

SECURITIES RELATED AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Benjamin M. McAdams

House Sponsor: Ronda Rudd Menlove

LONG TITLE

General Description:

This bill modifies the Utah Uniform Securities Act to address licensing requirements.

Highlighted Provisions:

This bill:

- ▶ addresses the licensing of investment advisers and investment adviser representatives; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

61-1-3, as last amended by Laws of Utah 2009, Chapter 351

61-1-4, as last amended by Laws of Utah 2009, Chapter 351

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **61-1-3** is amended to read:

61-1-3. Licensing of broker-dealers, agents, investment advisers, and investment adviser representatives.



28 (1) It is unlawful for a person to transact business in this state as a broker-dealer or
29 agent unless the person is licensed under this chapter.

30 (2) (a) It is unlawful for a broker-dealer or issuer to employ or engage an agent unless
31 the agent is licensed. The license of an agent is not effective during any period when the agent
32 is not associated with:

33 (i) a particular broker-dealer licensed under this chapter; or

34 (ii) a particular issuer.

35 (b) When an agent begins or terminates an association with a broker-dealer or issuer, or
36 begins or terminates activities as an agent, the agent and the broker-dealer or issuer shall
37 promptly notify the division.

38 (c) An agent who terminates an association with a broker-dealer or issuer is considered
39 to be unlicensed until the day on which the division:

40 (i) approves the agent's association with a different broker-dealer or issuer; and

41 (ii) notifies the agent of the division's approval of the association.

42 (d) (i) It is unlawful for a broker-dealer or an issuer engaged, directly or indirectly, in
43 offering, offering to purchase, purchasing, or selling a security in this state, to employ or
44 associate with an individual to engage in an activity related to a securities transaction in this
45 state if:

46 (A) (I) the license of the individual is suspended or revoked; or

47 (II) the individual is barred from employment or association with a broker-dealer, an
48 issuer, or a state or federal covered investment adviser; and

49 (B) the suspension, revocation, or bar described in Subsection (2)(d)(i)(A) is by an
50 order:

51 (I) under this chapter;

52 (II) of the Securities and Exchange Commission;

53 (III) of a self-regulatory organization; or

54 (IV) of a securities administrator of a state other than Utah.

55 (ii) A broker-dealer or issuer does not violate this Subsection (2)(d) if the broker-dealer
56 or issuer did not know and in the exercise of reasonable care could not have known, of the
57 suspension, revocation, or bar.

58 (iii) An order under this chapter may modify or waive, in whole or in part, the

59 application of Subsection (2)(d)(i) to a broker-dealer or issuer.

60 (3) It is unlawful for a person to transact business in this state as an investment adviser
61 or as an investment adviser representative unless:

62 (a) the person is licensed under this chapter;

63 (b) the person's only clients in this state are:

64 (i) one or more of the following whether acting for itself or as a trustee with investment
65 control:

66 (A) an investment company as defined in the Investment Company Act of 1940;

67 (B) another investment adviser;

68 (C) a federal covered adviser;

69 (D) a broker-dealer;

70 (E) a depository institution;

71 (F) a trust company;

72 (G) an insurance company;

73 (H) an employee benefit plan with assets of not less than \$1,000,000; or

74 (I) a governmental agency or instrumentality; or

75 (ii) other institutional investors as are designated by rule or order of the director; or

76 (c) the person:

77 (i) (A) to transact business as an investment adviser, is licensed in another state as an
78 investment adviser; or

79 (B) to transact business as an investment adviser representative, is licensed in another
80 state as an investment adviser representative;

81 (ii) has no place of business in this state; and

82 (iii) during the preceding 12-month period has had not more than five clients, other
83 than those specified in Subsection (3)(b), who are residents of this state.

84 (4) (a) It is unlawful for:

85 (i) a person required to be licensed as an investment adviser under this chapter to
86 employ an investment adviser representative unless the investment adviser representative is
87 licensed under this chapter, except that the license of an investment adviser representative is
88 not effective during any period when the person is not employed by an investment adviser
89 licensed under this chapter;

90 (ii) a federal covered adviser to employ, supervise, or associate with an investment
91 adviser representative having a place of business located in this state, unless the investment
92 adviser representative is:

93 (A) licensed under this chapter; or

94 (B) exempt from licensing; or

95 (iii) an investment adviser, directly or indirectly, to employ or associate with an
96 individual to engage in an activity related to providing investment advice in this state if:

97 (A) (I) the license of the individual is suspended or revoked; or

98 (II) the individual is barred from employment or association with a state or federal
99 covered investment adviser, broker-dealer, or issuer; and

100 (B) the suspension, revocation, or bar is by an order:

101 (I) under this chapter;

102 (II) of the Securities and Exchange Commission;

103 (III) a self-regulatory organization; or

104 (IV) a securities administrator of a state other than Utah.

105 (b) (i) An investment adviser does not violate Subsection (4)(a)(iii) if the investment
106 adviser did not know, and in the exercise of reasonable care could not have known, of the
107 suspension, revocation, or bar.

108 (ii) An order under this chapter may waive, in whole or in part, the application of
109 Subsection (4)(a)(iii) to an investment adviser.

110 (c) When an investment adviser representative required to be licensed under this
111 chapter begins or terminates employment with an investment adviser, the investment adviser
112 shall promptly notify the division.

113 (d) An investment adviser representative who terminates association with an
114 investment adviser is considered unlicensed until the day on which the division:

115 (i) approves the investment adviser representative's association with a different
116 investment adviser; and

117 (ii) notifies the investment adviser representative of the division's approval of the
118 association.

119 (5) Except with respect to an investment adviser whose only clients are those described
120 under Subsections (3)(b) or (3)(c)(iii), it is unlawful for a federal covered adviser to conduct

121 advisory business in this state unless the person complies with Section 61-1-4.

122 Section 2. Section **61-1-4** is amended to read:

123 **61-1-4. Licensing and notice filing procedure.**

124 (1) (a) A broker-dealer, agent, investment adviser, or investment adviser representative
125 shall obtain an initial or renewal license by filing with the division or its designee an
126 application together with a consent to service of process under Section 61-1-26.

127 (b) (i) The application shall contain the applicant's Social Security number and
128 whatever information the division by rule requires concerning such matters as:

129 (A) the applicant's form and place of organization;

130 (B) the applicant's proposed method of doing business;

131 (C) (I) the qualifications and business history of the applicant; and

132 (II) in the case of a broker-dealer or investment adviser, the qualifications and business
133 history of any partner, officer, or director, any person occupying a similar status or performing
134 similar functions, or any person directly or indirectly controlling the broker-dealer or
135 investment adviser;

136 (D) whether the applicant has been subject to:

137 (I) an injunction, administrative order, or misdemeanor conviction involving a security
138 or any aspect of the securities business; or

139 (II) a felony conviction; and

140 (E) the applicant's financial condition and history.

141 (ii) An applicant's Social Security number is a private record under Subsection
142 63G-2-302(1)(h).

143 (c) The division may, by rule or order, require an applicant for an initial license to
144 publish an announcement of the application in one or more specified newspapers published in
145 this state.

146 (d) A license or notice filing of a broker-dealer, agent, investment adviser, or
147 investment adviser representative expires on December 31 of each year.

148 (e) (i) If no denial order is in effect and no proceeding is pending under Section 61-1-6,
149 a license becomes effective at noon of the 30th day after an application is filed.

150 (ii) The division may by rule or order specify an earlier effective date and may by order
151 defer the effective date until noon of the 30th day after the filing of any amendment.

152 (iii) Licensing of a broker-dealer automatically constitutes licensing of only one
153 partner, officer, director, or a person occupying a similar status or performing similar functions
154 as a licensed agent of the broker-dealer.

155 (iv) Licensing of an investment adviser automatically constitutes licensing of only one
156 partner, officer, director, or a person occupying a similar status or performing similar functions.

157 (v) (A) For purposes of the activities of a licensee in this state, during the time period
158 that a broker-dealer or investment adviser is licensed in this state:

159 (I) the broker-dealer shall maintain a principal; and

160 (II) the investment adviser shall maintain a designated official.

161 (B) The division may by rule made in accordance with Title 63G, Chapter 3, Utah
162 Administrative Rulemaking Act, provide a process for a person to identify for the division:

163 (I) a principal or designated official at the time a license is issued; and

164 (II) a different principal or designated official if:

165 (Aa) a broker-dealer changes its principal; or

166 (Bb) an investment adviser changes its designated official.

167 (C) A principal or designated official identified in Subsection (1)(e)(v)(A) is not
168 required to be separately licensed with the division.

169 (2) Except with respect to a federal covered adviser whose only clients are those
170 described in Subsection 61-1-3(3)(b) or ~~[(c)]~~ (3)(c)(iii), a federal covered adviser shall file with
171 the division, before acting as a federal covered adviser in this state, a notice filing consisting of
172 the documents filed with the Securities and Exchange Commission as the division by rule or
173 order may require.

174 (3) (a) An applicant for an initial or renewal license as a broker-dealer or agent shall
175 pay a reasonable filing fee as determined under Section 61-1-18.4.

176 (b) An applicant for an initial or renewal license as an investment adviser or
177 investment adviser representative who is subject to licensing under this chapter shall pay a
178 reasonable filing fee as determined under Section 61-1-18.4.

179 (c) A person acting as a federal covered adviser in this state shall pay an initial and
180 renewal notice filing fee as determined under Section 61-1-18.4.

181 (d) If the license or renewal is not granted or the application is withdrawn, the division
182 shall retain the fee.

183 (4) A licensed broker-dealer or investment adviser may file an application for licensing
184 of a successor for the unexpired portion of the year. There shall be no filing fee.

185 (5) The division may by rule or order:

186 (a) require a minimum capital for a licensed broker-dealer, subject to the limitations of
187 Section 15 of the Securities Exchange Act of 1934; and

188 (b) establish minimum financial requirements for an investment adviser:

189 (i) subject to the limitations of Section 222 of the Investment Advisers Act of 1940;

190 and

191 (ii) which may include different requirements for an investment adviser who maintains
192 custody of or has discretionary authority over client funds or securities and an investment
193 adviser who does not.

194 (6) (a) The division may by rule or order require a licensed broker-dealer or investment
195 adviser who has custody of or discretionary authority over client funds or securities to post one
196 or more bonds in amounts and under conditions as the division may prescribe, subject to the
197 limitations of Section 15 of the Securities Exchange Act of 1934 for a broker-dealer, and
198 Section 222 of the Investment Advisers Act of 1940 for an investment adviser.

199 (b) An appropriate deposit of cash or securities may be accepted in lieu of a required
200 bond.

201 (c) A bond may not be required of a licensee whose net capital, or in the case of an
202 investment adviser whose minimum financial requirements, which may be defined by rule,
203 exceeds the amounts required by the division.

204 (d) A bond shall provide for suit on the bond by a person who has a cause of action
205 under Section 61-1-22 and, if the division by rule or order requires, by any person who has a
206 cause of action not arising under this chapter.

207 (e) A bond shall provide that a suit may not be maintained to enforce liability on the
208 bond unless brought before the earlier of:

209 (i) the expiration of five years after the act or transaction constituting the violation; or

210 (ii) the expiration of two years after the discovery by the plaintiff of the facts
211 constituting the violation.

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