

grounds that the offering, when viewed on its merits as an investment, is unfair, unjust, or inequitable.

(c) The security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state law applicable to the offering; but the securities commissioner may not institute a proceeding against an effective registration statement under this paragraph (c) more than one year from the date of the order or injunction relied on, and the securities commissioner may not enter an order under this paragraph (c) on the basis of an order or injunction entered under any other state law unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section; or

(d) The issuer's enterprise or method of business includes or would include activities which are illegal where performed.

(1.5) With respect to a security sought to be registered pursuant to section 11-51-303, the securities commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if the securities commissioner finds that there has been a failure to comply with section 11-51-303 (2).

(2) The securities commissioner may, by summary order under section 11-51-606 (3)(a), summarily postpone or suspend the effectiveness of a registration statement pending final determination of any proceeding under this section.

(3) No stop order may be entered under this section, except under subsection (2) of this section, without the provision to the issuer of an appropriate prior notice, an opportunity for a hearing, and written findings of fact and conclusions of law.

(4) The securities commissioner may vacate or modify a stop order if the securities commissioner finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

**Source:** L. 90: Entire article R&RE, p. 714, § 1, effective July 1. L. 94: (2) amended, p. 1839, § 2, effective July 1. L. 2004: (1.5) added, p. 514, § 2, effective July 1.

**Editor's note:** This section is similar to former § 11-51-112 as it existed prior to 1990.

**11-51-307. Exempt securities.** (1) The following securities are exempted from sections 11-51-301 and 11-51-305:

(a) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of any of them or any certificate of deposit for any of them;

(b) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of any of them, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(c) Any security issued by and representing an interest in or a debt of, or guaranteed by, any depository institution organized under the laws of the United States or any depository institution organized and supervised under the laws of any state;

(d) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

(e) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is: Subject to the jurisdiction of the surface transportation board; a registered holding company under the federal "Public Utility Holding Company Act of 1935" or a subsidiary of such a company within the meaning of that act; or regulated in respect of its issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(f) Any security listed or approved for listing upon notice of issuance on any national securities exchange registered under the federal "Securities Exchange Act of 1934", 15 U.S.C. sec. 78f, as amended, or any other security of the same issuer that is of a senior or substantially equal rank; any security called for by subscription rights or warrants so listed, designated, or approved; or any warrant or right to purchase or subscribe to any of them;

(g) Any security which is issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, or charitable purposes or as a chamber of commerce or trade or professional association and which is offered or sold to a bona fide constituent or member of such organization or association, if no direct or indirect commission or remuneration is paid in connection with the offer or sale of such security except to a licensed broker-dealer; or any security which is issued by any cooperative association engaged in the sale or production of electricity and regulated by the public utilities commission of this state;

(h) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal;

(i) Any security issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan;

(j) Any security issued by a cooperative association as defined in article 55 of title 7, C.R.S.; and

(k) Any security issued by an issuer registered as an open-end management investment company or unit investment trust under the federal "Investment Company Act of 1940" if:

(I) (A) The issuer is advised by an investment adviser that is a depository institution exempt from registration under the federal "Investment Advisers Act of 1940" or that is currently registered, and has been registered or is affiliated with an adviser that has been registered, as an investment adviser under the federal "Investment Advisers Act of 1940" for at least three years next preceding an offer or sale of a security claimed to be exempt under this paragraph (k) and the adviser has acted, or is affiliated with an investment advisor that has acted, as investment adviser to one or more registered investment companies or unit investment trusts for at least

three years next preceding an offer or sale of a security claimed to be exempt under this paragraph (k); or

(B) The issuer has a sponsor that has at all times throughout the three years before an offer or sale of a security claimed to be exempt under this paragraph (k) sponsored one or more registered investment companies or unit investment trusts the aggregate total assets of which have exceeded one hundred million dollars; and

(II) There is filed with and paid to the securities commissioner prior to any sale of any securities claimed to be exempt under this paragraph (k):

(A) A notice of intention to sell which has been executed by the issuer and which sets forth the name and address of the issuer and the title of the securities to be offered in this state; and

(B) An exemption fee, which shall be determined and collected pursuant to section 11-51-707, for open-end management companies and for unit investment trusts.

(2) Any notice filed and exemption fee paid under paragraph (k) of subsection (1) of this section shall be effective only for securities sold within twelve months after the date on which such notice was filed with the securities commissioner. For the purposes of paragraph (k) of subsection (1) of this section, an investment adviser is affiliated with another investment adviser if it controls, is controlled by, or is under common control with the other investment adviser. For the purposes of paragraph (k) of subsection (1) of this section, a "sponsor" of a unit investment trust means the person primarily responsible for the organization of the unit investment trust or who has continuing responsibilities for the administration of the affairs of the unit investment trust other than a trustee or custodian. "Sponsor" includes the depositor of the unit investment trust.

**Source:** L. 90: Entire article R&RE, p. 715, § 1, effective July 1. L. 2001: (1)(e) amended, p. 1267, § 7, effective June 5. L. 2008: (1)(f) amended, p. 21, § 10, effective August 5.

**Editor's note:** This section is similar to former § 11-51-113 as it existed prior to 1990.

**Cross references:** For the "Public Utility Holding Company Act of 1935", see Pub.L. 74-333, codified at 15 U.S.C. sec. 79 et seq.; for the "Investment Company Act of 1940", see Pub.L. 76-768, 54 Stat. 789 (1940); for the "Investment Advisers Act of 1940", see Pub.L. 76-768, 54 Stat. 847 (1940).

**11-51-308. Exempt transactions.** (1) The following transactions are exempted from sections 11-51-301 and 11-51-305:

(a) Any isolated nonissuer transaction, whether or not effected through a broker-dealer;

(b) Any nonissuer distribution of an outstanding security;

(l) If a recognized securities manual contains the name of the issuer, the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within the eighteen-month period immediately preceding the date of the distribution, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations;