

CHAPTER 177

FINANCIAL INSTITUTIONS

HOUSE BILL 98-1244

BY REPRESENTATIVES McPherson and Schauer;
also SENATORS Matsunaka and Perlmutter.

AN ACT

CONCERNING REGULATION UNDER THE "COLORADO SECURITIES ACT" OF PERSONS OFFERING INVESTMENT ADVISORY SERVICES.

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

SECTION 1. 11-51-102 (1), (2), and (6) (a), Colorado Revised Statutes, are amended, and the said 11-51-102 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

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.

(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.

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

(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.

SECTION 2. 11-51-201, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

11-51-201. Definitions. As used in this article, unless the context otherwise requires:

(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.

(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.

(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".

SECTION 3. 11-51-202, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

11-51-202. References to federal statutes. (3) EACH REFERENCE IN THIS ARTICLE TO THE FEDERAL "INVESTMENT ADVISERS ACT OF 1940" MEANS THAT ACT IN EFFECT ON THE EFFECTIVE DATE OF THIS SUBSECTION (3), 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.

SECTION 4. 11-51-401 (3), Colorado Revised Statutes, is amended, and the said 11-51-401 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

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

(2.5) 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) ~~Neither a~~ NO broker-dealer, ~~nor an~~ 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.

SECTION 5. 11-51-402, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

11-51-402. Exempt broker-dealers, sales representatives - sanctions - exempt investment advisers and investment adviser representatives. (5) (a) 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):

(I) AN INVESTMENT ADVISER WHO:

(A) IS EXEMPT FROM REGISTRATION AS AN INVESTMENT ADVISER PURSUANT TO SECTION 203 (b) OF THE FEDERAL "INVESTMENT ADVISERS ACT OF 1940";

(B) 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

(C) DURING THE PRECEDING TWELVE-MONTH PERIOD, HAS HAD NOT MORE THAN FIVE CLIENTS OTHER THAN THOSE SPECIFIED IN SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (I).

(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 (4) OF THIS SECTION ARE EXEMPT FROM THE LICENSE REQUIREMENT OF SECTION 11-51-401 (1.5).

SECTION 6. 11-51-403, Colorado Revised Statutes, is amended to read:

11-51-403. Application for license - notice filing requirements. (1) An applicant for a license as a broker-dealer, ~~or~~ sales representative, INVESTMENT ADVISER, OR INVESTMENT ADVISER REPRESENTATIVE shall file with the securities commissioner an application for a license and the consent to service of process required by section 11-51-706. The application must 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 ~~which~~ 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 ~~which~~ THAT is provided to the

securities commissioner through the central 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.

SECTION 7. 11-51-404, Colorado Revised Statutes, is amended to read:

11-51-404. License and notice fees. (1) (a) An applicant for a license as a broker-dealer, ~~or~~ 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 ~~initial~~ 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 ~~will be~~ 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. ~~or;~~

(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 ~~the~~ 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.

~~(4)~~ (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.

SECTION 8. 11-51-405, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

11-51-405. Examinations and alternate qualifications. (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.

SECTION 9. The introductory portion to 11-51-406 (1) (a) and 11-51-406 (3), (4), (5), and (6), Colorado Revised Statutes, are amended, and the said 11-51-406 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

11-51-406. General provisions. (1) (a) Unless a proceeding under section 11-51-410 is instituted, the license of a broker-dealer, ~~or~~ sales representative, OR INVESTMENT ADVISER REPRESENTATIVE becomes effective upon the last to occur of the following:

(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.

(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, ~~or~~ sales representative, OR INVESTMENT ADVISER REPRESENTATIVE is effective until terminated by revocation or withdrawal.

SECTION 10. 11-51-407 (1), (3), and (4), Colorado Revised Statutes, are amended, and the said 11-51-407 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

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 ~~which~~ 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.

~~(b)~~ (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.

(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 ~~which~~ 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; AND

(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).

SECTION 11. 11-51-408, Colorado Revised Statutes, is amended to read:

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.

SECTION 12. 11-51-409, Colorado Revised Statutes, is amended to read:

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 ~~which~~ 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 ~~which~~ 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.

SECTION 13. Part 4 of article 51 of title 11, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

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.

SECTION 14. 11-51-410 (1), Colorado Revised Statutes, is 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, 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 ~~which~~ 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 ~~which~~ 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, ~~OR~~ 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 ~~which~~ 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, ~~or~~ 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.

(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.

SECTION 15. 11-51-412 (2), Colorado Revised Statutes, is amended, and the said 11-51-412 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

11-51-412. Withdrawal. (2) Withdrawal from licensing as a broker-dealer, ~~or~~ 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.

(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.

SECTION 16. 11-51-501, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

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

SECTION 17. 11-51-602 (1), Colorado Revised Statutes, is amended to read:

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, ~~OR~~ INVESTMENT ADVISER, FEDERAL COVERED ADVISER, sales representative, OR INVESTMENT ADVISER REPRESENTATIVE and the court finds that ~~the broker-dealer or sales representative~~ 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 the broker-dealer or sales representative~~ 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.

SECTION 18. 11-51-604 (3), (5) (a), and (8), Colorado Revised Statutes, are amended, and the said 11-51-604 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

11-51-604. Civil liabilities. (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 a SUCH security OR RECEIVING SUCH SERVICES in connection with the violation for such legal or equitable relief which THAT the court deems appropriate, including rescission, actual damages, interest at the statutory rate, costs, and reasonable attorney fees.

(5) (a) Every person who, directly or indirectly, controls a person liable under subsection (1), ~~or~~ (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.

(8) No person may sue under subsection (1), ~~or~~ (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.

SECTION 19. 11-51-802, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

11-51-802. Savings provisions. (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.

SECTION 20. 24-75-703 (1) (e), Colorado Revised Statutes, is amended to read:

24-75-703. Local government investment pooling - trust method - resolution filing requirements. (1) The governing body of each local government that desires to participate in a local government investment pool trust fund shall cooperate in drafting a uniform resolution to be adopted by a majority vote of the governing body of each participating local government. The resolution shall provide for, but need not be limited to, the following:

(e) Appointment by the board of trustees of an investment adviser with its ~~primary~~ PRINCIPAL place of business in this state registered with the securities and exchange commission under the federal "Investment Advisers Act of 1940", OR LICENSED AS AN INVESTMENT ADVISER BY THE SECURITIES COMMISSIONER, or either a licensed broker-dealer with its primary place of business in this state or a financial institution to act in an advisory capacity, and a description of the duties and obligations of such adviser, advisory broker-dealer, or financial institution;

SECTION 21. No appropriation. The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

SECTION 22. Effective date - applicability. This section and sections 1, 2, 3, 6, 7, and 23 of this act shall take effect upon passage. The remainder of this act shall take effect January 1, 1999, and shall apply to acts occurring or committed on or after said date.

SECTION 23. 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 30, 1998