

CHAPTER 306

FINANCIAL INSTITUTIONS

SENATE BILL 94-022

BY SENATORS Schroeder and Lacy;
also REPRESENTATIVES George, Agler, Knox, and DeGette.

AN ACT

CONCERNING THE REGULATORY AUTHORITY OF THE DIVISION OF SECURITIES, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 11-51-302 (7), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

11-51-302. General registration provisions. (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.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(d) A registration statement EFFECTIVE under section 11-51-303 or 11-51-304 may be terminated or withdrawn upon the request of the issuer or the person who filed the registration statement and with the consent of the securities commissioner.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

SECTION 2. 11-51-306 (2), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

11-51-306. Denial, suspension, or revocation of registration. (2) The securities commissioner may, by summary order under ~~section 11-51-606 (2)~~ 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.

SECTION 3. 11-51-310 (1) (b), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

11-51-310. Denial or revocation of exemptions. (1) (b) The securities commissioner may, by summary order under ~~section 11-51-606 (2)~~ 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).

SECTION 4. 11-51-410 (1) (d) and (1) (f) (I), Colorado Revised Statutes, 1987 Repl. Vol., as amended, are amended, and the said 11-51-410 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

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 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, a partner, officer, director, person occupying a similar status or performing similar functions, or person directly or indirectly controlling the broker-dealer:

(d) ~~Has been found in a final decree~~ IS SUBJECT TO A TEMPORARY OR PERMANENT INJUNCTION issued by a court of competent jurisdiction ~~within the past five years~~, in an action instituted by the securities commissioner, the securities agency or administrator of another state or a ~~Canadian province or territory~~ FOREIGN JURISDICTION, the securities and exchange commission, or the commodity futures trading commission, ~~to have violated~~ FOR VIOLATING any securities registration or broker-dealer or similar license requirement in any federal, state, or ~~provincial~~ FOREIGN law or ~~to have engaged~~ FOR ENGAGING in fraudulent conduct;

(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 ~~Canadian province or territory~~ 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, sales representative, or investment adviser, or the substantial equivalent of those terms, or suspending or barring the right of the person to be associated with a broker-dealer.

(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).

SECTION 5. 11-51-601 (5), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

11-51-601. Investigations and subpoenas. (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 ~~except after authorization in writing by the securities commissioner or any designee of such commissioner that disclosure of information in the case is~~ UNLESS necessary or appropriate in connection with a particular investigation or proceeding under this article or for any law enforcement purpose. ~~The absence of written authorization pursuant to this subsection (5) shall not be proof of the lack of authorization in fact and shall not constitute grounds for the exclusion of any such information as evidence in any proceeding.~~

(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.

SECTION 6. 11-51-604, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

11-51-604. Civil liabilities. (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.

SECTION 7. 11-51-606, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

11-51-606. Conduct of proceedings - consent orders - summary orders - issued by securities commissioner. (1) Any administrative proceeding under this article shall be conducted pursuant to the provisions of ~~section~~ 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 (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. 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.

~~(2) No summary order may be entered under section 11-51-306 (2) or section 11-51-310 (1) (b) unless the securities commissioner finds, in addition to the findings required under section 11-51-704 (2), that immediate issuance of the order is imperatively necessary for the protection of investors. A summary order is effective when entered and shall be accompanied by a brief statement of findings of fact and conclusions of law. Upon the entry of a summary order, the securities commissioner shall promptly notify each person against whom it has been entered of its entry and the reasons therefor by providing to each such person at their last known mailing address a copy of the order and the accompanying findings of fact and conclusions of law. Within twenty-one calendar days from the entry of the order, any person against whom the order was entered may make a written request of the securities commissioner that the matter be set for a hearing. Within two business days of the receipt of the written request, the securities commissioner shall refer the matter to an administrative law judge for expedited hearing. If no request is received by the securities commissioner within twenty-one calendar days from the entry of the order, the order shall be final.~~ (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 THEREFOR 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 THEREFOR. 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.

SECTION 8. 11-51-607 (1), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

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 ~~district court of the city and county of Denver~~ COURT OF APPEALS pursuant to the provisions of section 24-4-106 (11), C.R.S.

SECTION 9. 11-51-701, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

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.

SECTION 10. Part 7 of article 51 of title 11, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

11-51-702.5. Securities board - creation - duties. (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 (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 11-51-604 (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.

SECTION 11. 11-51-707 (3) (a), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

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

(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.

SECTION 12. 11-51-803 (1), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

11-51-803. Repeal of article. (1) This article is repealed, effective ~~July 1, 1994~~ JULY 1, 2004.

SECTION 13. Part 2 of article 53 of title 11, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

11-53-211. Interpretive opinions. THE SECURITIES COMMISSIONER MAY HONOR REQUESTS FROM INTERESTED PERSONS FOR CONFIRMATION OF THE APPLICABILITY OF PARTICULAR EXCLUSIONS FROM THE DEFINITIONS SET FORTH IN SECTION 11-53-102, FOR THE APPLICABILITY OF EXEMPTIONS SET FORTH IN SECTIONS 11-53-104 AND 11-53-105, AND FOR THE APPLICABILITY OF ANY OTHER PROVISION OF THIS ARTICLE. ANY PERSON MAKING SUCH A REQUEST SHALL PAY A NONREFUNDABLE FEE WHICH SHALL BE SET AND COLLECTED PURSUANT TO SECTION 11-51-707. IN RESPONSE TO ANY REQUEST FOR A CONFIRMATION OR OTHER INTERPRETIVE OPINION RECEIVED PURSUANT TO THIS SECTION, THE SECURITIES COMMISSIONER MAY WAIVE ANY CONDITION IMPOSED UNDER THIS ARTICLE AS IT APPLIES TO THE PERSON MAKING THE REQUEST.

SECTION 14. 11-59-106, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

11-59-106. Requirement for registration of district bonds. (1) It is unlawful for any district to issue bonds or for any other person to make a distribution of such bonds unless they are first registered with the securities commissioner under section 11-59-108 or unless the issuance of bonds is exempted under section 11-59-110.

~~(2) It is unlawful for any district to refinance bonds without the prior written approval of the securities commissioner.~~

SECTION 15. The introductory portion to 11-59-110 (1) and 11-59-110 (1) (i), Colorado Revised Statutes, 1987 Repl. Vol., as amended, are amended, and the said 11-59-110 is further amended BY THE ADDITION THE FOLLOWING NEW SUBSECTIONS, to read:

11-59-110. Exemptions from registration. (1) Subject to the requirements of subsection (2) of this section, the following issues of bonds by a district are exempted from ~~section 11-59-106~~: ALL OF THE PROVISIONS OF SECTIONS 11-59-104 AND 11-59-106:

(i) Any issue of bonds by a district ~~other than a special district that does not exceed two million dollars in the aggregate~~ which has principal amounts payable from moneys other than the proceeds of an ad valorem tax, WHERE THE TOTAL OF SUCH OBLIGATIONS REPRESENTED BY THE ISSUE, TOGETHER WITH OTHER SUCH BONDS OF THE DISTRICT, DOES NOT AT THE TIME OF THE ISSUANCE EXCEED TWO MILLION DOLLARS;

(1.5) (a) THE SECURITIES COMMISSIONER MAY MAKE SUCH RULES, FORMS, AND ORDERS AS ARE NECESSARY TO IMPLEMENT THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION AND TO DEFINE ANY TERMS CONTAINED THEREIN INSOFAR AS THE DEFINITIONS ARE NOT INCONSISTENT WITH THE PROVISIONS OF THIS ARTICLE.

(b) NO SUCH 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 OR THE PROTECTION OF INVESTORS 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, THE MUNICIPAL SECURITIES RULE-MAKING BOARD, THE DEPARTMENT OF LOCAL AFFAIRS, AND THE STATE AUDITOR WITH A VIEW TO EFFECTUATING SUBSECTION (1) OF THIS SECTION AND TO ACHIEVING UNIFORMITY WHEREVER PRACTICABLE.

(c) THE SECURITIES COMMISSIONER MAY, BY RULE OR ORDER, PROVIDE MEANS BY WHICH BONDHOLDERS, AT THEIR EXPENSE, MAY COMMUNICATE WITH THE HOLDERS OF BONDS OF THE SAME DISTRICT SO LONG AS THE CONFIDENTIALITY OF THE NAMES AND ADDRESSES OF THE BONDHOLDERS IS PROTECTED.

(2.5) FOR PURPOSES OF THE APPLICATION OF THIS SECTION, EXEMPTION FROM REGISTRATION UNDER SUBSECTION (1) OF THIS SECTION SHALL NOT BE CONTINGENT UPON REVIEW OR APPROVAL OF ANY INFORMATION FILED WITH THE SECURITIES COMMISSIONER UNDER SUBSECTION (2) OF THIS SECTION.

SECTION 16. 24-1-122 (2) (e), Colorado Revised Statutes, 1988 Repl. Vol., is amended to read:

24-1-122. Department of regulatory agencies - creation. (2) The department of regulatory agencies shall consist of the following divisions:

(e) Division of securities, the head of which shall be the commissioner of securities. THE SECURITIES BOARD, CREATED IN SECTION 11-51-702.5, C.R.S., AND ITS POWERS, DUTIES, AND FUNCTIONS ARE TRANSFERRED BY A **TYPE 1** TRANSFER TO THE DEPARTMENT OF REGULATORY AGENCIES AND ALLOCATED TO THE DIVISION OF SECURITIES. The division of securities, and the office of commissioner of securities, created by article 51 of title 11, C.R.S., and their powers, duties, and functions are transferred by a **type 1** transfer to the department of regulatory agencies as the division of securities.

SECTION 17. 24-34-104 (23) (a) (III), Colorado Revised Statutes, 1988 Repl. Vol., is repealed as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (23) (a) The following divisions in the department of regulatory agencies shall terminate on July 1, 1994:

(III) ~~The division of securities, created by article 51 of title 11, C.R.S.~~

SECTION 18. 24-34-104, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (34) THE FOLLOWING BOARD AND DIVISION IN THE DEPARTMENT OF REGULATORY AGENCIES SHALL TERMINATE ON JULY 1, 2004:

(a) THE SECURITIES BOARD, CREATED IN SECTION 11-51-702.5, C.R.S.;

(b) THE DIVISION OF SECURITIES, CREATED PURSUANT TO ARTICLE 51 OF TITLE 11, C.R.S.

SECTION 19. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of securities cash fund not otherwise appropriated, to the department of regulatory agencies, for allocation to the division of securities, for the fiscal year beginning July 1, 1994, the sum of eight thousand ninety-three dollars (\$8,093), or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, to the department of law, for the fiscal year beginning July 1, 1994, the sum of three thousand four hundred thirty-two dollars (\$3,432), or so much thereof as may be necessary, for the provision of legal services to the department of regulatory agencies for the purposes of this act. Such sum shall be from cash funds received from the division of securities out of the appropriation made in subsection (1) of this section.

SECTION 20. Effective date. This act shall take effect July 1, 1994.

SECTION 21. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 1, 1994