not exceed one million dollars within any twelve-month period; and if the registration statement and offering documents for such limited offering contain the following:

(a) With respect to the issuer, its principal business address, and its form, state or foreign jurisdiction, and date of its organization;

(b) The general character and location of its business and a description of its physical properties and equipment;

(c) The name and address of every officer and director of the issuer and of every person occupying a similar status or performing similar functions, and for each such person, a brief description of their business experience within the last five years, a description of any transaction during the preceding year or any proposed transaction between any such persons and the issuer, and a description of any of the following events occurring within the last five years that are material to an evaluation of the offering:

(I) The filing of a petition in bankruptcy by or against, or the filing of a receivership action against, any such person personally or by or against any entity for which they served as officer, director, or in a similar status or function;

(II) Any conviction of any such person in a criminal proceeding, or the filing of any indictment, information, or criminal complaint against any such person (excluding traffic violations and other minor offenses); and

(III) Any order, judgment, or decree, not subsequently reversed, suspended, or vacated, against any such person entered by a court of competent jurisdiction or any federal or state regulatory authority involving the violation by such person of any federal or state securities law or in connection with any matter material to the offering, the issuer, or its business;

(d) The principal factors contributing to the risks of the enterprise, including, when applicable, the absence of an operating history of the issuer, the absence of profitable operations in recent periods, the nature of the business or proposed business in which the issuer will engage, and the absence of any previous market for the securities of the issuer;

(e) The amount of authorized and issued securities of the issuer;

(f) The kind and amount of securities to be offered, the proposed offering price, and the minimum and maximum amounts that will be raised in the offering;

(g) The name, address, and amount of compensation of any underwriter or broker-dealer to receive compensation in connection with the offering;

(h) The estimated proceeds to be received by the issuer from the offering and the purposes for which such proceeds are to be used;

(i) An unaudited balance sheet as of a date within four months of the filing of the registration statement and an unaudited profit and loss statement and analysis of surplus for the most recent fiscal year of the issuer and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's existence if less than one year; and

(j) The following legend prominently stated on the cover page of the offering document:

"THESE SECURITIES ARE OFFERED PURSUANT TO A LIMITED OFFERING REGISTRATION WITH THE COLORADO DIVISION OF SECURITIES. THESE SECURITIES HAVE NOT BEEN

APPROVED OR DISAPPROVED BY THE COLORADO DIVISION OF SECURITIES NOR HAS THE DIVISION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS OFFERING DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THE STATE OF COLORADO HAS INSTITUTED THIS LIMITED OFFERING REGISTRATION PROCEDURE IN AN EFFORT TO SIMPLIFY AND EXPEDITE THE SMALL BUSINESS CAPITAL FORMATION PROCESS. INVESTORS ARE ENCOURAGED TO ASK QUESTIONS OF AND SEEK ADDITIONAL INFORMATION FROM THE ISSUER AND UNDERWRITER OF THESE SECURITIES."

(7) In the case of a registration by qualification under subsection (6) of this section, the securities commissioner may not require as a condition of registration under section 11-51-302 (5) that any of the gross proceeds from the sale of the registered security be held in escrow in the case of an offering underwritten by a broker-dealer registered under the federal "Securities Exchange Act of 1934", or that more than thirty-five percent of the gross proceeds from the sale of the registered security be held in escrow in the case of an offering not underwritten by such a broker-dealer.

(8) A registration statement under subsection (6) of this section becomes effective when the securities commissioner so orders or fourteen calendar days from the date of the filing if the securities commissioner does not request changes in the registration statement or if the registration statement is not subject to a stop order under section 11-51-306.

11-51-305. Filing of sales literature.

The securities commissioner may, by rule or order, require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature addressed or intended for distribution to prospective investors, unless the security or the transaction is exempted by section 11-51-307, 11-51-308, or 11-51-309.

11-51-306. Denial, suspension, or revocation of registration.

(1) The securities commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement, if the securities commissioner finds violations of the escrow provisions in section 11-51-302 (5) or (6), or, in the case of any registration statement under section 11-51-304, if the securities commissioner finds that the order is in the public interest and that any one of the following grounds exists:

(a) The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, any amendment under section 11-51-302 (9) as of its effective date, or any report under section 11-51-302 (8) contains any false or misleading statement in violation of section 11-51-502;

(b) Any provision of this article or any rule, order, or condition imposed under this article has been violated, in connection with the offering, by the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer. Notwithstanding any other provision of this article, the securities commissioner shall not issue any stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement on the grounds that the offering, when viewed on its merits as an investment, is unfair, unjust, or inequitable.

(c) The security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state law applicable to the offering; but the securities commissioner may not institute a proceeding against an effective registration statement under this paragraph (c) more than one year from the date of the order or injunction relied on, and the securities commissioner may not enter an order under this paragraph (c) on the basis of an order or injunction entered under any other state law unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section; or

(d) The issuer's enterprise or method of business includes or would include activities which are illegal where performed.

(1.5) With respect to a security sought to be registered pursuant to section 11-51-303, The securities commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if the securities commissioner finds that there has been a failure to comply with section 11-51-303 (2).

(2) The securities commissioner may, by summary order under section 11-51-606 (3) (a), summarily postpone or suspend the effectiveness of a registration statement pending final determination of any proceeding under this section.

(3) No stop order may be entered under this section, except under subsection (2) of this section, without the provision to the issuer of an appropriate prior notice, an opportunity for a hearing, and written findings of fact and conclusions of law.

(4) The securities commissioner may vacate or modify a stop order if the securities commissioner finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

11-51-307. Exempt securities.

(1) The following securities are exempted from sections 11-51-301 and 11-51-305:

(a) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of any of them or any certificate of deposit for any of them;

(b) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of any of them, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(c) Any security issued by and representing an interest in or a debt of, or guaranteed by, any depository institution organized under the laws of the United States or any depository institution organized and supervised under the laws of any state;

(d) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

(e) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is: Subject to the jurisdiction of the surface transportation board; a registered holding company under the federal "Public Utility Holding Company Act of 1935" or a subsidiary of such a company within the meaning of that act; or regulated in respect of its issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(f) Any security listed or approved for listing upon notice of issuance on the New York stock exchange, American stock exchange, Pacific stock exchange, Midwest stock exchange, PBW stock exchange, Boston stock exchange, or Chicago board of options exchange; any security designated or approved for designation upon notice of issuance for inclusion in the national association of securities dealers automated quotation national market system; any other security of the same issuer which is of a senior or substantially equal rank; any security called for by subscription rights or warrants so listed, designated, or approved; or any warrant or right to purchase or subscribe to any of them;

(g) Any security which is issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, or charitable purposes or as a chamber of commerce or trade or professional association and which is offered or sold to a bona fide constituent or member of such organization or association, if no direct or indirect commission or remuneration is paid in connection with the offer or sale of such security except to a licensed broker-dealer; or any security which is issued by any cooperative association engaged in the sale or production of electricity and regulated by the public utilities commission of this state;

(h) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal;

(i) Any security issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan;

(j) Any security issued by a cooperative association as defined in article 55 of title 7, C.R.S.; and

(k) Any security issued by an issuer registered as an open-end management investment company or unit investment trust under the federal "Investment Company Act of 1940" if:

(I) (A) The issuer is advised by an investment adviser that is a depository institution exempt from registration under the federal "Investment Advisers Act of 1940" or that is currently registered, and has been registered or is affiliated with an adviser that has been registered, as an investment adviser under the federal "Investment Advisers Act of 1940" for at least three years next preceding an offer or sale of a security claimed to be exempt under this paragraph (k) and the adviser has acted, or is affiliated with an investment advisor that has acted, as investment adviser to one or more registered investment companies or unit investment trusts for at least three years next preceding an offer or sale of a security claimed to be exempt under this paragraph (k); or

(B) The issuer has a sponsor that has at all times throughout the three years before an offer or sale of a security claimed to be exempt under this paragraph (k) sponsored one or more registered investment companies or unit investment trusts the aggregate total assets of which have exceeded one hundred million dollars; and

(II) There is filed with and paid to the securities commissioner prior to any sale of any securities claimed to be exempt under this paragraph (k):

(A) A notice of intention to sell which has been executed by the issuer and which sets forth the name and address of the issuer and the title of the securities to be offered in this state; and

(B) An exemption fee, which shall be determined and collected pursuant to section 11-51-707, for open-end management companies and for unit investment trusts.

(2) Any notice filed and exemption fee paid under paragraph (k) of subsection (1) of this section shall be effective only for securities sold within twelve months after the date on which such notice was filed with the securities commissioner. For the purposes of paragraph (k) of subsection (1) of this section, an investment adviser is affiliated with another investment adviser if it controls, is controlled by, or is under common control with the other investment adviser. For the purposes of paragraph (k) of subsection (1) of this section, a "sponsor" of a unit investment trust means the person primarily responsible for the organization of the unit investment trust or who has continuing responsibilities for the administration of the affairs of the unit investment trust other than a trustee or custodian. "Sponsor" includes the depositor of the unit investment trust.

11-51-308. Exempt transactions.

(1) The following transactions are exempted from sections 11-51-301 and 11-51-305:

(a) Any isolated nonissuer transaction, whether or not effected through a broker-dealer;

(b) Any nonissuer distribution of an outstanding security:

(I) If a recognized securities manual contains the name of the issuer, the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within the eighteen-month period immediately preceding the date of the distribution, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations;

(II) If the security has a fixed maturity or a fixed interest or dividend provision and there has been no default by the issuer during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividend on any security of the issuer;

(III) If any class of securities of the issuer is registered under section 12 of the federal "Securities Exchange Act of 1934";

(IV) If the issuer is an investment company registered under the federal "Investment Company Act of 1940"; or

(V) If the issuer of the security has filed and maintained with the securities commissioner, for not less than ninety days next preceding the transaction, such information as the securities commissioner may specify by rule and has paid an exemption fee to be determined and collected as provided in section 11-51-707;

(c) Any nonissuer transaction effected by or through a licensed broker-dealer pursuant to an unsolicited order or offer to buy, if either the confirmation of the transaction delivered to the customer clearly states that the transaction was unsolicited or the broker-dealer obtains a written acknowledgment signed by the customer that the transaction was unsolicited and a copy of the confirmation or the acknowledgment is preserved by the broker-dealer for such period as the securities commissioner may, by rule, require;

(d) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(e) Any transaction in a bond or other evidence of indebtedness secured by a mortgage, security interest, or deed of trust or by an agreement for the sale of real estate or chattels, if the entire mortgage, security interest, deed of trust, or agreement together with all the bonds or other evidences of indebtedness secured thereby is offered and sold as a unit;

(f) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(g) Any transaction executed by a bona fide pledgee without any purpose of evading the provisions of this article;

(h) Any offer or sale to a financial or institutional investor or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(i) Any transaction not involving any public offering;

(j) Any transaction pursuant to an offering of securities directed by the offeror to not more than twenty persons (other than those designated in paragraph (h) of this subsection (1)) in this state and sold to not more than ten buyers (other than those designated in paragraph (h) of this subsection (1)) in this state during any period of twelve consecutive months, whether or not the offeror or any of the offerees or buyers is then present in this state, if:

(I) The seller reasonably believes that all the buyers in this state (other than those designated in paragraph (h) of this subsection (1)) are purchasing for investment; and

(II) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in paragraph (h) of this subsection (1)) except to a licensed broker-dealer or a licensed sales representative;

(k) Any offer or sale of a preorganization certificate or subscription if no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, if the number of subscribers does not exceed twenty-five, and if no payment is made by any subscriber;

(l) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state except to a licensed or exempt broker-dealer;

(m) A transaction involving an offer to sell, but not a sale, of a security if:

(I) A registration or offering statement or similar document as required under the federal "Securities Act of 1933" has been filed with the securities and exchange commission, but is not effective;

(II) A registration statement, if required, has been filed under section 11-51-303, but is not effective; and

(III) No stop order of which the offeror is aware has been entered by the securities commissioner or the securities and exchange commission;

(n) A transaction involving an offer to sell, but not a sale, of a security if:

(I) A registration statement has been filed under section 11-51-304 but is not effective; and

(II) No stop order of which the offeror is aware has been entered by the securities commissioner;

(o) A transaction described in section 11-51-201 (13) (g); and

(p) Any offer or sale of a security in compliance with an exemption from registration with the securities and exchange commission under section 3(b) or 4(2) of the federal "Securities Act of 1933" pursuant to regulations adopted thereunder by the securities and exchange commission. The issuer shall file with the securities commissioner a notification of exemption, upon such form as the securities commissioner may prescribe, and pay an exemption fee to be determined and collected pursuant to section 11-51-707.

11-51-309. Discretionary exemptions.

The securities commissioner may, by rule or order and subject to such terms and conditions as prescribed therein, from time to time add any securities to the securities exempted in section 11-51-307 or add any transactions to the transactions exempted in section 11-51-308, if the securities commissioner finds that the application of sections 11-51-301 and 11-51-305 to such securities or transactions is not necessary in the public interest and for the protection of investors.

11-51-310. Denial or revocation of exemptions.

(1) (a) The securities commissioner may, by order, deny or revoke the exemption specified in section 11-51-307 (1) (g) with respect to a specific security or transaction if the securities commissioner finds that such order is necessary in the public interest and for the protection of investors.

(b) The securities commissioner may, by summary order under section 11-51-606 (3) (b), summarily suspend the exemption specified in section 11-51-307 (1) (g) as to a specific security or issuer pending final determination of any proceeding under this subsection (1).

(2) The securities commissioner may, by rule or order, deny or revoke any exemption specified in section 11-51-308 (1) (i), (1) (j), and (1) (p) with respect to a specific security, transaction, issuer, or class of persons if the issuer, any of its predecessors, or any of the issuer's directors, officers, general partners, beneficial owners of ten percent or more of any class of its equity securities, or any of its promoters then presently connected with the issuer in any capacity has been

convicted within ten years of any felony in connection with the purchase or sale of any security. Such ten years shall be any ten years prior to any offer or sale of a security for which such exemption would otherwise be available.

(3) No order under subsection (1) or (2) of this section may operate retroactively. No person may be considered to have violated section 11-51-301 or 11-51-305 by reason of any offer or sale effected after the entry of an order under subsection (1) or (2) of this section if that person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the order.

11-51-311. Coordination of exemptions.

In furtherance of the policy stated in section 11-51-101 (3), the exemptions under sections 11-51-307 to 11-51-309 shall be coordinated with exemptions for securities and transactions under the federal "Securities Act of 1933" so that an offering registered under the federal "Securities Act of 1933" shall be subject to registration by filing under this article in the absence of an exemption under this article and so that an offering exempt from registration under the federal "Securities Act of 1933", other than pursuant to the exemption for intrastate offerings, shall also be exempt from registration under this article. The securities commissioner shall make, amend, and rescind rules in order to effectuate such policy. Nothing in this section shall limit the powers or actions of the securities commissioner to make, amend, and rescind rules with regard to exemptions provided by sections 11-51-307 and 11-51-308 or added by section 11-51-309 but not contained in the federal "Securities Act of 1933" or rules and regulations thereunder.

PART 4 LICENSING AND REGULATION OF BROKER-DEALERS AND SALES REPRESENTATIVES

11-51-401. Licensing and notice filing requirements.

(1) A person shall not transact business in this state as a broker-dealer or sales representative unless licensed or exempt from licensing under section 11-51-402.

(1.5) A person with a place of business in this state shall not transact business in this state as an investment adviser or investment adviser representative unless such person is licensed as such or exempt from licensing under section 11-51-402.

(1.6) A federal covered adviser either with a place of business in this state or who employs or otherwise engages an individual with a place of business in this state to act as an investment adviser representative shall not transact business in this state as a federal covered adviser unless such adviser has filed with the securities commissioner the notice and fee required in sections 11-51-403 and 11-51-404.

(2) Neither a broker-dealer nor an issuer shall employ or otherwise engage an individual to act as a sales representative in this state unless the sales representative is licensed or exempt from licensing under section 11-51-402.

(2.5) An investment adviser shall not employ or otherwise engage any individual with a place of business in this state to act as an investment adviser representative in this state unless such individual is licensed in accordance with section 11-51-403 or is exempt from licensing under section 11-51-402 (1).

(3) No broker-dealer, investment adviser, or issuer shall employ or otherwise engage a person to participate in any activity in this state contrary to an order by the securities commissioner applicable to that person under section 11-51-410. A broker-dealer, investment adviser, or issuer does not violate this subsection (3) if the broker-dealer, investment adviser, or issuer sustains the burden of proof that it did not know and in the exercise of reasonable care could not have known of the order. Upon request from a broker-dealer, investment adviser, or issuer and for good cause shown, the securities commissioner may waive the prohibition of this subsection (3) with respect to a person subject to an order under section 11-51-410.

(4) No person shall act as an investment adviser for a local government investment pool trust fund under article 75 of title 24, C.R.S., unless the person has first notified the securities commissioner by filing the form prescribed by the securities commissioner.

11-51-402. Exempt broker-dealers, sales representatives - sanctions - exempt investment advisers and investment adviser representatives.

(1) The following broker-dealers are exempt from the license requirement of 11-51-401 (1):

(a) A broker-dealer who is registered as a broker-dealer under the federal "Securities Exchange Act of 1934" and has no place of business in this state if the business transacted in this state as a broker-dealer is exclusively with the following:

(I) Issuers in transactions involving their own securities;

(II) Other broker-dealers licensed or exempt from licensing under this article, except when the broker-dealer is acting as a clearing broker-dealer for such other broker-dealers;

(III) Financial or institutional investors;

(IV) Individuals who are existing customers of the broker-dealer and whose principal places of residence are not in this state;

(V) During any twelve consecutive months, not more than five persons in this state, excluding persons described in subparagraphs (I) to (IV) of this paragraph (a); and

(b) Other broker-dealers the securities commissioner by rule or order exempts.

(2) The following sales representatives are exempt from the license requirement of section 11-51-401 (1):

(a) A sales representative employed or otherwise engaged by a broker-dealer exempt under subsection (1) of this section;

(b) A sales representative employed or otherwise engaged by an issuer in effecting transactions only in securities exempted by section 11-51-307 (1) (a) to (1) (d) or (1) (j);

(c) A sales representative employed by an issuer in effecting transactions only with employees, partners, officers, or directors of the issuer or of a parent or subsidiaries of the issuer, if no commission or other similar compensation is paid or given directly or indirectly to the sales representative for soliciting an employee, partner, officer, or director in this state; and

(d) Other sales representatives the securities commissioner by rule or order exempts.

(3) Any real estate broker or salesman licensed pursuant to part 1 of article 61 of title 12, C.R.S., who is trading only in securities comprised of notes, bonds, or evidences of indebtedness secured by mortgages or deeds of trust upon real estate, where the broker or salesman acts as the agent for the buyer or seller of the real estate securing the note, bond, or evidence of indebtedness being traded and is neither the issuer nor affiliated with or under the direct or indirect control of the issuer or an affiliate of the issuer of the note, bond, or evidence of indebtedness, is exempt from the license requirement of section 11-51-401 (1).

(4) (a) The securities commissioner may by order revoke, suspend, or impose conditions upon exemptions available pursuant to subparagraph (III) of paragraph (a) of subsection (1) of this section and paragraph (a) of subsection (2) of this section if the securities commissioner finds that a broker-dealer or sales representative who has an exemption pursuant to either of said sections offered or sold, other than in an unsolicited transaction, to a public entity in the state of Colorado a financial instrument that such broker-dealer or sales representative knew or should have known does not qualify for sale to the public entity pursuant to section 24-75-601.1, C.R.S., and that such action by the securities commissioner is in the public interest.

(b) Any proceeding concerning an order made pursuant to this subsection (4) shall be conducted as a proceeding under section 11-51-606 (1), (2), (4), and (5).

(5) The following investment advisers with no place of business in this state are exempt from the license requirement of section 11-51-401 (1.5):

(a) An investment adviser who:

(I) Is exempt from registration as an investment adviser pursuant to section 203 (b) of the federal "Investment Advisers Act of 1940";

(II) Has only clients in this state that are: Other investment advisers; federal covered advisers; broker-dealers; depository institutions; insurance companies; employee benefit plans with assets of not less than one million dollars; or other institutional investors other than any local government investment pool trust fund under article 75 of title 24, C.R.S., as are designated by rule or order of the securities commissioner; or

(III) During the preceding twelve-month period, has had not more than five clients other than those specified in subparagraph (II) of this paragraph (a).

(b) The commissioner may by rule or order exempt other investment advisers from the license requirement of section 11-51-401 (1.5).

(6) Investment adviser representatives employed by or otherwise associated with an investment adviser exempt under subsection (5) of this section are exempt from the license requirement of section 11-51-401 (1.5).

11-51-403. Application for license - notice filing requirements.

(1) An applicant for a license as a broker-dealer, sales representative, investment adviser, or investment adviser representative shall file with the securities commissioner or with the securities commissioner's designee an application for a license and the consent to service of process required by section 11-51-706. The application shall contain the information and be in the form the securities commissioner requires by rule. If the information contained in an application is inaccurate or incomplete in any material respect when the application is filed or becomes inaccurate or incomplete in any material respect as a result of any subsequent event, the applicant shall promptly file an amendment to the application to cure the inaccuracy or omission. The securities commissioner may require an applicant to submit additional information that is material to an understanding of information about the applicant available to the securities commissioner in the application or otherwise, and an application shall be incomplete until all additional information required by the securities commissioner has been submitted.

(2) The application requirement of subsection (1) of this section for broker-dealers and sales representatives is satisfied by an applicant who has filed and maintains complete and current registration information with the securities and exchange commission, in the case of a broker-dealer, or a self-regulatory organization, in the case of a sales representative, if that registration information and the consent to service of process required by section 11-51-706 are provided to the securities commissioner through the central registration depository. Any additional information the securities commissioner may require from such an applicant pursuant to subsection (1) of this section must be material to an understanding of information about the broker-dealer or sales representative that is provided to the securities commissioner through the central registration depository.

(2.5) The application requirement of subsection (1) of this section for an investment adviser and an investment adviser representative is satisfied by an applicant who has filed and maintains complete and current registration information with the investment adviser registration depository if that registration information and the consent to service of process required by section 11-51-706 are provided to the securities commissioner through the investment adviser registration depository. Any additional information the securities commissioner may require from such an applicant pursuant to subsection (1) of this section must be material to an understanding of information about the investment adviser or investment adviser representative that is provided to the securities commissioner through the investment adviser registration depository.

(3) (a) A federal covered adviser who, during any calendar year, either has a place of business in this state or employs or engages an investment adviser representative with a place of business in this state shall file with the securities commissioner annually a consent to service of process and such documents as are filed by such adviser with the securities and exchange commission that the commissioner may require by rule or order.

(b) The notice filing requirement described in paragraph (a) of this subsection (3) does not apply to any federal covered adviser who, during such calendar year, neither has a place of business in this state nor employs nor engages an investment adviser representative with a place of business in this state.

(c) A notice filing under this section shall be effective from its receipt by the securities commissioner until December 31 of each year. Thereafter, it may be renewed annually until the following December 31 by filing with the securities commissioner a copy of such documents as are required pursuant to paragraph (a) of this subsection (3) and payment of a fee pursuant to section 11-51-404.

(4) Any person required to pay a fee under this section may transmit through any designee of the securities commissioner any fee required by this section or by rules promulgated under this section.

11-51-404. License and notice fees.

(1) (a) An applicant for a license as a broker-dealer, sales representative, investment adviser, or investment adviser representative shall pay an initial license fee and a licensed person shall pay an annual license fee which shall be determined and collected pursuant to section 11-51-707; except that no such license fee for a sales representative or investment adviser representative shall be more than twenty-five dollars.

(b) A federal covered adviser required to file an annual notice with the securities commissioner pursuant to section 11-51-403 (3) (a) shall pay an annual notice fee that shall be determined and collected pursuant to section 11-51-707.

(2) If an annual license fee is not paid within ninety days after the application is filed, the securities commissioner may deem the application to be withdrawn.

(3) (a) (I) If an annual license or notice fee is not paid within thirty days after the securities commissioner sends a written notice that the fee was not paid when due, the amount of the annual license fee shall be double the amount originally payable.

(II) In the case of a broker-dealer, investment adviser, or federal covered adviser, written notice is deemed sent when the notice is sent to the broker-dealer, investment adviser, or federal covered adviser.

(III) In the case of a sales representative, written notice is deemed sent to the sales representative when the notice is sent to a broker-dealer or an issuer for whom the sales representative is licensed to act.

(IV) In the case of an investment adviser representative, written notice is deemed sent when the notice is sent to the investment adviser or federal covered adviser for whom the investment adviser representative is licensed to act.

(b) (I) If an annual license or notice fee is not paid within sixty days after the securities commissioner sends the written notice described in paragraph (a) of this subsection (3), the securities commissioner may by order summarily suspend the license or, in the case of a federal covered adviser, the authority to do business in this state.

(II) In the case of a broker-dealer, investment adviser, or federal covered adviser, the securities commissioner shall send a copy of the order to the broker-dealer, investment adviser, or federal covered adviser whose license or authority to do business in this state has been summarily suspended.

(III) In the case of a sales representative who has been licensed to act for a broker-dealer or an issuer and whose license has been summarily suspended, the securities commissioner shall send a copy of the order to a broker-dealer or an issuer for whom the sales representative has been licensed to act.

(IV) In the case of an investment adviser representative who has been licensed to act for an investment adviser or federal covered adviser and whose license has been summarily suspended, the securities commissioner shall send a copy of the order to the investment adviser or federal covered adviser for whom the investment adviser representative has been licensed to act.

(4) If the annual license or notice fee is not paid within thirty days after the effective date of an order of summary suspension, the securities commissioner may by order summarily revoke the license or authority to do business in this state on the grounds that the license or authority has been abandoned.

(5) If an application is denied or withdrawn, or a license or authority to do business in this state is abandoned, revoked, suspended, or withdrawn, the securities commissioner shall retain all fees paid.

11-51-405. Examinations and alternate qualifications.

(1) In the case of a license as a broker-dealer, if the applicant is not registered as a broker-dealer under the federal "Securities Exchange Act of 1934", the securities commissioner may by rule require the successful completion of a standardized written examination by any individual who will have primary responsibility to supervise any licensed sales representative of the broker-dealer. In the case of an application for a license as a sales representative to act for a broker-dealer who is not registered as a broker-dealer under the federal "Securities Exchange Act of 1934" or to act for an issuer, the securities commissioner may by rule require the successful completion of a standardized written examination by the applicant. Examinations may differ among classes of applicants. Any examination may be administered by the securities commissioner or any person the securities commissioner may designate.

(2) An applicant for a license as a broker-dealer or sales representative who is a licensed real estate broker or salesman pursuant to part 1 of article 61 of title 12, C.R.S., and whose securities activities in this state are limited to trading in securities comprised of notes, bonds, or other evidences of indebtedness secured by mortgages or deeds of trust upon real estate shall be excused from any examination requirement under subsection (1) of this section.

(3) In the case of a license as an investment adviser representative, the securities commissioner may by rule require the successful completion of one or more standardized written examinations. Examinations may differ among classes of applicants. Any examination may be administered by the securities commissioner or any person the securities commissioner may designate.

(4) The securities commissioner may by rule designate other qualifications and credentials that will be accepted in lieu of meeting the examination requirement set forth in subsection (3) of this section.

11-51-406. General provisions.

(1) (a) Unless a proceeding under section 11-51-410 is instituted, the license of a broker-dealer, sales representative, or investment adviser representative becomes effective upon the last to occur of the following:

(I) The passage of thirty days after the filing of the application or, in the event any amendment is filed before the license becomes effective, the passage of thirty days after the filing of the latest amendment, if the application, including all amendments, if any, was complete at the commencement of the thirty-day period;

(II) The examination requirement under section 11-51-405 is satisfied;

(III) In the case of a broker-dealer, the requirements of section 11-51-407 are satisfied; and

(IV) The required fee has been paid.

(b) The securities commissioner may authorize an earlier effective date of licensing.

(c) A notice filing by a federal covered adviser becomes effective upon receipt by the securities commissioner of the documents and fee required to be filed pursuant to sections 11-51-403 and 11-51-404.

(2) The securities commissioner may by rule or order, waive or reduce any of the requirements of this section and sections 11-51-405 and 11-51-407 with respect to any person or class of persons and, in connection with the waiver or reduction of any requirement, may limit or impose conditions on the securities activities that such person or class of persons may conduct in this state.

(3) (a) The license of a sales representative is effective only with respect to actions taken for a broker-dealer or issuer for whom the sales representative is licensed.

(b) The license of an investment adviser representative is effective only with respect to actions taken for an investment adviser or federal covered adviser with whom such investment adviser representative is employed or otherwise associated with as shown in the most current information filed by or on behalf of such representative pursuant to section 11-51-403 or 11-51-407 (3).

(4) (a) A person may act as a sales representative for more than one broker-dealer or issuer.

(b) A person may act as an investment adviser representative for more than one investment adviser or federal covered adviser and may also act as an investment adviser representative and a sales representative.

(5) (a) If a licensed sales representative ceases to be employed or otherwise engaged by a broker-dealer or issuer or ceases to act as a sales representative, the broker-dealer or, in the case of a sales representative licensed to act for an issuer, the sales representative shall promptly notify the securities commissioner. A notification required by this subsection (5) may be given by a broker-dealer who is registered as a broker-dealer under the federal "Securities Exchange Act of 1934" by filing the information through the central registration depository.

(b) If a licensed investment adviser representative ceases to be employed or otherwise engaged by an investment adviser or federal covered adviser or ceases to act as an investment adviser representative, the investment adviser or federal covered adviser shall promptly notify the securities commissioner.

(6) The license of a broker-dealer, sales representative, or investment adviser representative is effective until terminated by revocation or withdrawal.

11-51-407. Operating requirements.

(1) (a) The securities commissioner may by rule require licensed broker-dealers who are not registered under the federal "Securities Exchange Act of 1934":

(I) To satisfy specified minimum financial responsibility requirements;

(II) To file with the securities commissioner specified financial and other information;

(III) To make and maintain specified records and to preserve such records for five years or such other period as may be specified;

(IV) To establish written supervisory procedures and a system for applying such procedures that is reasonably expected to prevent and detect violations of this article; and

(V) To acquire and keep in force a fidelity bond in such minimum amount and covering such risks as may be specified.

(b) The securities commissioner may by rule require licensed investment advisers whose principal office and place of business is in this state, and licensed investment advisers whose principal office and place of business is not in this state but that is either not licensed in the state where it maintains its principal office and place of business or not in compliance with such state's financial operating requirements or books and records requirements:

(I) To file with the securities commissioner specified financial and other information;

(II) To make and maintain specified records and to preserve such records for five years or such other period as may be specified; and

(III) To establish written supervisory procedures and a system for applying such procedures that is reasonably expected to prevent and detect violations of this article.

(c) If a broker-dealer or investment adviser at any time knows, or has reason to know, that it is not in compliance with any rule made by the securities commissioner under this subsection (1), the broker-dealer or investment adviser shall promptly notify the securities commissioner of all relevant facts.

(2) The securities commissioner may by rule require licensed broker-dealers who are registered under the federal "Securities Exchange Act of 1934" to make, maintain, and preserve specified records, but no rule made by the securities commissioner under this subsection (2) shall require any broker-dealer to make, maintain, or preserve any records other than those required to be made, maintained, and preserved under the federal "Securities Exchange Act of 1934".

(3) (a) Every licensed broker-dealer, licensed investment adviser, and every licensed sales representative shall file with the securities commissioner such information as may be necessary to correct any information in that person's application for license that is or has become inaccurate in any material respect. The requirements of this subsection (3) may be satisfied by a broker-dealer who is registered as a broker-dealer under the federal "Securities Exchange Act of 1934" or by a sales representative licensed to act for such a broker-dealer by filing the correcting information through the central registration depository.

(b) A federal covered adviser who has filed the notice described in section 11-51-403 shall file with the securities commissioner a copy of each amendment filed by such adviser with the securities and exchange commission at the time such amendment is filed with the securities and exchange commission.

(4) Every licensed broker-dealer who is not registered under the federal "Securities Exchange Act of 1934" shall at all times have in its employment one or more individuals who have passed the written examination required under section 11-51-405 for individuals with supervisory responsibility. Every licensed investment adviser shall at all times have one or more individuals employed or otherwise associated with the investment adviser designated as having supervisory responsibilities over the investment adviser representatives of such adviser. Such individual or individuals shall have primary responsibility to supervise all of the licensed sales representatives of the broker-dealer, or all of the licensed investment adviser representatives of the investment adviser, as the case may be, and, for the purposes of section 11-51-410, each such individual who is not a partner, officer, or director of the broker-dealer or investment adviser shall be deemed a person occupying a similar status or performing similar functions as a partner, officer, or director. A broker-dealer or investment adviser who is not in compliance with this subsection (4) shall promptly notify the securities commissioner of all relevant facts.

(5) No investment adviser with its principal office and place of business in this state or investment adviser representative of a licensed investment adviser with a place of business in this state shall take or maintain custody or possession of any funds or securities in which any client of such person has any beneficial interest unless:

(a) All of the securities of each client are segregated, marked to identify the particular client with any beneficial interest therein, and held in safekeeping in some place reasonably free from risk of loss, damage, or destruction; and

(b) (I) All of the funds of each client are deposited in one or more accounts, containing only clients' funds, at a depository institution; and

(II) Each account is maintained in the name of the investment adviser or a federal covered adviser as agent or trustee for such clients; and

(III) A separate record is maintained for each such account that shows the name and address of the depository institution where the account is maintained, the dates and amounts of deposits to and withdrawals from the account, and the exact amount of each client's beneficial interest in the account; and

(c) Written notification is sent to the client giving the place and manner in which the client's funds or securities will be maintained immediately after the investment adviser or investment adviser representative accepts custody or possession of such funds or securities from the client and thereafter, if and when there is any change in the place or manner, written notification is sent to the client explaining the change; and

(d) An itemized statement is sent to each client, at least once every three months, that shows the client's funds and securities in the custody or possession of the investment adviser or investment adviser representative at the end of the period and all debits, credits, and transactions affecting the funds and securities during the period; and

(e) A certified public accountant or, with the prior written consent of the client, a public accountant verifies all funds and securities of clients at least once during each calendar year through an actual examination. Such examination shall be at a time chosen by the accountant without prior notice to the investment adviser or investment adviser representative. The investment adviser shall file with the securities commissioner promptly after each such examination a certificate from the accountant in which such accountant avers to the commissioner that the accountant has performed an examination of the funds and securities accounts, and in which the accountant describes the nature and extent of the examination, and the results and conclusions reached.

(f) The investment adviser or investment adviser representative who has custody of client funds or securities posts bonds in amounts and with conditions the securities commissioner may by rule prescribe, subject to the limitations of section 222 (c) of the federal "Investment Advisers Act of 1940". Any equivalent deposit of cash or securities shall be accepted in lieu of any bonds so required. Every bond shall provide for suit thereon by any person who has a cause of action under section 11-51-604 (3) and (5).

11-51-408. Licensing of successor firms.

(1) (a) A licensed broker-dealer or investment adviser may file an application for a license on behalf of a successor, whether or not the successor is in existence. If a broker-dealer or investment adviser succeeds to and continues the business of a licensed broker-dealer or investment adviser and the successor files an application for a license within thirty days after the succession, the license of the predecessor remains effective as the license of the successor for sixty days after the succession. An application filed pursuant to this subsection (1) must satisfy all requirements of an application under this article.

(b) A federal covered adviser may file a notice on behalf of a successor, whether or not the successor is in existence.

(2) If a successor is licensed or authorized to do business in this state pursuant to subsection (1) of this section, the license of each sales representative or investment adviser representative licensed to act for the predecessor shall remain effective as a license to act for the successor without a separate filing or payment of a separate fee.

11-51-409. Access to records.

(1) The securities commissioner, in a manner reasonable under the circumstances, may examine, without notice, the records, within or without this state, of a licensed broker-dealer or investment adviser that are required to be made and maintained pursuant to this article in order to determine compliance with this article. A licensed broker-dealer or investment adviser may maintain such records in any form of data storage if the records are readily accessible to the securities commissioner in legible form.

(2) The securities commissioner, in a manner reasonable under the circumstances, may copy records required to be made and maintained under this article or require a licensed broker-dealer or investment adviser, at the expense of the broker-dealer or investment adviser, to copy such records and provide copies to the securities commissioner.

(3) The securities commissioner, in a manner reasonable under the circumstances, may examine, without notice, the records, within or without this state, of a licensed sales representative or investment adviser representative that are made and maintained by the sales representative or investment adviser representative in the normal course of business in order to determine compliance with this article.

(4) The securities commissioner, in a manner reasonable under the circumstances, may copy records made and maintained by a licensed sales representative or investment adviser representative in the normal course of business or require a licensed sales representative or investment adviser representative, at the sales representative's or investment adviser representative's expense, to copy such records and provide copies to the securities commissioner.

11-51-409.5. Mandatory disclosure - investment advisers and investment adviser representatives.

(1) Each investment adviser and investment adviser representative of a licensed investment adviser shall furnish a written disclosure statement to each prospective client and to each client who is to receive investment advisory services. Such statement shall, at a minimum, contain the information the securities commissioner by rule requires to be furnished to clients or prospective clients by an investment adviser and an investment adviser representative. In the interests of

uniformity, the requirements for disclosure of information under such rules should be coordinated and consistent with those that would be imposed under the federal "Investment Advisers Act of 1940" and the rules promulgated pursuant to that act, and with the requirements of other states, unless the securities commissioner makes the specific finding that to do so would be contrary to the public interest, the protection of investors and advisory clients in this state, and the purposes of this article.

(2) The disclosure statement described in subsection (1) of this section shall be delivered before the client or prospective client incurs any obligation for or in connection with the investment advisory services. In addition, the investment adviser or investment adviser representative shall annually deliver or offer to deliver without charge upon written request of each client a true copy of the most recently available disclosure statement.

11-51-410. Denial, suspension, or revocation.

(1) The securities commissioner may by order deny an application for a license, suspend or revoke a license, censure a licensed person, limit or impose conditions on the securities activities that a licensed person may conduct in this state, and bar a person from association with any licensed broker-dealer, investment adviser, or federal covered adviser in the conduct of its business in this state in such capacities and for such period as the order specifies. These sanctions may be imposed only if the securities commissioner makes a finding, in addition to the findings required by section 11-51-704 (2), that the applicant or licensed person or, in the case of a broker-dealer or investment adviser, a partner, officer, director, person occupying a similar status or performing similar functions, or person directly or indirectly controlling the broker-dealer or investment adviser:

(a) Has filed an application for a license with the securities commissioner that, as of the effective date of the license or as of any date after filing in the case of an order denying effectiveness, was false or misleading as a result of an untrue statement of a material fact or an omission to state a material fact, unless the applicant sustains the burden of proof that the applicant did not know and in the exercise of reasonable care could not have known of the untruth or omission;

(b) Has willfully violated or willfully failed to comply with any provision of this article or any rule or order under this article, except any rule that is subject to the additional findings required by paragraph (g) of this subsection (1);

(c) Within the past ten years, has entered a plea of guilty or nolo contendere to, or has been convicted of, any felony, any misdemeanor involving a breach of fiduciary duty or fraud, or any misdemeanor in connection with a purchase or sale of a security;

(d) Is subject to a temporary or permanent injunction issued by a court of competent jurisdiction in an action instituted by the securities commissioner, the securities agency or administrator of another state or a foreign jurisdiction, the securities and exchange commission, or the commodity futures trading commission, for violating any securities registration or broker-dealer, investment adviser, federal covered adviser, or similar license requirement in any federal, state, or foreign law or for engaging in fraudulent conduct;

(e) Is currently the subject of an order of the securities commissioner denying, suspending, or revoking the person's license as a broker-dealer, investment adviser, sales representative, or investment adviser representative or barring the person from association with any licensed broker-dealer, investment adviser, or federal covered adviser;

(f) Is currently the subject of any of the following orders issued within the past five years:

(I) An order by the securities agency or administrator of another state or a foreign jurisdiction, entered after notice and opportunity for hearing and based upon fraudulent conduct, denying or revoking the person's license as a broker-dealer, investment adviser, sales representative, or investment adviser representative, or the substantial equivalent of those terms, or suspending or barring the right of the person to be associated with a broker-dealer, investment adviser, or federal covered adviser;

(II) An order by the securities and exchange commission, entered after notice and opportunity for hearing, denying, suspending, or revoking the person's registration as a broker-dealer under the federal "Securities Exchange Act of 1934" or as an investment adviser under the federal "Investment Advisers Act of 1940" or suspending or barring the right of the person to be associated with a broker-dealer or investment adviser;

(III) An order by the commodity futures trading commission, entered after notice and opportunity for hearing, denying, suspending, or revoking registration under the federal "Commodity Exchange Act"; or

(IV) A suspension or expulsion from membership in or association with a member of a self-regulatory organization;

(g) Has willfully engaged in a course of conduct involving the violation of one or more rules made by the securities commissioner that prohibit unfair and dishonest dealings by a broker-dealer or sales representative, including any rule that may be made to define conduct prohibited by section 11-51-501, if each such rule is based upon a finding, in

addition to the findings required by section 11-51-704 (2), which finding itself must be based on information provided by broker-dealers and sales representatives at a hearing on the proposed rule, that licensed broker-dealers and sales representatives who will be required to comply with the rule generally agree that the conduct prohibited by the rule does not meet prevailing standards of fair and honest dealing within the securities industry and that it is reasonable to expect the rule will prevent or deter such conduct;

(h) In the case of a broker-dealer who is not registered under the federal "Securities Exchange Act of 1934", is not in compliance with of section 11-51-407 (4);

(i) Has failed reasonably to supervise, with a view to preventing violations of this article, another person who is subject to the person's supervision and who commits such a violation, but for the purpose of this paragraph (i) no person shall be deemed to have failed to supervise another person if there existed established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person and such person reasonably discharged the duties and obligations incumbent upon such person by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with;

(j) Has ceased to do business as a broker-dealer, investment adviser, sales representative, or investment adviser representative;

(k) Has offered or sold to a public entity in the state of Colorado a financial instrument that such person knew or should have known does not qualify for sale to the public entity under section 24-75-601.1, C.R.S.; or

(l) In the case of an investment adviser or investment adviser representative, willfully has:

(I) Failed to provide a client with a written disclosure statement as required pursuant to section 11-51-409.5; or

(II) Engaged in conduct contrary to one or more rules wherein the securities commissioner prohibits dishonest or unethical conduct in connection with providing investment advisory services. This subparagraph (II) applies to an investment adviser representative employed by or affiliated with a federal covered adviser only to the extent permitted under the federal "National Securities Markets Improvement Act of 1996". In the interests of uniformity, any rules promulgated pursuant to this subparagraph (II) shall be coordinated and consistent with the regulation of federal covered advisers by the securities and exchange commission under the federal "Investment Advisers Act of 1940" and the rules promulgated pursuant to that act, and with the rules of other states regarding such conduct by investment advisers and investment adviser representatives, unless the securities commissioner makes the specific finding that to do so would be contrary to the public interest, the protection of investors and advisory clients in this state, and the purposes of this article.

(m) After notice and opportunity for a hearing, has been found within the previous ten years:

(I) By a court with jurisdiction, to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated;

(II) To have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, sales representative, investment adviser, investment adviser representative, or similar person; or

(III) To have been suspended or expelled from membership or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction.

(n) (I) Is not qualified because of training, experience, or knowledge of the securities business; except that in the case of an applicant who is a sales representative for a broker-dealer that is a member of a self-regulatory organization or for an individual as an investment adviser representative, a denial order may not be based on this paragraph (n) if the applicant has successfully completed all examinations required by this article.

(II) The securities commissioner may require an applicant for a license pursuant to section 11-51-403, who has not been registered or licensed in any state within the two years preceding the filing of an application in this state, to successfully complete an examination.

(2) The securities commissioner may not begin a proceeding under this section against any person more than ninety days after a license has been issued to that person on the basis of a fact or transaction which the person shows was known to the securities commissioner when the license was issued or when any prior license of the same class was issued to that person if such prior license was not revoked on the basis, in whole or in part, of such fact or transaction.

(3) For good cause shown the securities commissioner may waive or modify an order previously made under this section as it applies to any person with the consent of that person.

(4) The securities commissioner may suspend the license of a licensee pursuant to a summary order issued under section 11-51-606 (4) and such order shall be valid pending a final determination in any proceeding brought pursuant to this section subject to any modification made to such order under section 11-51-606 (4) (c).

(5) Where a person is an applicant for a license, or is licensed by the securities commissioner in more than one capacity, or both, and one or more grounds for sanction as set forth in subsection (1) of this section as they may apply to one application, license, or association with a broker-dealer, investment adviser, or federal covered adviser has been established either by findings of fact and conclusions of law or alleged before the securities commissioner on stipulation, the securities commissioner may impose one or more of such sanctions not only regarding the application, license, or association giving rise to the matter, but also upon any other application, license, or association under this section if the securities commissioner makes the additional findings that to do so is necessary and appropriate in the public interest and for the protection of investors.

11-51-411. Abandonment of license.

If a licensed person has died or ceased to exist as a legal entity, has been adjudicated incompetent, or cannot be located by the securities commissioner after a reasonable search, the securities commissioner may by order summarily revoke the license on the grounds that the license has been abandoned.

11-51-412. Withdrawal.

(1) An application for a license may be withdrawn without prejudice by the applicant upon written notice to the securities commissioner before the license becomes effective unless a proceeding under section 11-51-410 to deny the license is pending.

(2) Withdrawal from licensing as a broker-dealer, investment adviser, sales representative, or investment adviser representative becomes effective thirty days after receipt by the securities commissioner of an application to withdraw, or at such earlier time as the securities commissioner may allow, unless:

(a) A proceeding under section 11-51-410 against the licensed person is pending when the application is filed or is instituted within thirty days thereafter; or (b) Additional information regarding the application is requested by the securities commissioner within thirty days after the application is filed.

(3) If a proceeding is pending or instituted under subsection (2) of this section, withdrawal becomes effective at the time and upon the conditions the securities commissioner by order determines. If additional information is requested, withdrawal is effective thirty days after the additional information is received by the securities commissioner. If no proceeding is pending or instituted under subsection (2) of this section and withdrawal becomes effective, the securities commissioner may institute a proceeding under section 11-51-410 within one year after withdrawal became effective and enter an order as of the last date on which licensing was effective.

(4) Unless another date is specified by the federal covered adviser, withdrawal of a notice filing by a federal covered adviser becomes effective upon receipt by the securities commissioner of notice from such adviser of the withdrawal.

PART 5 FRAUD AND OTHER PROHIBITED CONDUCT

11-51-501. Fraud and other prohibited conduct.

(1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) It is unlawful for a custodian of the funds or securities of a local government investment pool trust fund organized under the provisions of part 7 of article 75 of title 24, C.R.S., to effect any transaction to relinquish possession of, distribute, expend, or transfer any of the assets of the trust fund without the prior written authorization of the board, except for:

(a) The purchase or sale of authorized investments or the exchange of such assets for other assets of equal or greater value if such sale, purchase, or exchange is solely in the accounts of the trust fund;

(b) Distributions to participating local governments; or

(c) The payment of routine fees and expenses that have been authorized by the board of trustees in the annual budget of the trust fund.

(3) It is unlawful for any investment adviser of a local government investment pool trust fund organized under the provisions of part 7 of article 75 of title 24, C.R.S., to:

(a) Take custody or possession of the funds or securities of the trust fund;

(b) Act as a principal in any transaction in securities with the trust fund unless the express prior written authorization of the board of trustees is obtained with regard to each such transaction and unless the transaction is effected without mark-up and at the fair market price of the securities purchased or sold; or

(c) Deposit, convey, or maintain the funds or securities of the trust fund in any account that is in any other name than that of the trust fund.

(4) It is unlawful for any broker-dealer or financial institution acting in an advisory capacity to a local government investment pool trust fund organized under the provisions of part 7 of article 75 of title 24, C.R.S., or any person employed by or directly associated with such broker-dealer or financial institution to:

(a) Act as a principal in any transaction in securities with the trust fund unless the express prior written authorization of the board of trustees is obtained with regard to each such transaction and unless the transaction is effected without mark-up and at the fair market price of the securities purchased or sold; or

(b) Deposit, convey, or maintain the funds or securities of the trust fund in any account that is in any other name than that of the trust fund.

(5) It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or of any purchase or sale thereof, whether through the issuance of analyses or reports or otherwise to:

(a) Employ any device, scheme, or artifice to defraud any client or prospective client;

(b) Make an untrue statement of a material fact to any client or prospective client or to omit to state to any client or prospective client any material fact necessary to make the statements made, in light of the circumstances under which they are made, not misleading, in the disclosure statement delivered to any client or prospective client pursuant to section 11-51-409.5 or a similar document under the federal "Investment Advisers Act of 1940" or during the solicitation of any such client or otherwise in connection with providing investment advisory services; or

(c) Engage in any transaction, act, practice, or course of business that operates or would operate as a fraud or deceit upon any client or prospective client or that is fraudulent, deceptive, or manipulative.

(6) It is unlawful for an investment adviser or investment adviser representative acting as principal for such person's own account or on behalf of a third party to:

(a) Sell a security to a client without disclosing in writing pursuant to section 11-51-409.5 the capacity in which the investment adviser or investment adviser representative is acting before the completion of the transaction; or

(b) Fail to obtain the written consent of the client to such transaction after disclosure has been made and before completion of the transaction.

(7) Nothing in subsection (5) or (6) of this section shall relieve an investment adviser, federal covered adviser, or investment adviser representative of liability under any other subsection of this section.

11-51-502. Misleading filings.

It is unlawful for any person to make or cause to be made, in any document filed with the securities commissioner or in any proceeding under this article, any statement which the person knows or has reasonable grounds to know is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

11-51-503. Unlawful representation concerning a license, registration, or exemption.

(1) Neither the fact that an application for a license or a registration statement has been filed nor the fact that a person is licensed or a security is registered constitutes a finding by the securities commissioner that any document filed under this article is true, complete, and not misleading. No such fact, nor the fact that an exemption or exception is available for a person, security, or transaction, means that the securities commissioner has passed in any way upon the merits or qualifications of, or has recommended or given approval to, any person, security, or transaction.

(2) It is unlawful to make, or cause to be made, to any prospective purchaser or to any existing or prospective customer or client any representation inconsistent with subsection (1) of this section.

**PART 6
ENFORCEMENT AND CIVIL LIABILITY**

11-51-601. Investigations and subpoenas.

(1) The securities commissioner may make such public or private investigations within or outside of this state as the securities commissioner deems necessary to determine whether any person has violated or is about to violate any provision of this article or any rule or order under this article or to aid in the enforcement of this article or in the prescribing of rules and forms under this article, may require or permit any person to file a statement as to all the facts and circumstances concerning the matter to be investigated, and may publish information concerning any violation of this article or any rule or order under this article.

(2) For the purpose of any investigation or proceeding under this article, the securities commissioner or any officer designated by the securities commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the securities commissioner deems relevant or material to the inquiry.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the district court of the city and county of Denver, upon application by the securities commissioner, may issue to the person an order requiring that person to appear before the securities commissioner, or the officer designated by the securities commissioner, to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(4) No person is excused from attending and testifying or from producing any document or record before the securities commissioner, or in obedience to the subpoena of the securities commissioner or any officer designated by the securities commissioner, or in any proceeding instituted by the securities commissioner on the ground that the testimony or evidence, documentary or otherwise, required of that person may tend to incriminate that person or subject that person to a penalty or forfeiture; but no document, evidence, or other information compelled under order of the district court of the city and county of Denver, or any information directly or indirectly derived from such document, evidence, or other information, may be used against an individual so compelled in any criminal case; except that the individual testifying is not exempt from prosecution and punishment for perjury in the first or second degree or contempt committed in testifying.

(5) (a) Information in the possession of, filed with, or obtained by the securities commissioner in connection with a private investigation under this section shall be confidential. No such information may be disclosed by the securities commissioner or any of the officers or employees of the division of securities unless necessary or appropriate in connection with a particular investigation or proceeding under this article or for any law enforcement purpose.

(b) As it relates solely to the preservation of the confidentiality of documents and other information obtained by the securities commissioner or any officer or employee of the division of securities pursuant to this section, the division of securities shall be construed as a criminal justice agency as defined in section 24-72-302 (3), C.R.S., and such documents and other information shall be treated as criminal justice records as defined in section 24-72-302 (4), C.R.S.

(c) Except as set forth in this subsection (5), no provision of this article either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the securities commissioner or any of the officers or employees of the division of securities.

11-51-602. Enforcement by injunction.

(1) Whenever it appears to the securities commissioner upon sufficient evidence satisfactory to the securities commissioner that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule or order under this article, the securities commissioner may apply to the district court of the city and county of Denver to temporarily restrain or preliminarily or permanently enjoin the act or practice in question and to enforce compliance with this article or any rule or order under this article. If the action is against a broker-dealer, investment adviser, federal covered adviser, sales representative, or investment adviser representative and the court finds that such person has committed a violation of section 11-51-501, in addition to any other relief, the court may enter an order imposing such conditions on such person as the court deems appropriate. In any such action, the securities commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the securities commissioner to post a bond.

(2) The securities commissioner may include in any action authorized by subsection (1) of this section, relating to any violation of section 11-51-301, 11-51-401, or 11-51-501, a claim for damages under section 11-51-604 or restitution, disgorgement, or other equitable relief on behalf of some or all of the persons injured by the act or practice constituting the subject matter of the action, if the applicable scienter standard of section 11-51-604 is met. No person shall be liable for damages or for restitution, disgorgement, or other equitable relief in any action authorized by subsection (1) of this section for a violation of section 11-51-301 due solely to a failure to file the prescribed notification of exemption or to pay the required exemption fee for an exemption under section 11-51-308 (1) (p).

11-51-603. Criminal penalties.

(1) Any person who willfully violates the provisions of section 11-51-501 commits a class 3 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) Any person who willfully violates any of the provisions of this article, except section 11-51-501, commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(3) The securities commissioner may refer such evidence as is available to the securities commissioner under authority of this article concerning any violation which constitutes the commission of any felony or misdemeanor, including any violation of subsection (1) or (2) of this section, to the attorney general or the proper district attorney, who may, with or without such a reference, prosecute the appropriate criminal proceedings under this article or otherwise as authorized by law, or the securities commissioner may refer such evidence to the proper United States attorney.

(4) Nothing in this article limits the power of the state to punish any person for any conduct which constitutes a crime by statute.

(5) No person shall be prosecuted, tried, or punished for any criminal violation of this article unless the indictment, information, complaint, or action for the same is found or instituted within five years after the commission of the offense.

11-51-604. Civil liabilities.

(1) Any person who sells a security in violation of section 11-51-301 is liable to the person buying the security from such seller for the consideration paid for the security, together with interest at the statutory rate from the date of payment, costs, and reasonable attorney fees, less the amount of any income received on the security, upon the tender of the security, or is liable for damages if the buyer no longer owns the security. Damages are deemed to be the amount that would be recoverable upon a tender, less the value of the security when the buyer disposed of it, and interest at the statutory rate from the date of disposition. No person is liable under this subsection (1) for a violation of section 11-51-301 due solely to a failure to file the prescribed notification of exemption or to pay the required exemption fee for an exemption under section 11-51-308 (1) (p).

(2) (a) Except as provided in paragraph (b) of this subsection (2), any broker-dealer or sales representative who sells a security in violation of section 11-51-401 is liable to the person buying the security from such seller for the consideration paid for the security, together with interest at the statutory rate from the date of payment, costs, and reasonable attorney fees, less the amount of any income received on the security, upon the tender of the security, or is liable for damages if the buyer no longer owns the security. Damages are deemed to be the amount that would be recoverable

upon a tender, less the value of the security when the buyer disposed of it, and interest at the statutory rate from the date of disposition.

(b) No broker-dealer or sales representative is liable under this subsection (2) for a sale of a security exempt from registration under section 11-51-307 (1) (g) to (1) (j) or for a sale of a security in a transaction exempt from registration under section 11-51-308 (1) (a), (1) (e) to (1) (l), (1) (o), or (1) (p); but this paragraph (b) does not apply if at the time of such sale:

(I) In the case of a violation of section 11-51-401 arising from the failure of a broker-dealer to be licensed under this article, such broker-dealer was registered as a broker-dealer under the federal "Securities Exchange Act of 1934", licensed as a broker-dealer or its equivalent under the laws of another state, or held a limited license under this article; or

(II) In the case of a violation of section 11-51-401 arising from the failure of a sales representative to be licensed under this article, such sales representative was licensed as a sales representative or its equivalent under the laws of another state, held a limited license under this article, or in connection with such sale was acting for a broker-dealer which was registered as a broker-dealer under the federal "Securities Exchange Act of 1934", licensed as a broker-dealer or its equivalent under the laws of another state, or licensed under this article.

(2.5) An investment adviser or investment adviser representative who violates section 11-51-401 is liable to each person to whom investment advisory services are provided in violation of such section in an amount equal to the greater of one thousand dollars or the value of all the benefits derived directly or indirectly from the relationship or dealings with such person prior to such time as the violation may be cured, together with interest at the statutory rate from the date of receipt of such benefits, costs, and reasonable attorney fees.

(2.6) An investment adviser or investment adviser representative who provides investment advisory services to another person but who recklessly, knowingly, or with an intent to defraud fails to furnish to that person a written disclosure statement as required by section 11-51-409.5 is liable to such other person in an amount equal to one thousand dollars, the value of all benefits derived directly or indirectly from the relationship or dealings with such person, or for actual damages suffered by such other person, whichever is greatest, plus interest at the statutory rate, costs, reasonable attorney fees, or such other legal or equitable relief as the court may deem appropriate.

(3) Any person who recklessly, knowingly, or with an intent to defraud sells or buys a security in violation of section 11-51-501 (1) or provides investment advisory services to another person in violation of section 11-51-501 (5) or (6) is liable to the person buying or selling such security or receiving such services in connection with the violation for such legal or equitable relief that the court deems appropriate, including rescission, actual damages, interest at the statutory rate, costs, and reasonable attorney fees.

(4) Any person who sells a security in violation of section 11-51-501 (1) (b) (the buyer not knowing of the untruth or omission) and who does not sustain the burden of proof that such person did not know, and in the exercise of reasonable care could not have known, of the untruth or omission is liable to the person buying the security from such person, who may sue to recover the consideration paid for the security, together with interest at the statutory rate from the date of payment, costs, and reasonable attorney fees, less the amount of any income received on the security, upon the tender of the security, or is liable for damages if the buyer no longer owns the security. Damages are deemed to be the amount that would be recoverable upon a tender, less the value of the security when the buyer disposed of it, and interest at the statutory rate from the date of disposition.

(5) (a) Every person who, directly or indirectly, controls a person liable under subsection (1), (2), (2.5), (2.6), or (3) of this section is liable jointly and severally with and to the same extent as such controlled person, unless the controlling person sustains the burden of proof that such person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

(b) Every person who, directly or indirectly, controls a person liable under subsection (3) or (4) of this section is liable jointly and severally with and to the same extent as such controlled person, unless such controlling person sustains the burden of proof that such person acted in good faith and did not, directly or indirectly, induce the act or acts constituting the violation or cause of action.

(c) Any person who knows that another person liable under subsection (3) or (4) of this section is engaged in conduct which constitutes a violation of section 11-51-501 and who gives substantial assistance to such conduct is jointly and severally liable to the same extent as such other person.

(6) Any tender specified in this section may be made at any time before entry of judgment.

(7) Every cause of action under this article survives the death of any individual who might have been a plaintiff or defendant.

(8) No person may sue under subsection (1), (2), (2.5), or (2.6) or paragraph (a) of subsection (5) of this section more than two years after the contract of sale, or, as those provisions pertain to investment advisers, federal covered

advisers, investment adviser representatives, and persons who provide investment advisory services, more than two years after the date of the violation. No person may sue under subsection (3) or (4) or paragraph (b) or (c) of subsection (5) of this section more than three years after the discovery of the facts giving rise to a cause of action under subsection (3) or (4) of this section or after such discovery should have been made by the exercise of reasonable diligence and in no event more than five years after the purchase or sale, or, as those provisions pertain to investment advisers, federal covered advisers, investment adviser representatives, and persons who provide investment advisory services, more than five years after the date of the violation.

(9) No buyer or seller of securities or recipient of investment advice may sue under this section if:

(a) The buyer or seller of securities or recipient of investment advice receives, before the action is commenced, documentation of:

(I) An offer stating how liability under this section may arise and fairly advising the buyer or seller of securities or recipient of investment advice of that person's rights in connection with the offer and any information necessary, including financial, to correct any material misrepresentation or omission in the information that was required by this article to be furnished to the person at the time of the purchase, sale, or rendering of investment advice;

(II) If the basis for relief under this subsection (9) is for a violation of subsections (1), (3), or (4) of this section and the person seeking rescission is a buyer of securities:

(A) An offer to repurchase the security for cash, payable on delivery of the security, in an amount equal to the consideration paid plus interest at the statutory rate from the date of the purchase less the amount of any income received on the security;

(B) If the buyer no longer owns the security, an offer to pay the purchaser, upon acceptance of the offer, damages in the amount that would be recoverable upon tender of the security less the value of the security when the buyer disposed of the security plus interest at the statutory rate from the date of the purchase, in cash, equal to the damages computed in the manner provided in this subparagraph (II);

(III) If the basis for relief under this subsection (9) is for a violation of subsections (1), (3), or (4) of this section and the person seeking rescission is a seller of securities:

(A) An offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the buyer, and interest at the statutory rate after the date of sale of the security to the buyer; or

(B) If the buyer no longer owns the security, an offer to pay the seller of the security upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the buyer's conduct that may have caused liability and interest at the statutory rate after the date of sale of the security by the seller to the buyer.

(IV) If the basis for relief under this subsection (9) is a violation of subsection (2) of this section:

(A) if the person is a buyer, an offer to pay pursuant to subparagraph (II) of this paragraph (a); or

(B) If the person is a seller of securities, an offer to tender or to pay as specified in subparagraph (III) of this paragraph (a).

(V) If the basis for relief under this subsection (9) is a violation of subsection (2.5) of this section, an offer to reimburse, in cash, the consideration paid for the advice and interest at the statutory rate from the date of the payment;

(VI) If the basis for relief under this subsection (9) is a violation of subsection (2.6) of this section, an offer to reimburse, in cash, the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest at the statutory rate from the date of the violation causing the loss;

(b) The offer pursuant to paragraph (a) of this subsection (9) states that the offer must be accepted by the buyer or seller of securities or recipient of investment advice within thirty days after the offer is mailed by the buyer or seller of securities or recipient of investment advice. The party seeking rescission may request that the securities commissioner authorize a time period for acceptance that is less than thirty days but not less than three days. The securities commissioner shall have the authority to grant such change in the acceptance period.

(c) The offeror has the ability to pay the amount offered or to tender the security under paragraph (a) of this subsection (9) at the time the offer is made;

(d) The offer pursuant to paragraph (a) of this subsection (9) is delivered to the buyer or seller of securities or recipient of investment advice, or sent in a manner that ensures receipt by the buyer or seller of securities or recipient of investment advice; or

(e) The buyer or seller of securities or recipient of investment advice who accepts the offer made pursuant to paragraph (a) of this subsection (9) is paid in accordance with the terms of the offer.

(10) No person who has made or engaged in the performance of any contract in violation of any provision of this article or any rule or order under this article or who has acquired any purported right under any such contract with knowledge of the facts by reason of which the making or performance of any such contract was in violation may base any suit on the contract.

(11) Any condition, stipulation, or provision binding any person acquiring or disposing of any security to waive compliance with any provision of this article or any rule or order under this article is void.

(12) The rights and remedies provided by this article may be pleaded and proved in the alternative and are in addition to any other rights or remedies that may exist at law or in equity, but this article does not create any cause of action not specified in this section or section 11-51-602.

(13) Any person liable under this section may seek and obtain contribution from other persons liable under this section, directly or indirectly, for the same violation. Contribution shall be awarded by the court in accordance with the actual relative culpabilities of the various persons so liable.

(14) In the case of a willful violation of or a willful refusal to comply with or obey an order issued by the securities commissioner to any person pursuant to section 11-51-410 or 11-51-606, the district court of the city and county of Denver, upon application by the securities commissioner, may issue to the person an order requiring that person to appear before the court regarding such violation or refusal. If the securities commissioner establishes by a preponderance of the evidence that the person willfully violated or willfully refused to comply with or obey the order, the court may impose legal and equitable sanctions as are available to the court in the case of contempt of court and as the court deems appropriate upon such person.

11-51-605. Burden of proof.

In any proceeding under this article, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

11-51-606. Conduct of proceedings - cease-and-desist orders - consent orders - summary orders - issued by securities commissioner - rules.

(1) Any administrative proceeding under this article shall be conducted pursuant to the provisions of sections 24-4-104 and 24-4-105, C.R.S.; except that section 24-4-104 (3), C.R.S., shall not apply to any proceeding conducted pursuant to this article. Except as specified in paragraph (d) of subsection (1.5) or paragraph (e) of subsection (3) of this section, the securities commissioner shall refer the conduct of all hearings to an administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S., or a panel of the securities board in the discretion of the securities commissioner, based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter. Every hearing in an administrative proceeding shall be public unless the securities commissioner, in the securities commissioner's discretion, grants a request joined in by all the respondents that the hearing be conducted privately.

(1.5) (a) Whenever it appears to the securities commissioner, based upon sufficient evidence as presented in a petition by an officer or employee of the division of securities, that a person has committed or may commit any of the acts or practices listed in paragraph (b) of this subsection (1.5), then, in addition to any specific powers granted under this article, the securities commissioner, in his or her discretion, may issue to such person an order to show cause why the securities commissioner should not enter a final order directing such person to cease and desist from the unlawful act or practice, or impose such other sanctions as provided in subparagraph (IV) of paragraph (d) of this subsection (1.5). The securities commissioner shall, within two calendar days, notify the chairperson of the securities board or an administrative law judge that an order to show cause has been issued, and the chairperson or an administrative law judge shall set a date for hearing on such order before the securities board or an administrative law judge as provided in paragraph (d) of this subsection (1.5).

(b) The securities commissioner may take action pursuant to paragraph (a) of this subsection (1.5) with regard to any of the following acts or practices:

(I) The sale of a security is subject to registration under this article and the security is being offered or has been offered or sold in violation of section 11-51-301, or any rule or order under said section;

(II) Any person has engaged or is about to engage in the offer or sale of a security or any other act or practice in violation of section 11-51-401 or any rule or order under said section;

(III) Any person has engaged or is about to engage in the offer or sale of a security or any other act or practice in violation of section 11-51-501 or any rule or order under said section;

(IV) Any person has engaged or is about to engage in any act or practice in violation of any provision of article 53 of this title; or

(V) Any person has violated or is about to violate any order previously entered by the securities commissioner.

(c) Any person against whom an order to show cause has been entered pursuant to paragraph (a) of this subsection (1.5) shall be promptly notified by the securities division of the entry of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the chairperson of the securities board or an administrative law judge for hearing on such order. Such notice may be served by United States mail, postage prepaid, to the last-known address of such person, by personal service, facsimile transmission, or as may be practicable upon any person against whom such order is entered. Mailing or facsimile transmission of an order or other documents under this subsection (1.5), or personal service of such orders or documents, shall constitute notice thereof to the person.

(d) (I) The hearing on an order to show cause shall be commenced no sooner than ten nor later than twenty-one calendar days following the date of transmission or service of the notification by the securities division as provided in paragraph (c) of this subsection (1.5). The hearing may be continued by agreement of all of the parties based on the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than thirty-five calendar days following the date of transmission or service of the notification.

(II) If a person against whom an order to show cause entered pursuant to paragraph (a) of this subsection (1.5) does not appear at the hearing, the securities division may present evidence that notification was properly sent or served upon such person pursuant to paragraph (c) of this subsection (1.5) and such other evidence related to the matter as the securities board or an administrative law judge deems appropriate. In the case where such person does not appear, the securities commissioner may not issue an order unless there is a finding by the securities board or an administrative law judge that there is a reasonable basis to believe such notification was actually received or served, or, after reasonable search by the securities division, the person against whom the order was entered cannot be located. The securities commissioner shall enter such order within ten days after his or her determination related to reasonable attempts of notification of the respondent, and the order shall become final as to that person by operation of law.

(III) At any hearing pursuant to this paragraph (d), the securities board or an administrative law judge shall take evidence and hear arguments from the securities division and the person against whom the order to show cause has been entered, pursuant to such rules and procedures as may be adopted by the securities commissioner. Based on the evidence entered and arguments heard at the hearing, the securities board or an administrative law judge shall enter findings of fact, conclusions of law, and an initial decision recommending to the securities commissioner that a final order be entered affirming, denying, vacating, or otherwise modifying the order to show cause. The initial decision shall be issued within ten days after the conclusion of the hearing provided pursuant to this paragraph (d) and shall be promptly delivered to the securities commissioner.

(IV) If the securities commissioner reasonably finds that the person against whom the order to show cause was entered has engaged, or is about to engage, in acts or practices constituting violations as set forth in paragraph (b) of this subsection (1.5) and makes the findings required by section 11-51-704 (2), he or she may issue a final cease and desist order imposing one or more of the following sanctions:

(A) Directing such person to cease and desist from further unlawful acts or practices;

(B) Censuring the person, if the person is a licensed broker-dealer, sales representative, investment adviser, or investment adviser representative; or

(C) Requiring such person to undertake or comply with conditions or limitations placed upon the activities, functions, or operations of such person, within such reasonable time period as may be imposed by the securities commissioner.

(V) The securities commissioner shall provide notice of the final order within ten calendar days after receiving the initial decision, in the manner set forth in paragraph (c) of this subsection (1.5), to each person against whom such order has been entered. The final order entered pursuant to subparagraph (IV) of this paragraph (d) shall be effective when issued, and shall be a final order for purposes of judicial review pursuant to section 11-51-607.

(2) (a) Whenever it appears to the securities commissioner, based upon sufficient evidence presented to the securities commissioner in a stipulation between an officer or employee of the division of securities and any person, that such person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article, any rule promulgated pursuant to this article, or any order issued under this article, or any act or practice constituting grounds for administrative sanction under this article, the securities commissioner may issue a consent order against such person.

(b) In any consent order issued pursuant to this subsection (2), the securities commissioner may:

(I) Prohibit the respondent from any further violation of any provision, rule, or order under this article that is alleged in the stipulation to have been violated or from engaging in the conduct alleged in the stipulation as grounds for sanction under this article; and

(II) Impose conditions, limitations, or sanctions as stipulated.

(3) (a) If it appears to the securities commissioner, based upon sufficient evidence as presented in a petition by an officer or employee of the division of securities, that, in the case of a registration statement subject to the escrow provisions in section 11-51-302 (5) or (6), there has been a violation of such escrow provisions, or, in the case of any registration statement under section 11-51-304, any of the grounds specified in section 11-51-306 (1) exist, the securities commissioner may enter a summary stop order postponing or suspending the effectiveness of the registration statement.

(b) If it appears to the securities commissioner, based upon sufficient evidence as presented in a petition by an officer or employee of the division of securities, that sufficient grounds exist under section 11-51-310 (1), the securities commissioner may enter a summary order under section 11-51-310 (1) (b) suspending the exemption from securities registration under section 11-51-307 (1) (g) as to a specified security or issuer pending final determination of a proceeding under that section.

(c) No summary order may be entered pursuant to this subsection (3) unless the securities commissioner determines, in addition to the findings required under section 11-51-704 (2), that immediate issuance of such summary order is imperatively necessary for the protection of investors. An order issued pursuant to this subsection (3) is effective when entered and shall be accompanied by a brief statement of findings of fact and conclusions of law.

(d) Upon entering a summary order, the securities commissioner shall promptly notify each person against whom it has been entered of its entry and the basis therefore by providing to each such person at such person's last known mailing address a copy of the order and the accompanying findings of fact and conclusions of law.

(e) (I) Any person against whom a summary stop order or summary order suspending exemption has been entered may make a written request to the securities commissioner that the matter be set for a hearing if such request is made within twenty-one calendar days after the date of entry of the order. Upon receipt of such request, the securities commissioner shall notify the chairperson of the securities board, and the chairperson shall set a date for a hearing within twenty-one days to determine whether to continue the summary order.

(II) Any such hearing before the securities board shall be conducted pursuant to the provisions of section 24-4-105, C.R.S. Following the hearing, the securities board shall issue its initial decision, accompanied by findings of fact and conclusions of law. The securities commissioner shall then enter a decision that shall be a final order for purposes of judicial review pursuant to section 11-51-607.

(III) If the securities commissioner does not receive a request for a hearing pursuant to subparagraph (I) of this paragraph (e), the order shall become final twenty-one calendar days after the entry of such order.

(4) (a) If it appears to the securities commissioner, based upon sufficient evidence as presented in a petition by an officer or employee of the division of securities, that any of the grounds specified in section 11-51-410 (1) exist as to any licensed person or, in the case of a licensed broker-dealer, a partner, officer, director, person occupying a similar status or performing similar functions, or a person directly or indirectly controlling a broker-dealer, the securities commissioner may issue to such person an order to show cause why the securities commissioner should not summarily suspend the license of that person or limit or impose conditions on the securities activities of that person pending final determination of a proceeding under sections 24-4-104 and 24-4-105, C.R.S. The securities commissioner shall promptly notify the chairperson of the securities board that an order to show cause has been issued, and the chairperson shall set a date for hearing on such order before the securities board.

(b) Any person against whom an order to show cause has been entered shall be promptly notified by the securities division of the entry of such order and the basis therefore. Such notice shall include a copy of the order, and shall include the date set by the chairperson of the securities board for hearing on such order. In the case of a broker-dealer, the notification shall be sent both to the broker-dealer's last known mailing address and, if different, the most current mailing address the broker-dealer has on file with the securities commissioner as required in section 11-51-407 (3). In the case of a sales representative, notification shall be sent to the sales representative's last known mailing address, the most current mailing address the sales representative has on file with the securities commissioner as required in section 11-51-407 (3), and the last known mailing address of the broker-dealer or issuer for which the sales representative is licensed to act.

(c) (I) The hearing on the order to show cause shall be commenced no sooner than seven, nor later than twenty, calendar days following the date of transmission of notification of the respondent by the division of securities as provided in paragraph (b) of this subsection (4).

(II) The securities board shall take evidence and hear arguments from the securities division and the respondent. If the respondent does not appear, the securities division may provide evidence that notification was promptly sent by the securities division to the respondent pursuant to paragraph (b) of this subsection (4). In the case where the respondent does not appear, the securities commissioner may not issue an order unless there is a finding by the securities board that there is reasonable basis to believe the respondent either received actual notice, or, after reasonable search by the securities division, cannot be located.

(III) Based on the evidence entered and arguments heard at the hearing, the securities board shall enter findings of fact, conclusions of law, and its initial decision recommending to the securities commissioner that an order be entered either denying the petition of the securities division for summary order or suspending the license of that person or otherwise limiting or imposing conditions on the securities activities of that person pending final determination of a proceeding under sections 24-4-104 and 24-4-105, C.R.S. Exceptions to the initial decision of the securities board must be filed with the securities commissioner within ten calendar days of the date of entry of such order. The securities commissioner shall then issue an order, which shall be a final order for purposes of judicial review pursuant to section 11-51-607.

(d) Any order entered under paragraph (c) (III) of this subsection (4) suspending a license or otherwise limiting or imposing conditions on the securities activities of the licensed person shall remain in effect during the pendency of a proceeding under sections 24-4-104 and 24-4-105, C.R.S., unless vacated or modified on judicial review pursuant to section 11-51-607 or by subsequent order of the securities commissioner after notice and opportunity for hearing.

(5) No order under subsection (3) (b), (3) (c), or (4) (a) of this section may be entered by the securities commissioner unless a proceeding under sections 24-4-104 and 24-4-105, C.R.S., either has been commenced, or is commenced promptly following or contemporaneously with the entry of such an order.

(6) The securities commissioner may promulgate a rule that defines what constitutes prompt filing and notification pursuant to this section.

11-51-607. Judicial review of orders.

(1) Any person aggrieved by a final order of the securities commissioner may obtain a review of the order in the court of appeals pursuant to the provisions of section 24-4-106 (11), C.R.S.

(2) The commencement of proceedings under subsection (1) of this section does not, unless specifically ordered by the court, operate as a stay of the securities commissioner's order.

PART 7 ADMINISTRATION AND FEES

11-51-701. Division of securities - creation - powers and duties.

There is hereby created the division of securities within the department of regulatory agencies, the head of which shall be the commissioner of securities, who shall be appointed by the executive director of the department of regulatory agencies, pursuant to the provisions of section 13 of article XII of the state constitution, and the securities board. The division shall be responsible for the administration of the provisions of articles 51, 53, and 59 of this title and part 7 of article 75 of title 24, C.R.S., and shall perform such other duties as are imposed upon it by law.

11-51-702. Division subject to termination. (Repealed)

11-51-702.5. Securities board - creation - duties - repeal.

(1) There is hereby created the securities board within the department of regulatory agencies which shall consist of five persons appointed by the governor, subject to the consent and approval of the senate, as follows:

(a) Two persons who are licensed by the state supreme court to practice law in the state of Colorado and who are conversant in securities law;

(b) One person certified as a certified public accountant pursuant to article 2 of title 12, C.R.S.; and

(c) Two persons who are members of the public at large.

(2) (a) One of the members of the securities board shall reside west of the continental divide.

(b) The members shall serve terms of three years with each term ending on July 1 of the year in which such term expires; except that initial appointments shall begin January 1, 1995, and one of the members initially appointed pursuant to paragraph (a) and one of the members initially appointed pursuant to paragraph (c) of subsection (1) of this section shall serve until July 1, 2000, the member initially appointed pursuant to paragraph (b) of subsection (1) of this section shall serve until July 1, 2001, and the other members initially appointed shall serve until July 1, 1999.

(c) Any vacancy on the securities board occurring before the expiration of the term shall be filled by the governor for the remainder of the term.

(d) Securities board members may be removed for cause.

(e) Securities board members shall be reimbursed for actual and necessary expenses, not to include out-of-state travel expenses.

(3) Securities board members shall be subject to the conflict of interest limitations placed on other employees of the division of securities pursuant to section 11-51-703 (2).

(4) The securities board shall provide oversight to the securities commissioner and shall be available to advise the securities commissioner at the request of the securities commissioner on issues affecting the division of securities and securities regulations in the state.

(5) The securities board shall meet as often as is necessary, but no less than quarterly. Meetings may be called by the chairperson of the securities board at the request of the securities commissioner or any member of the securities board.

(6) (a) The securities board shall aid and advise the securities commissioner at the request of the securities commissioner in connection with the duties of the securities commissioner under articles 51, 53, and 59 of this title and part 7 of article 75 of title 24, C.R.S., including but not limited to the promulgation of rules, issuance of orders, formulation of policies, and the setting of fees under such articles and other issues affecting the division of securities and securities regulation in the state.

(b) Commencing July 1, 1995, and once every year thereafter, the securities board shall submit to the executive director of the department of regulatory agencies its evaluation of the performance of the securities commissioner for the preceding year.

(c) The securities board shall hear the matters described in section 11-51-606 (1.5) (d), (3) (e), and (4) (d) and issue the initial decisions as provided therein. The chairperson of the securities board shall determine the date and place for such hearings and may appoint a panel of the securities board consisting of no less than three board members to conduct such hearings. Any hearing held regarding an order issued by the securities commissioner under section 11-51-606 (3) or (4) shall be heard by the securities board.

(7) (a) This section is repealed, effective July 1, 2004.

(b) Prior to such repeal, the functions of the securities board shall be reviewed as provided for in section 24-34-104, C.R.S.

11-51-703. Administration of article.

(1) The securities commissioner is hereby empowered to administer and enforce all provisions of this article and to provide the division of securities with such books, records, files, and printing and other supplies and employ such officers and clerical and other assistance as may be necessary in the securities commissioner's discretion to perform the duties required of the securities commissioner under this article.

(2) It is unlawful for the securities commissioner or any of the officers or employees of the division of securities to use for personal benefit any information which is filed with or obtained by the securities commissioner and which is not made public. No provision of this article authorizes the securities commissioner or any of such officers or employees to disclose any such information except among themselves or when necessary or appropriate in a proceeding or investigation under this article. No provision of this article either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the securities commissioner or any of the officers or employees of the division of securities.

(3) The securities commissioner may enter into an arrangement, agreement, or other working relationship with federal, other state, and self-regulatory authorities whereby public documents may be initially filed and maintained in the central registration depository, the investment adviser registration depository, or with other agencies or authorities. It is the intent of this subsection (3) that the securities commissioner be provided with the power to reduce the duplication of filings,

reduce administrative costs, and, in conjunction with other states and with federal authorities, establish uniform procedures, forms, and administration to be used by this state and by such other states and by such federal authorities.

(4) The securities commissioner may delegate to any officer of the division of securities any power, duty, authority, or function created by this article and vested in the securities commissioner, but nothing in this subsection (4) shall authorize the securities commissioner to delegate to any officer the securities commissioner's authority to make rules, institute proceedings or actions under section 11-51-306, 11-51-410, or 11-51-602, refer evidence under section 11-51-603 (3), or exercise the authority created by this section, section 11-51-704 (1) or (2), or section 11-51-707 (3) (a) or (3) (b).

11-51-704. Rules, forms, and orders.

(1) The securities commissioner may, from time to time, make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this article, including rules and forms governing registration statements, applications, and reports, and defining any terms, whether or not used in this article, insofar as the definitions are not inconsistent with the provisions of this article. For the purpose of rules and forms, the securities commissioner may classify securities, persons, and matters within the securities commissioner's jurisdiction and prescribe different requirements for different classes.

(2) No rule, form, or order may be made, amended, or rescinded unless the securities commissioner finds that the action is necessary or appropriate in the public interest and is consistent with the purposes and provisions of this article. In prescribing rules and forms, the securities commissioner may cooperate with the securities and exchange commission with a view to effectuating the policy of this article to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(3) The securities commissioner may, by rule or order, prescribe the form and content of financial statements required under this article, the circumstances under which consolidated financial statements shall be filed, and whether any required financial statements shall be certified by independent or certified public accountants. Unless the securities commissioner by rule or order provides otherwise, a financial statement required under this article must be prepared in accordance with generally accepted accounting principles or other accounting principles as are prescribed for the issuer of the financial statement by the securities and exchange commission.

(4) No provision of this article imposing any liability upon a person or providing a basis for any sanction against a person applies to any act done or omitted in good faith and in conformity with any rule, form, or order of the securities commissioner, notwithstanding that the rule, form, or order may later be amended or rescinded or be determined by any judicial or other authority to be invalid for any reason.

11-51-705. Interpretive opinions.

The securities commissioner may honor requests from interested persons for confirmation of the applicability of particular exemptions from securities registration under sections 11-51-307 to 11-51-309 or for other interpretive opinions regarding any provision of this article. Any person making such a request shall pay an opinion fee, which shall be determined and collected pursuant to section 11-51-707 and which shall not be refundable. In response to any request for a confirmation or other interpretive opinion received under this section, the securities commissioner may waive any condition imposed under this article as it applies to the person making such request.

11-51-706. Consent to service of process.

(1) An applicant for licensing under this article, a person filing a registration statement under this article, and an issuer who proposes to offer in this state through an agent a security registered under this article shall file with the securities commissioner, in such form as the securities commissioner by rule prescribes, an irrevocable consent appointing the securities commissioner or the successor in office of the securities commissioner to be the attorney for said person to receive service of any lawful process in any non-criminal suit, action, or proceeding against such person, or the successor, executor, or administrator of such person, arising under this article or any rule or order under this article after the consent has been filed with the same force and validity as if served personally on the person filing the consent.

(2) A person who has filed a consent in compliance with subsection (1) of this section in connection with a previous application for licensing or registration need not file an additional consent, but the securities commissioner may request, and in response to such request such person shall provide, verification of such previous consent.

(3) Service upon any person who has filed a consent pursuant to subsection (1) of this section may be made by leaving a copy of the process in the office of the securities commissioner, but it is not effective unless the plaintiff, who may be the securities commissioner in a suit, action, or proceeding instituted by the securities commissioner, forthwith sends a notice of the service and a copy of the process by registered mail to the defendant or respondent at the last address

on file with the securities commissioner and unless the plaintiff's affidavit of compliance with this subsection (3) is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(4) The methods of service of process provided for in this section are in addition to other methods of service of process provided for by law, including section 13-1-124, C.R.S. Any violation of this article shall be deemed to constitute the transaction of business within this state for the purpose of section 13-1-124, C.R.S.

11-51-707. Collection of fees - division of securities cash fund created.

(1) A fee payable under this article shall be deemed paid when the securities commissioner receives the payment.

(2) The securities commissioner shall transmit all fees collected under this article to the state treasurer, who shall credit the same to the division of securities cash fund, which fund is hereby created. Pursuant to subsection (3) of this section, the general assembly shall make annual appropriations from said fund for expenditures of the division. The expenditures incurred by the division shall be made out of such appropriations upon vouchers and warrants drawn pursuant to law. All moneys credited to the division of securities cash fund shall be used as provided in this section and shall not be deposited in or transferred to the general fund of this state or any other fund.

(3) (a) The division shall set the amount of each fee which it is authorized by law to collect under this article. The budget request and the fees for the division shall reflect direct and indirect costs. The division, in the discretion of the securities commissioner, may set registration fees payable under section 11-51-302 according to a scale of rates applied to the dollar amount of securities to be registered, with a maximum fee specified. The division, in the discretion of the securities commissioner, may set an investment company registration renewal fee payable under section 11-51-302 (7) and an exemption fee payable under section 11-51-307 (1) (k) for each series, portfolio, separate account, or fund of an open-end management company or unit investment trust. The division, in the discretion of the securities commissioner, may set registration fees payable under section 11-51-905 (4), according to a scale of rates applied to the asset size of the trust fund as of the date of registration. The division, in the discretion of the securities commissioner, may set annual fees payable under section 11-51-906 (4) (e), according to a scale of rates applied to the asset size of the trust fund as of the date of the filing of the annual audit.

(b) Based upon the appropriation made and subject to the approval of the executive director of the department of regulatory agencies, the division shall set its fees for a fiscal year so that the revenue generated from said fees approximates its direct and indirect costs, including statewide indirect costs. Such fees for a fiscal year may be adjusted by the securities commissioner no more often than twice during that fiscal year.

(c) On July 1 each year, whenever moneys appropriated to the division for its activities for the prior fiscal year are unexpended, said moneys shall be made a part of the appropriation to the division for the next fiscal year, and such amount shall not be raised from fees collected by the division. If a supplemental appropriation is made to the division for its activities, its fees, when adjusted for the fiscal year next following that in which the supplemental appropriation was made, shall be adjusted by an additional amount which is sufficient to compensate for such supplemental appropriation. Funds appropriated to the division in the annual long appropriations bill shall be designated as a cash fund and shall not exceed the amount anticipated to be raised from fees collected by the division.

11-51-708. Administrative files.

(1) A document is filed when it is received by the securities commissioner.

(2) The securities commissioner shall keep a register of all applications for licenses and registration statements which are or have ever been effective under this article and all orders which have been entered under this article. The register shall be open for public inspection.

(3) The information contained in or filed with any registration statement, application, or report may be made available to the public under article 72 of title 24, C.R.S.

(4) Upon request and at such reasonable charges as the securities commissioner prescribes, the securities commissioner shall furnish to any person photostatic or other copies of any entry in the register or any document which is a matter of public record and may certify their authenticity; and the securities commissioner may also provide certification of the absence of any entry in the register or the absence of any document or other record from division files which are of public record. In any action, proceeding, or prosecution under this article, any copy so certified, and any certification by the securities commissioner as to the absence of any such entry, document, or record from division files, are prima facie evidence of the contents of the entry, document, or record so certified or of the absence of the entry, document, or record which is the subject of such certification.

PART 8
EFFECTIVE DATE - REPEAL OF ARTICLE

11-51-801. Effective date of article.

This article shall be effective on and after July 1, 2004, subject to the provisions of section 11-51-802.

11-51-802. Savings provisions.

(1) Except as otherwise provided in this section, articles 51 and 52 of this title, as said articles existed prior to July 1, 1990, exclusively govern all suits, actions, prosecutions, or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring prior to July 1, 1990; except that no civil suit or action may be maintained to enforce any liability under such prior law unless brought within any period of limitation which applied when the cause of action accrued.

(2) All registrations of securities under such prior law in effect immediately prior to July 1, 1990, shall remain in effect after said date subject to revocation, termination, or withdrawal as provided under such prior law and subject to all administrative orders and all conditions relating to such registrations as were in effect under such prior law.

(3) Such prior law applies to any offer to sell or sale made no later than January 1, 1991, pursuant to an offering begun in good faith before July 1, 1990, on the basis of an exemption available under said prior law.

(4) (a) Every person registered or exempt from registration as a broker, dealer, principal, or representative under articles 51 and 52 of this title, as said articles existed prior to July 1, 1990, shall be automatically licensed as a broker-dealer or sales representative, as the case may be, under this article on July 1, 1990, subject to all fines, censures, suspensions, revocations, conditions, or limitations imposed upon or in connection with such registration or exemption or upon such person, as if imposed upon or in connection with a license under this article, so long as such sanctions would have remained in effect under articles 51 and 52 of this title, as said articles existed prior to July 1, 1990. Such sanctions shall continue to be governed by such prior law.

(b) There are no grounds for the denial of automatic licensing under paragraph (a) of this subsection (4). After July 1, 1990, every person automatically licensed under paragraph (a) of this subsection (4) shall comply with the provisions of this article as if such person's license had been originally obtained by application under the provisions of this article.

(c) No proceeding under section 11-51-410 may be initiated by the securities commissioner against any person who is licensed pursuant to paragraph (a) of this subsection (4) if the proceeding is based upon:

(I) Any plea, conviction, decree, order, or other action described in section 11-51-410 (1) (c) to (1) (f) entered or imposed prior to July 1, 1990; or

(II) Any act or course of conduct within section 11-51-410 (1) (a), (1) (b), (1) (g), (1) (i), or (1) (j) initiated and concluded prior to July 1, 1990.

(d) Nothing in this subsection (4) limits the authority of the securities commissioner or any hearing officer, administrative law judge, or court to consider any event or circumstance which has occurred or existed prior to July 1, 1990:

(I) In connection with any proceeding or action other than a proceeding under section 11-51-410; or

(II) Solely in connection with a determination of appropriate sanctions in a proceeding under section 11-51-410 which is based upon:

(A) Any plea, conviction, decree, order, or other action described in section 11-51-410 (1) (c), (1) (d), (1) (e), or (1) (f) entered or imposed on or after July 1, 1990; or

(B) Any act or course of conduct within section 11-51-410 (1) (a), (1) (b), (1) (g), (1) (h), (1) (i), or (1) (j) concluded on or after July 1, 1990.

(e) Nothing in this subsection (4) limits the authority of the securities commissioner to initiate a proceeding under section 11-51-410 with regard to:

(I) Any plea, conviction, decree, order, or other action described in section 11-51-410 (1) (c) to (1) (f) entered or imposed on or after July 1, 1990, without regard for when the underlying act or conduct was initiated or concluded; or

(II) Any act or course of conduct within section 11-51-410 (1) (a), (1) (b), (1) (g), (1) (h), (1) (i), or (1) (j) concluded on or after July 1, 1990, without regard for when such act or conduct was initiated.

(f) Any administrative action by the securities commissioner under articles 51 and 52 of this title, as said articles existed prior to July 1, 1990, initiated or pending prior to July 1, 1990, against an applicant for registration, or a person registered or exempt from registration, as a broker, dealer, principal, financial principal, representative, or financial representative shall be governed by such prior law; except that as of July 1, 1990, such action shall be construed as an action under section 11-51-410 either to deny an application for a license or to impose sanctions against a licensed person, as the case may be, and the sanctions provided under section 11-51-410 shall apply.

(5) (a) Any person with a place of business in this state who is registered with the securities and exchange commission as an "investment adviser" under the federal "Investment Advisers Act of 1940", who is exempt from registration as an investment adviser pursuant to section 203 (b) of said act, or who is registered as an investment adviser in any other state, and who, prior to January 1, 1999, has filed an application and paid the appropriate fee in compliance with the requirements set forth in sections 11-51-403 and 11-51-404, shall be licensed automatically as an investment adviser under this article effective January 1, 1999.

(b) Any individual with a place of business in this state who is associated either with a federal covered adviser, or an investment adviser licensed automatically pursuant to paragraph (a) of this subsection (5), and regarding whom, prior to or on January 1, 1999, an application has been filed and the appropriate fee paid in compliance with the requirements set forth in sections 11-51-403 and 11-51-404, shall be licensed automatically as an investment adviser representative for such federal covered adviser or investment adviser under this article, effective January 1, 1999. Automatic licensing under this paragraph (b) is unavailable to any individual who is the subject of any plea, conviction, decree, order, or other action described in section 11-51-410 (1) (c) to (1) (f) entered or imposed prior to January 1, 1999, or is currently the subject of a proceeding in which any of the sanctions set forth in such paragraphs could be imposed.

(c) After January 1, 1999, no proceeding under section 11-51-410 may be initiated by the securities commissioner against any person who is licensed automatically pursuant to paragraph (a) or (b) of this subsection (5) if the proceeding is based upon:

(I) Any plea, conviction, decree, order, or other action described in section 11-51-410 (1) (c) to (1) (f) entered or imposed prior to January 1, 1999; or

(II) Any act or course of conduct within section 11-51-410 (1) (a), (1) (b), (1) (g), (1) (h), (1) (i), or (1) (j) initiated and concluded prior to January 1, 1999.

(d) Nothing in this subsection (5) limits the authority of the securities commissioner or any hearing officer, administrative law judge, or court to consider any event or circumstance that has occurred or existed prior to January 1, 1999:

(I) In connection with any proceeding or action other than a proceeding under section 11-51-410; or

(II) Solely in connection with a determination of appropriate sanctions in a proceeding under section 11-51-410 based upon:

(A) Any plea, conviction, decree, order, or other action described in section 11-51-410 (1) (c) to (1) (f) entered or imposed on or after January 1, 1999; or

(B) Any act or course of conduct within section 11-51-410 (1) (a), (1) (b), (1) (g), (1) (h), (1) (i), or (1) (j) concluded on or after January 1, 1999.

(e) Nothing in this subsection (5) limits the authority of the securities commissioner to initiate a proceeding under section 11-51-410 with regard to:

(I) Any plea, conviction, decree, order, or other action described in section 11-51-410 (1) (c) to (1) (f) entered or imposed on or after January 1, 1999, without regard for when the underlying act or conduct was initiated or concluded; or

(II) Any act or course of conduct within section 11-51-410 (1) (a), (1) (b), (1) (g), (1) (h), (1) (i), or (1) (j) concluded on or after January 1, 1999, without regard for when such act or conduct was initiated.

11-51-803. Repeal of article.

(1) This article is repealed, effective July 1, 2015.

(2) Prior to such repeal, the division of securities shall be reviewed as provided for in section 24-34-104, C.R.S.

PART 9
LOCAL GOVERNMENT INVESTMENT
POOL TRUST FUND ADMINISTRATION
AND ENFORCEMENT ACT

11-51-901. Short title.

This part 9 shall be known and may be cited as the "Local Government Investment Pool Trust Fund Administration and Enforcement Act".

11-51-902. General powers of the securities commissioner.

The securities commissioner is hereby empowered to administer and enforce the provisions of part 7 of article 75 of title 24, C.R.S., and all the provisions of this part 9.

11-51-903. Interests in a local government investment pool trust fund.

(1) For the purposes of this part 9, unless the context otherwise requires:

(a) The interest of a participating local government in a local government investment pool trust fund is a "security", as defined by section 11-51-201 (17); and

(b) The solicitation of a local government to participate in a local government investment pool trust fund constitutes an "offer" to sell a security, as defined by section 11-51-201 (13) (c), by the trust fund to the local government, and the consummation of an agreement to participate in a local government investment pool trust fund constitutes a "sale" of a security, as defined by section 11-51-201 (13) (a), by the trust fund to the local government.

11-51-904. Requirement for registration of local government investment pools.

(1) It is unlawful for the board of trustees of any local government investment pool trust fund to permit the investment of trust fund assets unless the trust fund is registered with the securities commissioner under this part 9.

(2) It is unlawful for a local government to participate in a local government investment pool trust fund unless the trust fund is registered with the securities commissioner under this part 9.

11-51-905. General registration requirements.

(1) A local government investment pool trust fund shall register with the securities commissioner under this part 9 by filing a notice, in such form as prescribed by the securities commissioner, and a copy of the resolution adopted pursuant to section 24-75-703, C.R.S.

(2) Any local government investment pool trust fund organized pursuant to the provisions of part 7 of article 75 of title 24, C.R.S., as it existed prior to July 1, 1993, shall register with the securities commissioner under this part 9 by filing a notice, in such form as prescribed by the securities commissioner, and the resolution adopted pursuant to the provisions of part 7 of article 75 of title 24, C.R.S., as it existed prior to July 1, 1993, no later than thirty days after July 1, 1993.

(3) The information to be provided to the securities commissioner by a local government investment pool trust fund in the notice for registration shall include, but need not be limited to:

(a) The name and address of the trust fund;

(b) The name and address of the administrator of the trust fund;

(c) The name and address of each of the custodians of the assets of the trust fund;

(d) The name and address of each of the investment advisers of the trust fund and each of the financial institutions acting in an advisory capacity for the trust fund;

(e) Identification of each participating local government in the trust fund; and

(f) The total assets of the trust fund as of the date of filing.

(4) Every filing of the notice and resolution required under this section shall be accompanied by a fee, which shall be determined and collected pursuant to section 11-51-707; except that no such registration fee shall be more than five thousand dollars.

11-51-906. Reports to the securities commissioner.

(1) A local government investment pool trust fund shall inform the securities commissioner of any material change regarding the administrator, investment adviser, broker-dealer, or financial institution acting in an advisory capacity, or custodian of the trust fund within ten days of such change.

(2) (a) The board of trustees of a local government investment pool trust fund shall file quarterly reports with the securities commissioner in the form prescribed by the securities commissioner.

(b) Such reports shall demonstrate that the trust fund is in full compliance with the provisions of part 7 of article 75 of title 24, C.R.S., as amended.

(c) The information to be provided in such quarterly reports may include, but need not be limited to:

(I) The identity of the participating local governments;

(II) The amount of participation of each such participating local government; and

(III) The total assets of the trust fund.

(d) In addition to the quarterly reports required in paragraph (a) of this subsection (2), the securities commissioner may, by rule or order, require the board of trustees of a local government investment pool trust fund to file such other periodic reports with the securities commissioner as are necessary to demonstrate that the trust fund is in full compliance with the provisions of part 7 of article 75 of title 24, C.R.S., as amended.

(3) The financial statements of a local government investment pool trust fund shall be prepared in accordance with generally accepted accounting principles except as the securities commissioner may otherwise provide by rule or order.

(4) (a) A local government investment pool trust fund shall file with the securities commissioner an annual audit of the trust fund to be completed at least annually, but at intervals of not more than fifteen months, performed by an independent certified public accountant.

(b) The securities commissioner may, by rule or order, provide that such audits include safeguards to ensure that they adequately describe the financial condition of the trust fund.

(c) Such audit shall be completed and submitted to the securities commissioner within the time lines the securities commissioner by rule or order prescribes.

(d) Such audit shall include, but need not be limited to, the following information:

(I) The name and address of each custodian holding or which at any time since the last annual audit held any assets of the trust fund;

(II) The amount and description of the assets of the trust fund on deposit with or otherwise in the custody of each such custodian; and

(III) Any other information the securities commissioner prescribes by rule or order.

(e) Every filing of the annual audit required under this subsection (4) shall be accompanied by a fee, which shall be determined and collected pursuant to section 11-51-707; except that no such annual fee shall be more than two thousand dollars.

11-51-907. Access to records.

(1) The securities commissioner, in a manner reasonable under the circumstances, may examine, without notice, any accounts held by a custodian on behalf of a local government investment pool trust fund and all books, records, and papers pertaining thereto, and all accounts, books, records, and papers pertaining thereto, within or without this state, in the possession of any administrator, the board of trustees, any investment adviser or broker-dealer or financial institution acting in an advisory capacity to the trust fund, any person employed by or directly associated with such broker-dealer or financial institution in connection with providing such advisory services, or any investment adviser representative.

(2) The securities commissioner, in a manner reasonable under the circumstances, may copy, or cause to be copied, or request from and shall receive copies of such documents as are made and maintained by the custodians,

administrator, board of trustees, investment adviser of or broker-dealer or financial institution acting in advisory capacity to the trust fund, any person employed by or directly associated with such broker-dealer or financial institution in connection with providing such advisory services, or any investment advisor representative in connection with a local government investment pool trust fund in the normal course of business, at the expense of such person, in order to determine compliance with this part 9 and part 7 of article 75 of title 24, C.R.S., as amended.

11-51-908. Confidentiality of information.

Financial information and the identities of participating local governments in the possession of, filed with, or obtained by the securities commissioner under this part 9 shall be confidential. No such information may be disclosed by the securities commissioner or any of the officers or employees of the division of securities except in connection with any investigation or proceeding or with the consent of the board of trustees of the local government investment pool trust fund to which such information pertains. Such information shall be construed as information within the meaning of section 24-72-204 (3) (a) (IV), C.R.S.