

CHAPTER 170

FINANCIAL INSTITUTIONS

HOUSE BILL 04-1109

BY REPRESENTATIVE(S) Marshall, Coleman, Harvey, Hodge, Hoppe, Larson, McCluskey, Paccione, Rhodes, White, Wiens, Williams T., Borodkin, Madden, and McGihon;
also SENATOR(S) Lamborn.

AN ACT

CONCERNING THE CONTINUATION OF THE REGULATION OF SECURITIES BY THE DIVISION OF SECURITIES, AND, IN CONNECTION THEREWITH, NARROWING THE EXEMPTION FOR CERTAIN ANNUITIES, AMENDING PROCEDURES FOR THE ISSUANCE OF CEASE-AND-DESIST ORDERS, REGISTRATION OF FEDERALLY REGISTERED SECURITIES, AND DISCIPLINE OF LICENSEES, SPECIFYING CONDITIONS FOR RECISION OF SALES, AND REDUCING THE NUMBER OF REQUIRED MEETINGS OF THE MUNICIPAL BOND AUTHORITY ADVISORY COMMITTEE.

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

SECTION 1. 11-51-303, Colorado Revised Statutes, is amended to read:

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 ~~filing~~ **COORDINATION**. A registration statement ~~for a registration by filing under~~ **AND ACCOMPANYING RECORDS** SHALL BE FILED WITH THE SECURITIES COMMISSIONER PURSUANT TO this section ~~must~~ **AND SHALL** contain the following information and be accompanied by the consent to service of process required by section 11-51-706:

(a) ~~A statement of eligibility for registration by filing~~ **COPY OF THE LATEST FORM OF PROSPECTUS FILED UNDER THE FEDERAL "SECURITIES ACT OF 1933";**

(b) (I) ~~The name, address, form of organization, and jurisdiction of organization of the issuer~~ **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**

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

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) The title of the security being registered under this article, and the number or amount being registered under this article~~ 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. ~~and~~

~~(d) With respect to a person on whose behalf a part of the offering is to be made in a nonissuer distribution, the name, address, and amount of securities of the issuer held by the person as of the date of the filing of the registration statement.~~

~~(2) If the information and documents required to be filed by subsection (1) of this section have been on file with the securities commissioner for at least five business days or any shorter period that the securities commissioner by rule or order allows and if the applicable registration fee has been paid before the effectiveness of the federal registration statement, a registration statement under this section automatically becomes effective concurrently with the effectiveness of the federal registration statement. If the federal registration statement becomes effective before all the conditions in this subsection (2) are satisfied or waived, the registration statement becomes effective when all the conditions are satisfied or waived. The person filing the registration statement under this article shall promptly notify the securities commissioner of the date and time when the federal registration statement became effective and shall promptly file with the securities commissioner the final prospectus relating to the federal registration statement. A final prospectus shall be deemed promptly filed if it is filed with the securities commissioner within five business days after the first distribution of the final prospectus to investors. 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.

SECTION 2. 11-51-306, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

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

SECTION 3. 11-51-410 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS 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, 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:

(m) AFTER NOTICE AND OPPORTUNITY FOR A HEARING, HAS BEEN FOUND WITHIN THE PREVIOUS TEN YEARS:

(I) BY A COURT WITH JURISDICTION, TO HAVE WILFULLY 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.

SECTION 4. 11-51-604 (9), Colorado Revised Statutes, is amended to read:

11-51-604. Civil liabilities. (9) ~~(a)~~ No buyer OR SELLER OF SECURITIES OR RECIPIENT OF INVESTMENT ADVICE may sue under this section IF:

~~(f) (a) If the buyer received a written rescission offer, before suit and at a time~~

~~when the buyer owned the security, to refund the consideration paid together with interest at the statutory rate from the date of payment, less the amount of any income received on the security, and the buyer failed to accept the offer within thirty days of its receipt; or~~ 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 buyer received such an offer before suit and at a time when the buyer did not own the security, unless the buyer rejects the offer in writing within thirty days of its receipt.~~ 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 RECISSION 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; OR

(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 SUBSECTION (1), (3), OR (4) OF THIS SECTION AND THE PERSON SEEKING RECISSION 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) If, after acceptance, a rescission offer is not performed in accordance with its terms, the buyer may obtain relief under this section without regard to the rescission offer.~~ 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 RECISION 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.

SECTION 5. 11-51-606 (1), (1.5) (a), (1.5) (c), and (1.5) (d), Colorado Revised Statutes, are amended to read:

11-51-606. Conduct of proceedings - cease-and-desist orders - consent orders - summary orders - issued by securities commissioner. (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, promptly 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 ADMINISTRATIVE LAW JUDGE shall set a date for hearing on such order before the securities board OR ADMINISTRATIVE LAW JUDGE as provided in paragraph (d) of this subsection (1.5).

(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, BY 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 UPON 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 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 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 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 ADMINISTRATIVE LAW JUDGE shall enter findings of fact, conclusions of law, and ~~its~~ 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 ~~promptly~~ 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.

SECTION 6. 11-51-606, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

11-51-606. Conduct of proceedings - cease-and-desist orders - consent orders - summary orders - issued by securities commissioner - rules. (6) THE SECURITIES COMMISSIONER MAY PROMULGATE A RULE THAT DEFINES WHAT CONSTITUTES PROMPT FILING AND NOTIFICATION PURSUANT TO THIS SECTION.

SECTION 7. 11-51-803 (1), Colorado Revised Statutes, is amended to read:

11-51-803. Repeal of article. (1) This article is repealed, effective July 1, ~~2004~~ 2015.

SECTION 8. 11-59-105 (1), Colorado Revised Statutes, is amended to read:

11-59-105. Advisory board. (1) There is hereby created the Colorado municipal bond supervision advisory board, to be composed of three members of the general assembly, one municipal securities broker-dealer representative, one representative of a county, one representative of a municipality, one representative of a special district, one representative of banks ~~which~~ THAT act as indenture trustees for municipal bond offerings, one bond counsel representative, one real estate developer representative, three members of the general public with experience in municipal financing as investors who are not associated with any of the other members or interests, and four owners of residential real property located in special districts who are not associated with any of the other members or interests. Except for the legislative members, members of the board shall be appointed by the governor, who shall take into account the extent to which the board represents the geographic areas, population concentrations, and ethnic communities of this state. Appointments by the governor shall be for a period of four years. The three members of the general assembly shall be appointed one each by the governor, the speaker of the house of representatives, and the president of the senate. No more than two of said legislative members may be from the same major political party, and each such legislative member shall be appointed for a term of two years or for the same term to which they were elected, whichever is less. Successors shall be appointed in the same manner as the original members. Vacancies of all other members shall be filled by appointment by the governor for unexpired terms. In the case of a vacancy, the remaining members of the board shall exercise all the powers and authority of the board until such vacancy is filled. The board shall choose its own chairperson by majority vote of the quorum present at a meeting called for the purpose of electing a chairperson. The board shall meet not less than ~~quarterly~~ ANNUALLY. Members of the board shall receive no compensation but shall be reimbursed for all actual and necessary expenses incurred in the performance of their duties. Such expenses shall be paid from the appropriations from the division of securities cash fund created in section 11-51-707. A majority of the board shall constitute a quorum to transact business and for the exercise of any of the powers or authority conferred.

SECTION 9. 10-7-104, Colorado Revised Statutes, is amended to read:

10-7-104. Exceptions. The provisions of sections 10-7-102 and 10-7-103 shall not apply to annuities, industrial policies, or corporations or associations operating on the assessment or fraternal plan; EXCEPT THAT THE COMMISSIONER MAY REVIEW VARIABLE ANNUITIES TO ENSURE THAT SUCH PRODUCTS ARE OFFERED, MARKETED, OR SOLD TO A MARKET SUITABLE FOR SUCH PRODUCT.

SECTION 10. 24-34-104 (34) (d) (II) and (46), Colorado Revised Statutes, are amended to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (34) The following agencies,

functions, or both, shall terminate on July 1, 2004:

(d) (II) ~~The division of securities, created pursuant to article 51 of title 11, C.R.S.;~~

(46) The following agencies, functions, or both, shall terminate on July 1, 2015:

(a) The licensing of massage parlors in accordance with article 48.5 of title 12, C.R.S.;

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

SECTION 11. Effective date - applicability. This act shall take effect July 1, 2004, and shall apply to disciplinary proceedings of the securities commissioner, civil actions concerning rescission commencing, and variable annuities issued on or after said date.

SECTION 12. 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: April 21, 2004