

Source: L. 90: Entire article R&RE, p. 700, § 1, effective July 1. **L. 98:** (1), (2), and (6)(a) amended and (8) and (9) added, p. 546, § 1, effective April 30.

Editor's note: This section is similar to former § 11-51-127 as it existed prior to 1990.

PART 2

DEFINITIONS AND REFERENCES TO FEDERAL STATUTES AND RULES

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

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

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

- (a) A sales representative;
- (b) An issuer with respect to purchasing and selling the issuer's own securities;
- (c) A bank; or
- (d) Any other person or class of persons the securities commissioner designates by rule or order.

(3) "Central registration depository" means the computer registration system known as the central registration depository, which is maintained by the financial industry regulatory authority and the states that participate in that system, or any successor system.

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

(5) "Depository institution" means:

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

(b) A trust company or other institution that is authorized by federal or state law to exercise fiduciary powers of the type a national bank is permitted to exercise under the authority of the comptroller of the currency and is supervised and examined by an official or agency of a

state or the United States. The term does not include an insurance company or other organization primarily engaged in the insurance business.

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

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

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

(a) A depository institution;

(b) An insurance company;

(c) A separate account of an insurance company;

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

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

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

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

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

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

(j) Any other institutional buyer.

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

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

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

(9.5) (a) (I) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for

compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities.

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

(b) "Investment adviser" does not include:

(I) A federal covered adviser;

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

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

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

(V) An investment adviser representative;

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

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

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

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

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

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

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

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

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

(II) Manages securities accounts or portfolios for clients;

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

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

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

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

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

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

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

(10) "Issuer" means any person who issues or proposes to issue any security; except that, with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the term "issuer" means the person performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; except that, in the case of an unincorporated association which provides by its articles for limited liability of any or all of its members or in the case of a trust, committee, or other legal entity, the trustees or members thereof shall not be individually liable as issuers of any security issued by the association, trust, committee, or other legal entity; except that, with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is or is to be used; and except that, with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of any interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of offering them for sale.

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

(11.5) "Online intermediary" means a person:

(a) Acting pursuant to section 11-51-308.5 as an intermediary in a transaction involving the offer through a website of securities for the account of an issuer; and

(b) Who does not:

(I) Offer investment advice or recommendations;

(II) Solicit purchases, sales, or offers to buy the securities offered or displayed on its website;

(III) Compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its website;

(IV) Hold, manage, possess, or otherwise handle purchaser funds or securities;

(V) Act as an exchange or listing or quotation service for the offer or sale of securities by third parties; or

(VI) Engage in such other activities as the securities commissioner, by rule, determines is inappropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate of subscription; transferable share; investment contract; viatical settlement investment; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security" or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract

under which an insurance company promises to pay a sum of money either in a lump sum or periodically for life or some other specified period. For purposes of this article, an "investment contract" need not involve more than one investor nor be limited to those circumstances wherein there are multiple investors who are joint participants in the same enterprise.

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

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

(20) "Viatical settlement investment" means the contractual right to receive any portion of the death benefit or ownership of a life insurance policy or certificate, in exchange for consideration that is less than the expected death benefit of the life insurance policy or certificate. "Viatical settlement investment" does not include:

(a) Any transaction between a viator and a viatical settlement provider as defined by section 10-7-602, C.R.S.;

(b) Any transfer of ownership or beneficial interest in a life insurance policy from a viatical settlement provider to another viatical settlement provider as defined by section 10-7-602, C.R.S., or to any legal entity formed solely for the purpose of holding ownership or beneficial interest in a life insurance policy or policies;

(c) The bona fide assignment of a life insurance policy to a bank, savings bank, savings and loan association, savings association, credit union, or other licensed lending institution as collateral for a loan; or

(d) The exercise of accelerated benefits pursuant to the terms of a life insurance policy issued in accordance with title 10, C.R.S.

Source: **L. 90:** Entire article R&RE, p. 702, § 1, effective July 1. **L. 98:** (5.5), (9.5), (9.6), (9.7), and (12.5) added, p. 547, § 2, effective April 30. **L. 2005:** (17) amended and (20) added, p. 1324, § 2, effective January 1, 2006. **L. 2015:** (3) and (20)(c) amended, (SB 15-104), ch. 177, p. 575, § 2, effective May 11; (11.5) added, (HB 15-1246), ch. 98, p. 286, § 2, effective August 5.

Editor's note: This section is similar to former § 11-51-102 as it existed prior to 1990.

Cross references: For the "Securities Act of 1933", see Pub.L. 73-22, codified at 15 U.S.C. sec. 77a et seq.; for the "Commodity Exchange Act", see Pub.L. 67-331, codified at 7 U.S.C. sec. 1 et seq.; for the "Investment Advisers Act of 1940", see Pub.L. 76-768, 54 Stat. 847 (1940); for the "Investment Company Act of 1940", see Pub.L. 76-768, 54 Stat. 789 (1940); for the "Employee Retirement Income Security Act of 1974", see Pub.L. 93-406, codified at 29

U.S.C. sec. 1001 et seq.; for the "Securities Exchange Act of 1934", see Pub.L. 73-291, codified at 15 U.S.C. sec. 78a et seq.; for the "Small Business Investment Act of 1958", see Pub.L. 85-699, codified at 15 U.S.C. sec. 661 et seq.

11-51-201.5. Investment adviser registration depository - definition. As used in this article, unless the context otherwise requires:

(1) "Investment adviser registration depository" means the electronic computer registration system known as the investment adviser registration depository, which is operated and maintained by the financial industry regulatory authority and by the states that participate in the system. The term includes any successor system.

Source: L. 2001: Entire section added, p. 15, § 1, effective March 9. **L. 2015:** Entire section amended, (SB 15-104), ch. 177, p. 576, § 3, effective May 11.

11-51-202. References to federal statutes. (1) Each reference in this article to a federal act or statute means, unless the context otherwise requires, that act or statute as in effect on January 1, 1990, together with all rules and regulations under such act or statute as in effect on that date, except as subsequent amendments may become applicable under this article pursuant to subsection (2) of this section.

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

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