DEPARTMENT OF REGULATORY AGENCIES

Division of Securities

RULES UNDER THE COLORADO SECURITIES ACT

3 CCR 704-1

[Editor's Notes follow the text of the Rules at the end of this CCR Document.]

CHAPTER 1 (Reserved for future use)

CHAPTER 2 DEFINITIONS AND FEDERAL COORDINATION

51-2.1 The following terms as used in these Rules, unless the context otherwise requires, are defined:

A. "33 Act" means the federal Securities Act of 1933 and the Rules and regulations promulgated thereunder.

B. "34 Act" means the federal Securities Exchange Act of 1934 and the Rules and regulations promulgated thereunder.

C. "40 Act" means the federal Investment Advisers Act of 1940 and the Rules and regulations promulgated thereunder.

D. "Act" means the Colorado Securities Act.

E. "Beneficial ownership" is interpreted in the same manner as it would be under 17 C.F.R. § 240.16a-1 in determining whether a person has beneficial ownership of a security for purposes of section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) and the rules and regulations thereunder. Any report required by 17 C.F.R 275.204A-1(b) may contain a statement that the report will not be construed as an admission that the person making the report has any direct or indirect beneficial ownership in the security to which the report relates.

F. "Commissioner" or "Securities Commissioner" means the Colorado Securities Commissioner.

G. "Confidential Personal Information" shall mean a first name or first initial and last name in combination with any one or more of the following data elements:

(1) Social Security number;

(2) Driver's license number or identification card number;

(3) Account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to a resident's financial account;

(4) Individual's digitized or other electronic signature; or

(5) Username, unique identifier or electronic mail address in combination with a password, access code, security questions or other authentication information that would permit access to an online account.

H. "Confidential Personal Information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records or widely distributed media.

I. "CRD" means the Central Registration Depository of the Financial Industry Regulatory Authority, Inc. and the North American Securities Administrators Association, Inc. The CRD address is P.O. Box 9401, Gaithersburg, MD 20898-9401.

J. "Division" means the Colorado Division of Securities, 1560 Broadway, Suite 900, Denver, CO 80202.

K. "EFD" means the Electronic Filing Depository System.

L. "FINRA" means the Financial Industry Regulatory Authority.

M. "IARD" means the Investment Adviser Registration Depository of the federal Securities and Exchange Commission and the North American Securities Administrators Association, Inc., as maintained by the Financial Industry Regulatory Authority, Inc. The IARD address is 9509 Key West Avenue, Rockville, Maryland 20850.

N. "Mortgage broker-dealer" means a "broker-dealer" other than a broker-dealer registered under the 34 Act whose business is limited exclusively to effecting transactions in notes, bonds or evidences of indebtedness secured by mortgages or deeds of trust upon real estate.

O. "Mortgage sales representative" means a "sales representative" who represents a mortgage broker-dealer.

P. "NASAA" means the North American Securities Administrators Association, Inc.

Q. "SEC" means the federal Securities and Exchange Commission.

51-2.1.1 Pursuant to the authority of the Securities Commissioner provided at section 11- 51-201(2)(d), C.R.S., "broker-dealer" as defined at section 11-51-201(2), C.R.S., does not include:

A. A person who is resident in Canada, has no office or other physical presence in this state, and complies with the following conditions:

1. Only effects or attempts to effect transactions in securities

a. With or through the issuers of securities involved in the transactions, broker- dealers, banks, savings institutions, trust companies, insurance companies, investment companies (as defined in the federal Investment Company Act of 1940), pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;

b. With or for a person from Canada who is present temporarily in this state, with whom the Canadian person had a bona fide business relationship before the person entered this state, or

c. With or for a person from Canada who is present in this state, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor; and

2. Files a notice in the form of their current application required by the jurisdiction in which the head office of such person is located and a consent to service of process;

3. Is a member of a self-regulatory organization or stock exchange in Canada;

4. Maintains the provincial or territorial registration and membership in a self-regulatory organization or stock exchange of such person in good standing;

5. Discloses to the clients of such person in this state that such person is not subject to the full regulatory requirements of the Colorado Securities Act; and

6. Is not in violation of section 11-51-501(1), C.R.S.

B. A person who acts as a business broker with respect to a transaction involving the offer or sale of all of the stock or other equity interests in any closely held corporation or limited liability company provided that such stock or other equity interest is sold to no more than one person, as that term is defined in the Act.

51-2.2 SEC Amendments Coordinated

A. If any SEC Rule or regulation incorporated in these Rules is amended by the SEC subsequent to the date the Colorado Rule was adopted, pursuant to section 11-51-202, C.R.S., such subsequent amendment may apply to the Rule provided that the Securities Commissioner does not commence Rule making proceedings within ninety (90) days of the effective date of any such amendment.

B. Information concerning any SEC Rule or regulation incorporated in these Rules may be obtained from:

Deputy Securities Commissioner 1560 Broadway, Suite 900 Denver CO 80202

CHAPTER 3 REGISTRATION OF SECURITIES AND EXEMPTIONS

51-3.1 Registration by Coordination.

Preliminary Note: Securities for which a registration statement has been filed under the federal "Securities Act of 1933" or any securities for which filings have been made pursuant to the SEC's regulation A may be registered by coordination in Colorado. Various sections of the Colorado Securities Act, these Rules, and certain NASAA forms require a person seeking registration by coordination to file with the Securities Commissioner certain documents that are submitted to the SEC. The Division finds that the duplicative filing of such documents increases offering costs and harms the environment, and, therefore, not requiring these paper filings is in the public interest.

A. Filing Information

1. When securities are registered by coordination under Section 11-51-303, C.R.S., any document filed with the SEC in connection with such offering shall be considered filed with the Securities Commissioner when such document is received by the SEC.

2. Application for registration by coordination in the State of Colorado is made by filing the NASAA Form U-1 and the documents required by it, along with the information required for registration by coordination under section 11-51-303(1)(a) and (b)(I)-(III), C.R.S.

3. The application for registration by coordination shall also include a specimen, copy, or detailed description of the security to be offered and sold. The description shall include details of all terms and conditions to which the security, or its holder, are subject.

4. A person seeking registration by coordination shall also file a Consent to Service of Process on the NASAA Form U-2 (see Rule 51-7.1) with the Securities Commissioner, along with a filing fee as specified by the Securities Commissioner.

B. Effective Date

1. A registration statement required to be filed with the Securities Commissioner in connection with a registration by coordination is considered effective simultaneously with or subsequent to the registration statement filed with the SEC when the following conditions are satisfied:

   a. A stop order issued under sections 11-51-303(4) or 11-51-306, C.R.S., or a stop order issued by the SEC, is not in effect, and a proceeding is not pending against the person seeking registration by coordination under section 11-51-410, C.R.S.; and

   b. The complete registration statement has been on file with the Securities Commissioner for a period of at least ten (10) days.

2. The person seeking registration by coordination shall promptly notify the Securities Commissioner of the date when the registration statement filed with the SEC becomes effective, and the content of any price amendment. The notification containing the price amendment shall be promptly filed with the Securities Commissioner, and if not timely filed, the Securities Commissioner may, without prior notice or hearing, issue a stop order under section 11-51-306, C.R.S., which stop order shall retroactively deny the effectiveness of the registration statement, or suspend the effectiveness of the registrations statement until the person seeking registration complies with the conditions in this Rule 51-3.1.

3. The Securities Commissioner shall promptly notify the person seeking registration of a stop order by telegram, telephone, facsimile, or other electronic means, and shall maintain evidence that such notification was given in the form of a certificate or affidavit of service or other appropriate document.

4. In the event the person seeking registration complies with the notice requirements of this Rule 51-3.1.B. subsequent to entry of a stop order, the stop order shall become void as of the date of its issuance.

5. In the event the Securities Commissioner intends to institute a proceeding for a stop order under section 11-51-306, C.R.S., in connection with the registration statement, the Securities Commissioner shall notify the person seeking such registration. Evidence of such notice by the Securities Commissioner may include a certificate or affidavit of service, or other appropriate documentary evidence.

C. Amendments

Any amendments to the federal prospectus filed with the Securities Commissioner pursuant to section 11- 51-303(2) shall be made by filing an amended Form U-1 and an amended registration statement. The amendment becomes effective when the amended registration becomes effective with the SEC and any requirements of this Rule 51-3.1 have been satisfied. Such amendment shall also contain any post- effective amendments to such SEC registration that would result in net proceeds from the sale of registered securities that are subject to the escrow requirements of section 11-51-302(6), C.R.S. and Rule 51-3.4.

D. Closing Report

Within 30 days of the close of the offering or the termination of the registration statement, whichever occurs first, the registrant shall file with the Securities Commissioner a closing report. The closing report shall be filed on the Division's Form RC-C.

E. Designees

At such time as the Securities Commissioner authorizes the electronic filing of registration statements, the Securities Commissioner may designate other persons or entities to receive filings on behalf of the Division under this Rule 51-3.1, including but not limited to, applications, registration statements, and fees. Any such designation shall be for the sole purpose of receiving such filings and transmitting those documents to the Division.

F. Prompt filing; Notification

1. For purposes of this Rule 51-3.1, when an act is required to be done "promptly," or any person is required to "promptly file" or "promptly notify," such terms shall mean within five (5) business days of the date the action was taken or order entered.

2. Methods of "notification," as required by this Rule 51-3.1, may include certified or registered mail, telegram, telephone, facsimile, e-mail, or other electronic means. The person sending any required notification shall assure receipt of such notification by retaining all necessary documents reflecting that the notice was sent and received, including preparing and maintaining a certificate or affidavit of service, with appropriate documentation attached.

51-3.2 Registration by Qualification

A. An application for registration of an offering of securities by qualification pursuant to section 11- 51-304(2), C.R.S., is made by filing with the Securities Commissioner Form RQ, and a registration statement as required by said section. Pursuant to section 11-51-302(4), C.R.S., the Securities Commissioner will permit public offerings made under Rule 504 of the SEC to apply for registration on Form U-7 (Registration Form for Small Corporate Offerings), provided that the form is completed and there is full compliance with all of the form's requirements, conditions and limitations.

B. A person seeking registration by qualification must also file a Consent to Service of Process form (see Rule 51-7.1) with the Securities Commissioner.

C. Required filings and fees may be made through the Electronic Filing Depository (EFD).

51-3.3 Limited Offering Registration

A. An application for registration of a limited offering of securities under section 11-51-304(6), C.R.S., is made by filing with the Securities Commissioner a registration statement on Form RL.

B. A person seeking registration by qualification under section 11-51-304(6), C.R.S., must also file a Consent to Service of Process form (see Rule 51-7.1) with the Securities Commissioner.

51-3.4 Escrow and Release of Funds under Section 11-51-302(6), C.R.S.

A. For the purposes of section 11-51-302(6), C.R.S.:

1. “Committed for use” means an identification of general or specific purposes for which specific portions of the net proceeds from the offering are intended in good faith to be used in the manner and within the time specified in the registration statement. Nothing contained herein shall preclude the issuer from making a good faith reallocation of anticipated expenditures of the net proceeds within the categories specified in the registration statement, or an allocation to new categories not reasonably anticipated at the date the registration statement was declared effective.

2. “Completion of a transaction or series of transactions” means the closing or other completion of substantially all of the material obligations, but for the actual conveyance of escrow funds, of all parties to one or more agreements between an issuer subject to the escrow requirements of section 11-51-302(6), C.R.S., and one or more other persons by which the issuer obtains interests in one or more specific lines of business.

3. “Improper release” means any release by a depository of escrowed funds without certification to the depository by the issuer that the requirements for such release under subsections 11-51-302(6)(a)(I) and (II), C.R.S., are satisfied, and where, in fact, such requirements are not satisfied at the time of the release, unless the depository is in receipt of a notification from the Securities Commissioner that the release prior to the expiration of the time period specified in section 11-51-302(6)(a)(II), C.R.S., is permissible.

4. “Net proceeds” means the gross proceeds less selling and organizational costs.

5. “Selling and organizational costs” means all expenses incurred by the issuer within twelve (12) months prior to the date of effectiveness of the registration in Colorado and those reasonably anticipated to be incurred within six (6) months after the date in connection with:

    a. the issuance and distribution of the securities to be registered in the offering, including, but not limited to, registration and filing fees, printing and engraving expenses, accounting and legal fees and expenses, “blue sky” fees and expenses, transfer and warrant agent fees, expenses of other experts, and underwriting discounts and commissions; and

    b. the organization of the issuer and the preparation of the organizational documents, including, but not limited to, filing fees, and legal, accounting, and tax planning fees and expenses, provided that said expenses are to be paid out of the proceeds of the offering.

6. “Specific line of business” means any commercial, industrial or investment activity that is generally recognized as a distinct economic undertaking or enterprise intended to generate a profit for the issuer. Although certain characteristics may commonly be used to assist in determining whether a specific line of business has been so identified, no single characteristic is determinative in all cases. The determination whether a specific line of business has been identified depends on the Securities Commissioner's review of the facts and circumstances of each case and the Commissioner's determination as to whether the management of the issuer has acted in good faith.

B. To comply with the escrow requirements of section 11-51-302(6), C.R.S., an issuer, or one or more broker-dealers or sales representatives acting on behalf of such issuer, shall deliver at least eighty percent (80%) of the net proceeds received from the offering of securities to an unaffiliated depository to be held in accordance with section 11-51-302(6), C.R.S., until completion of a transaction or series of transactions in which at least fifty percent (50%) of the gross proceeds is committed to a specific line of business. If such transactions have not been completed within two (2) years from the date of effectiveness of the offering in Colorado, the funds shall be distributed to the then security holders of record of the securities sold pursuant to the registered offering (except warrants or other rights to subscribe to or purchase other securities) unless said security holders have approved by majority vote the renewal of the escrow not to exceed one year. The escrow agreement may be renewed in subsequent years by means of the same procedure. The Commissioner shall not be a party to an escrow agreement, but an executed or conformed copy of the escrow agreement shall be provided to the Commissioner.

1. In any instance where the escrow of the proceeds of sale of securities is required pursuant to section 11-51-302(6), C.R.S., the escrow shall be evidenced by a written agreement between the issuer (as depositor) and an unaffiliated depository, and other interested parties.

2. Each agreement for the establishment of an escrow shall include:

    a. The date of the agreement;

    b. The names and addresses of the issuer, the depository, and any other parties to the agreement;

    c. The terms of the escrow, including a specific reference to section 11-51-302(6), C.R.S.;

    d. The conditions under which the escrowed funds are to be released to the issuer or are to be distributed, and by whom and in what manner such distribution is to be effected;

    e. Whether the escrowed funds will earn interest, and if so, a description of the manner in which interest accrued on the escrowed funds will be used or otherwise distributed; and

    f. A statement that the proceeds of the escrow may not be released to the issuer until the lapse of more than nine (9) days after the receipt by the Commissioner of notice of the proposed release of funds from such escrow or upon authorization of the Commissioner of any earlier release.

3. The Commissioner may, in the Commissioner's sole discretion, authorize release of funds escrowed pursuant to section 11-51-302(6), C.R.S., prior to the lapse of nine (9) days after receipt by the Commissioner of the notice provided in paragraph C. below. In such cases, the Commissioner shall provide the issuer with such authorization in writing in a form that may be presented to the depository.

C. A notice of proposed release of funds from escrow under section 11-51-302(6), C.R.S., shall be filed with the Commissioner on Form ES. Proof of filing of the Form ES with the Commissioner may be established by a receipt or other writing upon which the Commissioner, by stamp or other writing, evidences that the Form ES was received.

D. The notice shall contain, at a minimum, the following information:

1. The gross amount of aggregate proceeds received from the sale of any and all of the securities registered in this offering;

2. Whether the offering has closed;

3. Whether any additional funds may be received by the issuer in exchange for securities issued in the offering;

4. Whether a transaction or series of transactions has been completed which commit(s) at least fifty percent (50%) of the gross amount of aggregate proceeds for use in one or more specific lines of business;

5. A description of each transaction, including the dates of each transaction, the parties to each transaction, the amount committed in each transaction, a description of how the proceeds are to be spent under the terms of each transaction, and the specific lines of business; and,

6. Any additional information the Securities Commissioner may require as material to the Commissioner's determination.

51-3.5 (Repealed)

51-3.6 Required Filings for Exemption for Certain Non-Issuer Distributions under Section 11-51- 308(1)(b)(V), C.R.S.

The information that must be filed with the Securities Commissioner in order for the transactional securities registration exemption provided by section 11-51-308(1)(b)(V), C.R.S., for a non-issuer distribution of the outstanding securities of an issuer to apply shall be filed by the issuer on Form ST.

51-3.7 Notification of Exemption under Section 11-51-308(1)(p), C.R.S., for Certain Securities or Transactions Exempt from Registration under the 33 Act

A. The notification of exemption required under section 11-51-308(1)(p), C.R.S., is made by filing with the Securities Commissioner, or his or her designee, the forms which must be filed with the SEC pursuant to Rules and regulations promulgated under the 33 Act in connection with reliance on a securities or transactional exemption from registration created by said Rules or regulations under the 33 Act relevant to the Colorado exemption, and by paying a filing fee.

B. The required filings must be made with the Securities Commissioner no later than the time when such filings in connection with the federal exemption would have to be made with the SEC. Any filing required under (A), and any amendment required under (C) or (D), must be submitted to the Securities Commissioner through the Electronic Filing Depository (EFD) operated by NASAA, and must comply with the following;

   1. All filing fees shall likewise be submitted through EFD;

   2. A person duly authorized by the issuer shall affix his or her electronic signature to the Form D filing by typing his or her name in the appropriate fields and submitting the filing through the EFD, which shall constitute irrefutable evidence of legal signature by the individual whose name is typed on the filing; and

   3. The electronic filing of documents and the collection of related filing fees shall not be required until such time as the EFD system provides for receipt of such filings and fees. Any documents or fees required to be filed with the Securities Commissioner that are not permitted to be filed with, or cannot be accepted by, the EFD system shall be filed directly with the Securities Commissioner.

C. An issuer may file an amendment to a previously filed notice of sales on Form D at any time.

D. An issuer must file an amendment to a previously filed notice of sales on Form D for an offering:

1. To correct a material mistake of fact or error in the previously filed notice of sales on Form D, as soon as practicable after discovery of the mistake or error;

2. To reflect a change in the information provided in the previously filed notice of sales on Form D, as soon as practicable after the change, except that no amendment is required to reflect a change that occurs after the offering terminates or a change that occurs solely in the following information:

    a. The address or relationship of the issuer of a related person identified in response to Item 3 of the notice of sales on Form D;

    b. An issuer's revenues or aggregate net asset value;

    c. The minimum investment amount, if the change is an increase, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in a decrease of more than ten percent;

    d. Any address or state(s) of solicitation shown in response to Item 12 of the notice of sales on Form D;

    e. The total offering amount, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than ten percent;

    f. The amount of securities sold in the offering or the amount remaining to be sold;

    g. The number of non-accredited investors who have invested in the offering, as long as the change does not increase the number to more than thirty-five;

    h. The total number of investors who have invested in the offering;

    i. The amount of sales commissions, or use of proceeds for payment to executive officers, directors or promoters, if the change is a decrease, or if the change, together with all the other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than ten percent; and

3. Annually, on or before the first anniversary of the filing of the notice of sales on Form D or the filing of the most recent amendment to the notice of sales on Form D, if the offering is continuing at that time.

E. An issuer that files an amendment to a previously filed notice of sales on Form D must provide current information in response to all requirements of the notice of sales on Form D regardless of why the amendment is filed.

51-3.8 Multijurisdictional Disclosure Statement ("MJDS")

A. Canadian registration statements filed with the Securities and Exchange Commission on forms designated as Form F-7, F-8, F-9 or F-10 by the SEC may be filed with the Securities Commissioner as registration statements under section 11-51-303, C.R.S. For those offerings for which a registration statement has been filed with the Securities Commissioner on the Form F-7, F-8, F-9 or F-10, the registration statement will take effect upon effectiveness with the SEC pursuant to section 11-51-303, C.R.S.

B. Financial statements and financial information which have been prepared in accordance with Canadian generally accepted accounting principles, consistently applied, and contained in a registration statement which has been filed with the Securities Commissioner on Form F-7, F-8, F-9, or F-10, will be accepted without reconciliation with U.S. generally accepted accounting principles.

C. The Commissioner will accept Form F-7 in lieu of any form that may be required to be filed by the Colorado Securities Act to claim an exemption for any transaction pursuant to an offer to existing security holders of the issuer making the Rights Offering under a Multijurisdictional Disclosure Statement.

D. The Commissioner exempts from registration any non-issuer transaction, whether or not effected through a broker-dealer, involving any class of an issuer's security where the issuer has filed with the Commissioner a registration statement on Form F-8, F-9, or F-10 that is effective.

51-3.9 Transactional Securities Exemption for Non-Issuer Distribution of Outstanding Security

For the purposes of section 11-51-308(1)(b)(I), C.R.S., the following manuals are recognized:

A. Mergent Industrial Manual;

B. Mergent Municipal and Government Manual;

C. Mergent Transportation Manual;

D. Mergent Public Utility Manual;

E. Mergent Bank and Finance Manual;

F. Mergent OTC Industrial Manual;

G. Mergent International Manual;

H. OTC Markets Group Inc. (with respect to securities included in the OTCQX and OTCQB markets).

I. Periodic supplements to each recognized securities manual.

51-3.10 Exemption for Oil and Gas Auctions

The offer and sale by auction of interests in or under oil, gas or mining leases, fees, or titles, including real property from which the minerals have not been severed, or contracts relating thereto, are transactions in securities exempted from the securities registration requirements of the Colorado Securities Act, provided as follows:

A. This transactional exemption applies only to:

1. transactions in those securities within the meaning of the clause “interests in or under oil, gas or mining leases, fees, or titles, including real property from which the minerals have not been severed, or contracts relating thereto,” as contained in the definition of “security” provided at section 11-51-201(17), C.R.S., (hereinafter described as “interests”), and

2. offers and sales of such interests that are not part of an offering or other distribution by an issuer of said interests and are not being made for the benefit of an issuer or any affiliate of an issuer of the interests.

B. All offers and sales by auction of the interests are conducted by a Colorado licensed broker- dealer registered with the SEC as a broker and dealer and a member of FINRA.

C. The purchaser at auction of such interests either must be engaged in the business of oil and gas exploration or production, or must be an “accredited investor” as defined in Regulation D, promulgated by the SEC under section 3(b) of the 33 Act.

D. The transactional securities registration exemption shall apply only to those interests that the seller acquired for investment purposes and not those acquired with the intention of reselling, unless the seller was forced to acquire the interests in a package in order to obtain other properties in the package.

E. The interests being auctioned are not “fractionalized” or converted into undivided interests in the interest for the purpose of resale at auction. The seller is required to offer its entire ownership of the interest being offered for sale; however, the seller shall not be considered to be fractionalizing its interest in sales where the seller horizontally severs the property by retaining all of its existing rights in certain formations or depths under the whole property. There must be only one purchaser for each interest offered and sold.

F. With respect to each interest offered or sold at auction, the seller must make available to the prospective and actual purchaser(s) of said interest all material information regarding said interests.

G. The seller or the broker-dealer/auction company must record, or in the alternative, must deliver to the purchaser the documents or notices necessary for the purchasers themselves to record, evidence of lawful conveyance of said interests to the purchaser. All payments for properties shall be made by the purchasers to an independent bank that shall act as escrow agent for the proceeds of the sales.

H. The only compensation received by the broker-dealer is a commission based on the sales of the interests.

51-3.11 Unavailability of Exemptions for Certain Issuers

The exemptions specified at section 11-51-308(1)(i), (1)(j), or (1)(p), C.R.S., are unavailable if the issuer, any of its predecessors, or any of the issuer's directors, officers, general partners, beneficial owners of ten percent or more of any class of its equity securities, or any of its promoters then presently connected with the issuer in any capacity has been convicted within the past ten years of any felony in connection with the purchase or sale of any security.

51-3.12 Transactional Securities Registration Exemption for Securities Issued Pursuant to Court or Governmental Order

The offer and sale of securities in exchange for bona fide claims or property interests within or from this State made pursuant to a final judgment or order, in either event no longer subject to appeal, of a federal or state court of competent jurisdiction or other governmental authority expressly authorized by law are transactions in securities exempted from the securities registration requirements of the Colorado Securities Act, provided as follows:

A. The terms and conditions of such offers and sales are approved by said court or governmental authority; and

B. The final judgment or order was issued after reasonable notice and opportunity to be heard is given to all interested parties.

51-3.13 Transactional Securities Registration Exemptions under section 11-51-308(1)(p)

A. The exclusion of Regulation A from the registration exemption in 11-51-308(1)(p) shall only apply to Tier 1 offerings. The following provisions apply to offerings made under Tier 2 of federal Regulation A and Section 18(b)(3)of the Securities Act of 1933:

1. Initial filing. An issuer planning to offer and sell securities in this state in an offering exempt under Tier 2 of federal Regulation A shall submit the following at least 21 calendar days prior to the initial sale in this state:

   a. A completed Regulation A – Tier 2 notice filing form or copies of all documents filed with the Securities and Exchange Commission;

   b. A consent to service of process on Form U-2 if not filing on the Regulation A – Tier 2 notice filing form; and

   c. The filing fee prescribed by the Securities Commissioner.

2. The initial notice filing is effective for twelve months from the date of the filing with this state.

B. For each additional twelve-month period in which the same offering is continued, an issuer conducting a Tier 2 offering under federal Regulation A may renew its notice filing by filing the following on or before the expiration of the notice filing:

   1. The Regulation A – Tier 2 notice filing form marked “renewal” and/or a cover letter or other document requesting renewal; and

   2. The renewal fee prescribed by the Securities Commissioner to renew the unsold portion of securities for which a filing fee has previously been paid.

C. An issuer may increase the amount of securities offered in this state by submitting a Regulation A – Tier 2 notice filing form marked “amendment” or other document describing the transaction and a fee prescribed by the Securities Commissioner.

51-3.14 Securities Registration Exemption for Securities Issued by Persons Organized for Religious. Educational, Benevolent or Charitable Purposes

Any security issued by a person organized and operated not for private profit but exclusively for religious, educational, benevolent or charitable purposes shall be exempt from the securities registration requirement of the Colorado Securities Act provided as follows:

A. The issuer has not defaulted during the current fiscal year and within the three preceding fiscal years in the payment of principal, interest or dividends on any security or debt of the issuer (or any predecessor of the issuer) with a fixed maturity or a fixed interest or dividend provision:

B. The issuer‘s total debt service, after completion of the offering, does not exceed 35 percent of the issuer‘s gross revenues for the previous full fiscal year or the previous twelve months. The total debt service of the first two years may be lower than later years of debt service payments provided the lowest payment is equal to at least interest on the debt and the greatest payment does not exceed a payment amount that is 10 percent higher than the straight line method of payment, using the same total number of years; and

C. The issuer‘s debt is secured by real estate and such other properties necessary to secure the debt, pursuant to a trust indenture and related deed of trust, trust deed, or mortgage, and the aggregate amount of the indebtedness created by the issuance of the securities does not exceed 75 percent of the value of the properties pledged to secure the debt.

For purposes of this subsection C., the term “value” shall mean book value, as found in audited financial statements, or market value of existing real estate securing the debt, as contained in a written report prepared by a qualified appraiser in accordance with the Uniform Standards of Professional Appraisal Practices adopted by the Appraisal Standards Board of the Appraisal Foundation. Both book value and market value may be increased by anticipated construction costs and property to be acquired with proceeds of the offering, if applicable.

51-3.15 Securities Registration Exemption for Securities Issued by Certain Religious Organizations

Any security issued by a person organized and operated not for private profit but exclusively for religious, educational, benevolent or charitable purposes shall be exempt from the securities registration requirement of the Colorado Securities Act provided as follows:

A. The issuer is: (1) a religious organization affiliated with, associated with, or authorized by a religious denomination or denominations, or (2) a religious organization that consists of or acts on behalf of individual or local churches or local or regional church organizations;

B. The issuer is an organization that qualifies and operates under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

C. The issuer, alone or through its predecessor organization:

1. Has been in existence for over ten years;

2. Has received audited financial statements with an unqualified opinion from a certified public accountant for its most recent three fiscal years; and

3. Has experienced no defaults on any outstanding obligations to investors for the period that it has issued securities;

D. The issuer's:

1. Cash, cash equivalents and readily marketable assets have had a market value of at least five percent of the principal balance of its total outstanding debt securities for the last three fiscal years or 36 months prior to the issue; or

2. Net worth, as that term is used in Generally Accepted Accounting Principles, has been at least equal to three percent of its total assets for the last three fiscal years or 36 months prior to the issue;

E. Prior to any sale of the securities, the issuer provides an investor with a disclosure document reflecting financial and other information concerning the issuer and relevant risks involved in the investment;

F. The issuer makes loans to or otherwise utilizes the net proceeds of the offering in support of:

1. Local churches, or other religious organizations affiliated or associated with such churches; or

2. Related religious organizations; and

G. The issuer:

1. Has a net worth, as that term is used in Generally Accepted Accounting Principles, of $5,000,000.00 or more which includes all church owned property; or

2. Makes loans, secured by either real property or by a pledge of readily marketable securities, at all times, having equal or greater value than the loan amount, to finance the purchase, construction or improvement of church related property, buildings, related capital expenditures, or to refinance existing debt to be secured by such property, or for other operating expenses of the entities described in F. above provided the obligation is secured by such property.

51-3.16 Securities Registration Exemption for Securities Issued by Student Loan Organizations

Any security issued by a person organized and operated not for private profit but exclusively for religious, educational, benevolent or charitable purposes shall be exempt from the securities registration requirement of the Colorado Securities Act provided as follows:

A. The issuer is established for the purpose of acquiring or originating student and parent education loans (“Student Loans”) under state or federal law regarding such organizations;

B. There is nothing in such laws that would prohibit the issuance of securities by such entities; and

C. The net proceeds of the offering of such securities are used to either finance the acquisition or the origination of Student Loans, or to refund or otherwise redeem or retire previous issues of securities made in connection with Student Loans.

51-3.17 Securities Registration Exemption for Securities Offered, Sold or Purchased by Canadian Broker-Dealers Excluded from Broker-Dealer Definition Pursuant to Rule 51-2.1.1.

Any offer, sale or purchase of a security effected by a person excluded from the definition of "broker- dealer" pursuant to Rule 51-2.1.1 shall be exempt from the securities registration requirement of the Colorado Securities Act.

51-3.18 World Class Issuer Exemption

Any security that meets all of the following conditions shall be exempt from the securities registration requirements of the Colorado Securities Act:

A. The securities are:

1. Equity securities except options, warrants, preferred stock, subscription rights, securities convertible into equity securities or any right to subscribe to or purchase such options, warrants, convertible securities or preferred stock;

2. Units consisting of equity securities permitted under subparagraph (1) and warrants to purchase the same equity security being offered in the unit;

3. Non-convertible debt securities rated in one of the four highest rating categories of Standard and Poor's, Moody's, Dominion Bond Rating Services of Canadian Bond Rating Services or such other rating organization the Commissioner by Rule or order may designate. For purposes of this subparagraph (2), the term "non-convertible debt securities" means securities that cannot be converted for at least one year from the date of issuance and then, only into equity shares of the issuer or its parent; or

4. American Depositary Receipts representing securities described in subparagraphs (1) and (2) above;

B. The issuer is not organized under the laws of the United States, or of any state, territory or possession of the United States, or of the District of Columbia or Puerto Rico;

C. The issuer, at the time an offer or sale is made in reliance on the securities exemption embodied in this Rule, has been a going concern engaged in continuous business operations for the immediate past five years and during that period has not been the subject of a proceeding relating to insolvency, bankruptcy, involuntary administration, receivership or similar proceeding. For purposes of this paragraph, the operating history of any predecessor that represented more than 50% of the value of the assets of the issuer that otherwise would have met the conditions of this Rule may be used toward the five year requirement;

D. The issuer, at the time an offer or sale is made in reliance on the securities exemption embodied in this Rule, has a public float of US $1 billion or more. For purposes of this paragraph:

1. The term “public float” means the market value of all outstanding equity shares owned by non-affiliates;

2. The term “equity shares” means common shares, non-voting equity shares and subordinate or restricted voting equity shares, but does not include preferred shares; and

3. An “affiliate” is anyone who owns beneficially, directly or indirectly, or exercises control or direction over, more than 10% of the outstanding equity shares of such person;

E. The market value of the issuer's equity shares, at the time an offer or sale is made in reliance on the securities exemption embodied in this Rule, is US $3 billion or more. For purposes of this paragraph, the term “equity shares” means common shares, non-voting equity shares and subordinate or restricted voting equity shares, but does not include preferred shares; and

F. The issuer, at the time an offer or sale is made in reliance on the securities exemption embodied in this Rule, has a class of equity securities listed for trading on or through the facilities of a foreign securities exchange or recognized foreign securities market included in SEC Rule 902(a)(1) or designated by the SEC under SEC Rule 902(a)(2).

51-3.19 Model Accredited Investor Exemption

Any offer or sale of a security by an issuer in a transaction that meets the requirements of this Rule is exempted from the securities registration requirements of the Colorado Securities Act .

A. Sales of securities shall be made only to persons who are or the issuer reasonably believes are “accredited investors” as that term is defined in SEC Rule 501(a) of Regulation D.

B. The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

C. The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under the securities registration requirements of the Act or to an accredited investor pursuant to another applicable exemption under the Act.

D. Disqualification

1. This exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of 10% or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter:

a. within the last five years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the SEC;

b. within the last five years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;

c. is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

d. is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

2. Subparagraph D.1. shall not apply if:

a. the party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment or decree creating the disqualification was entered against such party;

b. before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

c. the issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this paragraph.

E. General Announcement

1. A general announcement of the proposed offering may be made by any means.

2. The general announcement shall include only the following information, unless additional information is specifically permitted by the Commissioner:

a. The name, address and telephone number of the issuer of the securities;

b. The name, a brief description and price (if known) of any security to be issued;

c. A brief description of the business of the issuer in 25 words or less;

d. The type, number and aggregate amount of securities being offered;

e. The name, address and telephone number of the person to contact for additional information; and

f. A statement that:

i sales will only be made to accredited investors;

ii. no money or other consideration is being solicited or will be accepted by way of this general announcement; and

iii. the securities have not been registered with or approved by any state securities agency or the SEC and are being offered and sold pursuant to an exemption from registration.

F. The issuer, in connection with an offer, may provide information in addition to the general announcement under paragraph E., if such information:

1. is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or

2. is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

G. No telephone solicitation shall be permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

H. Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this Rule.

I. The issuer must file or cause to be filed with the Commissioner a notice of exemption in the form prescribed by the Commissioner, a copy of any general announcement, and the prescribed fee, as provided in Rule 51-3.7, all within 15 days after the first sale in this state.

51-3.20. Crowdfunding – Fees and Notice Filing Forms

A. Not less than ten days before the commencement of an offering pursuant to the exemption from registration provided in section 11-51-308.5 (the Colorado Crowdfunding Act), the issuer shall pay a fee, which shall be determined and collected pursuant to section 11-51-707.

B. Before acting as an on-line intermediary for an offering pursuant to the exemption from registration provided in section 11-51-308.5 (the Colorado Crowdfunding Act), the on-line intermediary shall pay a fee, which shall be determined and collected pursuant to section 11-51- 707.

C. The issuer notice filing required by section 11-51-308.5(3)(a)(IV)(A) of the Colorado Crowdfunding Act shall be made by filing Form CF-1 with the Securities Commissioner.

D. The notice of intention to act as an on-line intermediary for an offering to be conducted pursuant to the Colorado Crowdfunding Act required by section 11-51-308.5(3)(c)(I)(E) shall be made by filing Form CF-3 with the Securities Commissioner.

E. Notice Filing Review.

1. If an issuer, submits a crowdfunding notice filing pursuant to section 11-51- 308.5(3)(a)(IV)(A), that fails to comply with, and/or violates section 11-51-308.5, C.R.S., Rules under the Colorado Crowdfunding Act, the Colorado Securities Act, Rules under the Colorado Securities Act, and/or any order or orders issued by the Securities Commissioner; the Securities Commissioner may reject the notice filing, require that the issuer correct the incompliance and/or violation(s), and re-submit the notice filing.

2. Revised crowdfunding notice filings shall be re-submitted pursuant to section 11-51- 308.5(3)(a)(IV)(A) and shall occur not less than ten days before the commencement of the offering, pursuant to the exemption from registration provided in the Colorado Crowdfunding Act.

3. If any notice filing that was corrected and is resubmitted pursuant to section 11-51- 308.5(3)(a)(IV)(A), fails to comply with, and/or violates section 11-51-308.5, C.R.S., Rules under the Colorado Crowdfunding Act, the Colorado Securities Act, Rules under the Colorado Securities Act, and/or any order or orders issued by the Securities Commissioner, the Securities Commissioner may reject the re-submitted notice filing, require that the issuer correct the incompliance and/or violation(s), and re-submit the notice filing.

F. Required filings and fees may be made through the Electronic Filing Depository (EFD).

51-3.21. Crowdfunding – Consent to Service of Process Form

A. The issuer consent to service of process required by section 11-51-308.5(3)(a)(IV)(A) of the Colorado Crowdfunding Act shall be made by filing NASAA Form U-2 with the Securities Commissioner at the same time that the issuer files Form CF-2 with the Securities Commissioner.

51-3.22. Crowdfunding – Disclosure Document

A. Not fewer than ten days before commencing an offering pursuant to the exemption from registration provided in the Colorado Crowdfunding Act, and to comply with section 11-51- 308.5(3)(a)(IV)(C), the issuer of securities shall timely file with the Securities Commissioner a completed Form CF-2 together with the escrow agreement required to be filed with the Securities Commissioner pursuant to section 11-51-308.5(3)(a)(IV)(D). Before commencement of any offering pursuant to the Colorado Crowdfunding Act, the issuer shall also provide a completed Form CF-2 to the broker-dealer, sales representative, or on-line intermediary through which the offering pursuant to the Colorado Crowdfunding Act is being conducted, and provide a copy of the filed Form CF-2 to each offeree at the time the offer of securities is made. The issuer can comply with section 11-51-308.5(3)(a)(X) by ensuring that the broker-dealer, sales representative, or on- line intermediary provides a copy of the filed Form CF-2 to each offeree.

B. Utilizing Form CF-2 to conduct an offering pursuant to the Colorado Crowdfunding Act through a broker-dealer, sales representative, or on-line intermediary shall not relieve the issuer of its obligation to provide full and fair disclosure to investors of all material facts relating to the issuer and the securities being offered as required by section 11-51-501(1).

C. If the offering is for more than $1 million, the Form CF-2 must include the issuer's financial statements for its most recently completed fiscal year which have been reviewed by a certified public accountant licensed to practice accountancy within the state of Colorado. If the end of the most recently completed fiscal year of an issuer subject to this subsection is of a date that is more than four months before the commencement of the offering pursuant to the Colorado Crowdfunding Act, interim financial statements, which must be reviewed by the same certified public accountant that performed the audit, as of a date within four months of the commencement of the offering must be included. No issuer subject to this subsection may complete the sale of any securities pursuant to the Colorado Crowdfunding Act if the most recently audited or reviewed financial statements are for a period ending more than twelve months before the completion of the sale.

D. Within five (5) business days of any material change, addition, or update, an issuer shall file with the Commissioner, and provide to the broker-dealer, sales representative, or on-line intermediary and to all other holders of the issuer's securities an amendment to the disclosure document to disclose any material changes, additions, or updates to information that it provided to investors if the offering has not yet been completed or terminated.

E. An issuer must disclose to the Commissioner and (through the broker-dealer, sales representative, or on-line intermediary) to offerees and (directly by the issuer) to all other holders of its securities its progress in meeting the target offering amount no later than five (5) business days after the issuer reaches the minimum and maximum target offering amount, and after the date the offering proceeds are released from any escrow, or upon termination of the offering being conducted pursuant to the Colorado Crowdfunding Act when the offering is not completed and the offering proceeds are returned to the offerees who subscribed to purchase the securities in accordance with the escrow agreement.

51-3.23. Crowdfunding – Issuer Records

A. Issuers shall make and preserve all records with respect to any offering conducted pursuant to the exemption provided by the Colorado Crowdfunding Act for five years after the completion or termination of the offering. These records shall include, at a minimum:

1. All organizational documents, including but not limited to, partnership agreements, operating agreements, articles of incorporation or organization, bylaws, minute books, and stock certificate books (or other similar type documents) and any agreements among the issuer's owners relating to voting or transferability of the owner's interests;

2. The issuer's Form CF-1, Form CF-2, including all exhibits, together with all amendments thereto, and Form ES-CF;

3. All records related to any person who purchases or attempts to purchase securities through the on-line intermediary or issuer, including evidence of residency from each such person in the offering as well as documentation obtained by the issuer showing that such person met any suitability standards set forth in the Form CF-2, including all records and information used to establish that an investor is an accredited investor as defined by the Securities and Exchange Commission's Rule 501 of Regulation D (17 CFR 230.501);

4. Records of all communications with all other holders of the issuer's securities, including all quarterly reports;

5. The escrow agreement executed in connection with the offering;

6. Any agreement between the issuer and any broker-dealer, sales representative, or on- line intermediary, and records reflecting the payment of compensation by the issuer or any person on behalf of the issuer to any broker-dealer, sales representative, or on-line intermediary; and

7. All records required to demonstrate compliance with section 11-51-308.5(3)(a)(VII).

B. The issuer may contract with the on-line intermediary or other service provider to collect such information and preserve such records, but the issuer retains the responsibility for the accuracy, completeness, and availability of such records.

51-3.24. Crowdfunding – Additional Issuer Requirements

A. Investor Qualifications.

1. Before accepting any investment, an issuer must verify that the aggregate amount sold by the issuer to any person during the twelve-month period preceding the date of sale does not exceed $5,000, or take reasonable steps to verify that any person who has purchased an aggregate amount greater than $5,000 from the issuer during any twelve- month period satisfies the accredited investor definition under the SEC's Rule 501 of Regulation D (17 CFR 230.501).

2. Before accepting any offer to purchase securities from any person pursuant to the Colorado Crowdfunding Act, an issuer must comply with the certification requirements of section 11-51-308.5(3)(a)(VII).

B. *Communications Between the Offerees and the Issuer*. After reviewing any Form CF-2 posted by an issuer through an on-line intermediary, any offeree may communicate directly with the issuer pursuant to the method described in the Form CF-2 to obtain further information or to provide the issuer with a notice that the offeree intends to make an investment in the offering as described in the Form CF-2.

C. *Notice of Investment Commitment*. After a person directs funds to the escrow account in an offering being conducted through an on-line intermediary, the issuer must promptly send to such person a notification disclosing:

1. The dollar amount of the investment commitment;

2. The price of the securities;

3. The name of the issuer;

4. The amount of the minimum offering and the maximum offering;

5. The amount of proceeds received in the escrow account as of the date of such notification; and

6. Whether such person has the right to cancel their investment prior to the deadline in the escrow agreement to reach the minimum offering amount and what such person must do to invoke that right.

D. *Notice of Completion of Transaction*. The issuer must, at or before the release of funds from escrow pursuant to Rule 51-3.24(F), send to each investor a notification disclosing:

1. The date of the transaction;

2. The type of security that such person is purchasing;

3. The identity, price, and number of securities being purchased by such person, as well as the number of securities sold by the issuer in the transaction through the date of the notification, and the price at which the securities were sold;

4. If a debt security, the interest rate and yield to maturity calculated from the price paid and the maturity date;

5. If a callable security, the first date that the security can be called by the issuer;

6. Whether the offering is being continued or is completed; and

7. Other information that the issuer determines is appropriate or necessary to provide to the person purchasing securities from the issuer in the offering being conducted pursuant to the Colorado Crowdfunding Act.

E. *Transmission of Funds*. The on-line intermediary and issuer shall direct investors to transmit all payments for the purchase of securities directly to the escrow account specified in the Form CF-2 until the offering is completed or terminated.

F. *Escrow Agreement*. For transactions occurring pursuant to section 11-51-308.5, C.R.S., issuers must place all funds received from investors in an escrow account which shall be established pursuant to a written agreement between the issuer (as depositor) and an unaffiliated depository institution or other escrow agent approved by the Commissioner, and other interested parties (if any). The written agreement shall meet the requirements of the Colorado Crowdfunding Act and these Rules.

1. Each agreement for the establishment of an escrow account shall include:

a. The date of the agreement;

b. The names and addresses of the issuer, the escrow agent, and any other parties to the agreement;

c. The terms of the escrow, including a specific reference to section 11-51-308.5, C.R.S.;

d. A provision for the delivery of the purchased securities by the issuer to the investor at the time of, or prior to, the release of funds to the issuer;

e. Whether the escrowed funds will earn interest and, if so, a description of the manner in which interest accrued on the escrowed funds will be used or otherwise distributed;

f. Unless the minimum/maximum requirement is waived or modified by the Commissioner, the agreement shall contain a provision that prohibits the issuer from accessing the escrowed funds until the aggregate funds raised from all investors equals or exceeds the minimum offering amount in a timely fashion (as the minimum offering amount and the period of the offering are defined in the issuer's Form CF-2 as filed with the Commissioner), a provision detailing the conditions under which the escrowed funds are to be released to the issuer or are to be returned to the prospective investors, and whether, after any initial closing and distribution of funds to the issuer, the offering may continue with further funds being deposited into the escrow account; and

g. A statement that the escrowed funds may not be released to the issuer until the lapse of at least seven (7) days after the receipt by the Commissioner of notice of the proposed release of funds from such escrow, provided in paragraph 3 below, or upon written authorization of the Commissioner of any earlier release.

2. The Commissioner may, in their sole discretion, authorize release of escrowed funds pursuant to section 11-51-308.5, C.R.S. prior to the lapse of seven (7) days after receipt by the Commissioner of the notice provided in paragraph 3 below. In such cases, the Commissioner shall provide the issuer with such authorization in writing in a form that may be presented to the escrow agent.

3. A notice of proposed release of funds from escrow under section 11-51-308.5, C.R.S. shall be filed with the Commissioner on Form ES-CF. Proof of filing the Form ES-CF with the Commissioner may be established by a receipt or other writing upon which the Commissioner, by stamp or other writing, evidences that the Form ES-CF was received.

4. The notice shall contain, at a minimum, the following information:

a. The gross amount of aggregate proceeds received from the sale of any and all of the securities sold in the offering;

b. Whether the offering is completed;

c. Whether any additional funds may be received by the issuer in exchange for securities issued in the offering;

d. A description of each transaction, including the dates of each transaction, the parties to each transaction, the amount committed in each transaction, a description of how the proceeds are to be spent under the terms of each transaction, including the specific lines of business, and a description of how the securities will be delivered to the purchaser; and

e. Any additional information the Commissioner may require as material to the Commissioner's determination.

G. *Single Intermediary*. An issuer shall not conduct an offering or concurrent offerings in reliance on the Colorado Crowdfunding Act using more than one on-line intermediary.

H. *Sales Representative*. An issuer shall not conduct an offering in reliance on the Colorado Crowdfunding Act through a sales representative who is not associated with nor acting on behalf of a broker-dealer that is a member of FINRA.

I. *Quarterly Report Timing*. Each quarterly report shall be provided to all holders of the issuer's securities and the Commissioner within forty-five days after the end of each fiscal quarter.

J. *Issuer Distribution of Notice of Offering*. The issuer may, in accordance with section 11-51- 308.5(3)(a)(XIV), distribute a statement that the issuer is conducting an offering. When used in section 11-51-308.5(3)(a)(XIV), the term "within Colorado" includes a statement distributed by, at the direction of, or on behalf of the issuer on the issuer's website or through electronic mail or social media if the statement includes (at a minimum) disclaimers and restrictive legends making it clear that the offering is limited to residents of Colorado and there is in fact a confirmation of residency before the recipient or viewer of such statement can access the Form CF-2 or other information related to the offering.

K. Single Plan of Financing. In accordance with section 11-51- 308.5(3)(a)(XI), the exemption provided by the Colorado Crowdfunding Act shall not be used in conjunction with any other exemption pursuant to section 11-51- 307, 11-51- 308, or 11-51- 309 during the immediately preceding twelve-month period which is part of the same issue. The determination whether offers, offers to sell, offers for sale, and sales of securities are part of the same issue (i.e., are deemed to be integrated) is a question of fact and will depend on the particular circumstances. In determining whether offers and sales should be regarded as part of the same issue and thus should be integrated, any one or more of the following factors may be determinative:

1. Are the offerings part of a single plan of financing;

2. Do the offerings involve issuance of the same class of securities;

3. Are the offerings made at or about the same time;

4. Is the same type of consideration to be received; and

5. Are the offerings made for the same general purpose.

L. Federal Rules Applicable. Offerings made pursuant to the Colorado Crowdfunding Act must be conducted in a manner consistent with SEC Rule 147 (17 CFR 230.144) or Rule 147A (17 CFR 230.147A).

M. Failure of an issuer to comply with any of the provisions of section 11-51-308.5, these Rules, or any order, will constitute a violation of those provisions, Rules, or orders, and subject the issuer to the enforcement authority of the Commissioner under section 11-51-602.

51-3.25. Crowdfunding – On-line Intermediary Records

A. An on-line intermediary shall make and preserve all records required to demonstrate compliance with the requirements of section 11-51-308.5(3)(c) and any applicable Rules under the Colorado Securities Act, including the following records, for five (5) years after the completion or termination of an offering:

1. All records of compensation received for acting as an on-line intermediary, including the amount of compensation and method used to determine such amount, the name of the payor, the date of payment, and name of the issuer;

2. All records related to issuers who offer or attempt to offer securities through the on-line intermediary and the control persons of such issuers, including all information used to establish Colorado residency;

3. Records of all communications that occur on or through the on-line intermediary's website;

4. All records related to persons that use communication channels provided by an on-line intermediary to promote an issuer's securities or communicate with potential investors;

5. To the extent received by the on-line intermediary, all records and information used to establish that an investor is an accredited investor as defined by the Securities and Exchange Commission's Rule 501 of Regulation D (17 CFR 230.501);

6. All notices provided by such on-line intermediary to issuers and investors generally through the on-line intermediary's website or otherwise, including, but not limited to, notices addressing hours of on-line intermediary operations (if any), on-line intermediary malfunctions, changes to on-line intermediary procedures, maintenance of hardware and software, instructions pertaining to access to the on-line intermediary and denials of, or limitations on, access to the on-line intermediary;

7. All agreements and contracts between the on-line intermediary and an issuer or investor;

8. All information that the on-line intermediary is required to collect from persons pursuant to Rule 51-3.28;

9. Any other records of all offers of securities effected through the on-line intermediary's website; and

10. Any written supervisory procedures or policies as required by section 11-51- 308.5(3)(c)(II)(C).

B. An on-line intermediary shall make and preserve during the operation of the on-line intermediary and of any successor on-line intermediary all organizational documents relating to the on-line intermediary, including, but not limited to, partnership agreements, articles of incorporation or charter, minute books, and stock certificate books (or other similar type documents).

C. The records required to be made and preserved pursuant to paragraph A. of this Rule must be produced, reproduced, and maintained in the original, non-alterable format in which they were created.

51-3.26. Crowdfunding – On-line Intermediary Financial and Other Information

A. An on-line intermediary shall make an annual filing with the Commissioner listing each offering completed pursuant to section 11-51-308.5 accompanied by how much compensation the on-line intermediary received for each offering completed and listing all other offerings pursuant to section 11-51-308.5 accompanied by how much compensation the on-line intermediary received for all other offerings for the reporting period. This filing shall be made on Form CF-4.

51-3.27. Crowdfunding – Small Offering Exemption

Upon approval of the Commissioner, an issuer who files a Form CF-1, a consent to service of process, and a Form CF-2 as required by Rules 51-3.20, 51-3.21 and 51-3.22, pays the required fees, maintains issuer records required by Rule 51-3.23, meets the additional issuer requirements set forth in Rule 51-3.24 and is not disqualified as contemplated in Rule 51-3.30, and the issuer is not seeking to raise not more than $500,000 in any twelve-month period, the issuer may proceed with the offering under these Rules without imposing a minimum offering and without using an online intermediary. If the offering is proceeding without imposing a minimum offering, the offering may proceed without requiring that the proceeds be placed in escrow provided that the funds are maintained in a segregated account until spent on a proposed use of proceeds.

51-3.28. Crowdfunding – Additional On-line Intermediary Requirements

A. Before permitting any person to view offerings being conducted through the on-line intermediary, the on-line intermediary shall gather the following information from such person:

1. Such person’s name;

2. Such person’s address;

3. Such person’s telephone number;

4. Such person’s email address;

5. Such person's date of birth; and

6. Information to establish Colorado residency.

B. Before permitting any person to view the offerings being conducted through the on-line intermediary, the on-line intermediary shall have each such person acknowledge that:

THESE SECURITIES HAVE NOT BEEN REGISTERED WITH, APPROVED BY, OR RECOMMENDED BY ANY FEDERAL OR STATE AGENCY. IN MAKING AN INVESTMENT DECISION, PURCHASHERS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR DIVISION OR OTHER REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION (e) OF SECURITIES AND EXCHANGE COMMISSION RULE 147, 17 CFR 230.147(e), AS PROMULGATED PURSUANT TO THE FEDERAL "SECURITIES ACT OF 1933," AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

C. An on-line intermediary in a transaction involving the offer or sale of securities in reliance on the Colorado Crowdfunding Act must deny access to its platform if the on-line intermediary:

1. Has a reasonable basis for believing that an issuer is not in compliance with section 11- 51-308.5;

2. Has a reasonable basis for believing that the issuer has not established means to keep accurate records as required by the Colorado Crowdfunding Act and these Rules; or

3. Has a reasonable basis for believing that the issuer or offering presents the potential for fraud or otherwise raises concerns regarding investor protection.

D. An on-line intermediary that has denied an issuer access to its platform based upon any of the grounds specified in Rule 51-3.28(C) shall promptly report such denial to the Commissioner.

E. Failure of the on-line intermediary to comply with any of the provisions of section 11-51-308.5, these Rules, or any order, will constitute a violation of those provisions, Rules, or orders, and subject the on-line intermediary to the enforcement authority of the Commissioner under section 11-51-602.

51-3.29. Crowdfunding – On-line Intermediary Prohibited Activities

A. An on-line intermediary shall not:

1. Offer investment advice or recommendations absent licensure and residency as stated in section 11-31-308.5(3)(b)(I) or (II);

2. Receive a financial interest in an issuer as compensation for services provided to or on behalf of an issuer unless disclosed on Form CF-2; or

3. Hold, manage, possess, or otherwise handle purchaser funds or securities.

B. An on-line intermediary that does nothing more than collect information regarding the purchase of securities pursuant to the Colorado Crowdfunding Act and provides a link to transmit funds to the escrow agent is not conducting any activity prohibited by Rule 51-3.29(A).

C. The fee charged by an online intermediary may be a variable amount based upon the number of investors in an offering.

51-3.30. Crowdfunding – Disqualification from Relying on Crowdfunding Exemption

A. No exemption under section 11-51-308.5 shall be available for a sale of securities if the issuer; any predecessor of the issuer; any affiliated issuer; any director, executive officer, other officer participating in the offering, general partner or managing member or manager of the issuer; any beneficial owner of 20% or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power; any promoter connected with the issuer in any capacity at the time of such sale; any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with such sale of securities; any general partner or managing member of any such solicitor; or any director, executive officer or other officer participating in the offering of any such solicitor or general partner or managing member of such solicitor:

1. Has a conviction that became final within ten years before such sale, of any felony or misdemeanor:

a. In connection with the purchase or sale of any security;

b. Involving the making of any false filing with the Securities and Exchange Commission or a state securities regulatory agency;

c. Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities; or

d. Involving fraud or deceit in which the loss to the victim or victims exceeds $10,000;

2. Is subject to any final order, judgment or decree of any court of competent jurisdiction, entered within five years before such sale, that, at the time of such sale, restrains or enjoins such person from engaging or continuing to engage in any conduct or practice:

a. In connection with the purchase or sale of any security;

b. Involving the making of any false filing with the Securities and Exchange Commission or a state securities regulatory agency; or

c. Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities;

3. Is subject to a final order of a state securities commission (or an agency or officer of a state performing like functions); a state authority that supervises or examines banks, savings associations, or credit unions; a state insurance commission (or an agency or officer of a state performing like functions); a federal banking agency; the Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission; the Federal Trade Commission, the Consumer Financial Protection Bureau, or the National Credit Union Administration that:

a. At the time of such sale, bars the person from:

i. Association with an entity regulated by such commission, authority, agency, bureau or officer;

ii. Engaging in the business of securities, insurance or banking; or

iii. Engaging in savings association or credit union activities; or

b. Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct, including making untrue statements of material facts or omitting to state material facts, entered within five years before such sale;

4. Is subject to a final order of the Securities and Exchange Commission entered pursuant to section 15(b) or 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b) or 78o–4(c)) or section 203(e) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b– 3(e) or (f)) that, at the time of such sale:

    a. Suspends or revokes such person's registration as a broker, dealer, municipal securities dealer or investment adviser;

    b. Places limitations on the activities, functions or operations of such person; or

    c. Bars such person from being associated with any entity or from participating in the offering of any penny stock;

5. Is subject to any final order of the Securities and Exchange Commission entered within five years before such sale that orders the person to cease and desist from committing or causing a violation or future violation of:

    a. Any scienter based anti-fraud provision of the federal securities laws, including without limitation section 17(a)(1) of the Securities Act of 1933 (15 U.S.C. 77q(a)(1)), section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) and 17 CFR 240.10b–5, section 15(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)(1)) and section 206(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–6(1)), or any other Rule or regulation thereunder; or

    b. Section 5 of the Securities Act of 1933 (15 U.S.C. 77e);

6. Is suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for any act or omission constituting conduct inconsistent with just and equitable principles of trade;

7. Has filed (as a registrant or issuer), or was or was named as an underwriter in, any registration statement or Regulation A offering statement filed with the Securities and Exchange Commission that, within five years before such sale, was the subject of a final refusal order, stop order, or order suspending the Regulation A exemption, or is, at the time of such sale, the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued;

8. Is subject to a final United States Postal Service false representation order entered within five years before such sale, or is, at the time of such sale, subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations;

9. Has filed a registration statement which is subject to a final stop order entered under section 11-51-306, or any other state's securities law, within five years before such sale; or

10. Is currently subject to any final state administrative enforcement order or judgment, including Colorado, entered by the Commissioner, or any other state's securities administrator, within five years prior to such sale.

B. For purposes of paragraph A. of this Rule, "final order" shall mean a written directive or declaratory statement issued by a federal or state agency described in subparagraph A.3. under applicable statutory authority that provides for notice and an opportunity for hearing, which constitutes a final disposition or action by that federal or state agency.

C. The Commissioner may, following a written request, and in the exercise of discretion, waive, either before or after an offering has commenced, subparagraphs 5. through 10. of paragraph A. of this Rule and subsections (d)(1)(v) through (viii) of Rule 506 (17 CFR 230.506(d)(1)(v)-(viii)) if upon a showing of good cause and without prejudice to any other action by the Commissioner, the Commissioner determines that, in balancing all relevant factors, granting the waiver is consistent with the objective of the Colorado Securities Act to protect investors and maintain public confidence in securities markets while avoiding unreasonable burdens on participants in capital markets.

51-3.31. Notice Filing Requirement for Federal Crowdfunding Offerings

The following provisions apply to offerings made under federal Regulation Crowdfunding (17 CFR §227) and Sections 4(a)(6) and 18(b)(4)(C) of the Securities Act of 1933:

A. Initial filing.

1. An issuer that offers and sells securities in this state in an offering exempt under federal Regulation Crowdfunding, and that either (1) has its principal place of business in this state or (2) sells 50% or greater of the aggregate amount of the offering to residents of this state, shall file the following with the Securities Commissioner:

a. A completed Uniform Notice of Federal Crowdfunding Offering form or copies of all documents filed with the Securities and Exchange Commission

b. A consent to service of process on Form U-2 if not filing on the Uniform Notice of Federal Crowdfunding Offering form; and

c. The filing fee prescribed by the Securities Commissioner.

2. If the issuer has its principal place of business in this state, the filing required under paragraph (A) shall be filed with the Securities Commissioner when the issuer makes its initial Form C filing concerning the offering with the Securities and Exchange Commission. If the issuer does not have its principal place of business in this state but residents of this state have purchased 50% or greater of the aggregate amount of the offering, the filing required under paragraph (A) shall be filed when the issuer becomes aware that such purchases have met this threshold and in no event later than thirty (30) days from the date of completion of the offering.

3. The initial notice filing is effective for twelve (12) months from the date of the filing with the Securities Commissioner.

B. Renewal. For each additional twelve-month period in which the same offering is continued, an issuer conducting an offering under federal Regulation Crowdfunding may renew its notice filing by filing the following on or before the expiration of the notice filing:

1. A completed Uniform Notice of Federal Crowdfunding Offering form marked “renewal” and/or a cover letter or other document requesting renewal; and

2. The renewal fee prescribed by 11-51-308.5(3)(a)(IV)(B).

3. If the amount of securities subject to the notice filing is being increased, the fee prescribed by the Securities Commissioner.

C. Required filings and fees may be made through the Electronic Filing Depository (EFD).

51-3.32 Use of Electronic Offering Documents and Electronic Signatures

A. The following terms are defined for purposes of this section, 51-3.32

1. "Offering documents" include, but are not limited to, the registration statement, prospectus, applicable agreements, charter, by-laws, opinion of counsel and other opinions, specimen, indenture, consent to service of process and associated resolution, sales materials, subscription agreement, and applicable exhibits.

2. "Sales materials" include only those materials to be used in connection with the solicitation of purchasers of the securities approved as sales literature or other related materials by the SEC, FINRA, and the States, as applicable.

B. Use of Electronic Offering Documents and Subscription Agreements

1. An issuer of securities or agent acting on behalf of the issuer may deliver offering documents over the Internet or by other electronic means, or in machine readable format, provided:

a. Each offering document:

i. is prepared, updated and delivered in a manner consistent and in compliance with state and federal securities laws;

ii. satisfies the formatting requirements applicable to printed documents, such as font size and typeface, and which is identical in content to the printer version (other than electronic instructions and/or procedures as may be displayed and non-substantive updates to daily net asset value which can be updated more efficiently in the electronic version);

iii. is delivered as a single, integrated document or file; when delivering multiple offering documents, the documents must be delivered together as a single package or list;

iv. where a hyperlink to documents or content that is external to the offering documents is included, provides notice to investors or prospective investors that the document or content being accessed is provided by an external source; and

v. is delivered in an electronic format that intrinsically enables the recipient to store, retrieve and print the documents;

AND

b. the issuer or agent acting on behalf of the issuer:

i. obtains informed consent from the investor or prospective investor to receive offering documents electronically;

ii. ensures that the investor or prospective investor receives timely, adequate, and direct notice when an electronic offering document has been delivered;

iii. employs safeguards to ensure that delivery of offering documents occurred at or before the time required by law in relation to the time of sale; and

iv. maintains evidence of delivery by keeping records of its electronic delivery of Offering Documents and makes those records available on demand by the Commissioner.

2. Subscription agreements may be provided by an issuer or agent acting on behalf of the issuer electronically for review and completion, provided the subscription process is administered in a manner that is similar to the administration of subscription agreement in paper form, as follows:

a. before completion of any subscription agreement, the issuer or agent acting on behalf of the issuer must review with the prospective investor all appropriate documentation related to the prospective investment including on how to complete the subscription agreement;

b. mechanisms are established to ensure a prospective investor reviews all required disclosure and scrolls through the document in its entirety prior to initialing and/or signing; and

c. unless otherwise allowed by the Securities Commissioner, a single subscription agreement is used to subscribe a prospective investor in no more than one offering

3. Delivery requires that the offering documents be conveyed to and received by the investor or prospective investor, or that the storage media in which the offering documents are stored be physically delivered to the investor or prospective investor in accordance with subsection (A)(1).

4. Each electronic document shall be preceded by or presented concurrently with the following notice: **"Clarity of text in this document may be affected by the size of the screen on which it is displayed."**

5. Informed consent to receive offering documents electronically pursuant to (A)(2)(a) in this section may be obtained in connection with each new offering or globally, either by an issuer or an agent acting on behalf of the issuer. The investor may revoke this consent at any time by informing the party to whom the consent was give, or, if such party is no longer available, the issuer.

6. Investment opportunities shall not be conditioned on participation in the electronic offering documents and subscription agreements initiative.

7. Investors or prospective investors who decline to participate in an electronic offering documents and subscription agreements initiative shall not be subjected to higher costs- other than the actual direct cost of printing, mailing, processing, and storing offering documents and subscription agreements- as a result of their lack of participation in the initiative, and no discount shall be given for participating in an electronic offering documents and subscription agreements initiative.

8. Entities participating in an electronic initiative shall maintain, and shall require participating underwriters, dealer-managers, placement agents, broker-dealers, and/or other selling agents to maintain written policies and procedures covering the use of electronic offering documents and subscription services.

9. Entities and their contractors and agents having custody and possession of electronic offering documents, including electronic subscription agreements, shall store them in a non-rewriteable and non-erasable format.

10. This section does not change or waive any other requirement of law concerning registration or presale disclosure of securities offerings.

C. Use of Electronic Signatures

1. An issuer of securities or agent acting on behalf of the issuer may provide for the use of electronic signatures provided:

a. The process by which electronic signatures are obtained:

i. will be implemented in compliance with the Electronic Signatures in Global and National Commerce Act ("Federal E-Sign"), and the Uniform Electronic Transactions Act, including an appropriate level for security and assurances of accuracy, and where applicable, required federal disclosures

ii. will employ an authentication process to establish signer credentials;

iii. will employ security features that protect signed records from alteration, and;

iv. will provide for retention of electronically signed documents in compliance with applicable laws and regulations, by either the issuer or agent acting on behalf of the issuer;

b. An investor or prospective investor shall expressly opt-in to the electronic signature initiative, and participation may be terminated at any time; and

c. Investment opportunities shall not be conditioned on participation in the electronic signature initiative.

2. Entities that participate in an electronic signature initiative shall maintain, and shall require underwriters, dealer-managers, placement agents, broker-dealers, and other selling agents to maintain, written policies and procedures covering the use of electronic signatures

3. An election to participate in an electronic signature initiative pursuant to (1)(b) in this section may be obtained in connection with each new offering, or by an agent acting on behalf of the issuer, The investor may revoke this consent at any time informing the party to whom the consent was given, or , if such party is no longer available, the issuer.

D. Incorporation by Reference

1. Electronic Signatures in Global and National Commerce Act (“Federal E-Sign”), as effective on June 30, 2000 is hereby incorporated by reference. No later amendment or edition of Federal E-Sign is incorporated into this Section 51-3.32. All referenced laws and regulations shall be available for copying or public inspection during regular business hours from the Division of Securities, Department of Regulatory Agencies, 1560 Broadway, Suite 900, Denver, CO 80202. The Division of Securities will provide certified copy of the material incorporated at cost or will provide the requester with information on how to obtain a certified copy.

2. Uniform Electronic Transactions Act, C.R.S. section §24-71.3-102 et seq., as effective on May 30, 2002 is hereby incorporated by reference. No later amendment or edition 24- 71.3-101 et seq., is incorporated into this Section 51-3.32. All referenced laws and regulations shall be available for copying or public inspection during regular business hours from the Division of Securities, Department of Regulatory Agencies, 1560 Broadway, Suite 900, Denver, CO 80202. The Division of Securities will provide certified copy of the material incorporated at cost or will provide the requester with information on how to obtain a certified copy.

Rule 3.33. Licensing Exemption for Merger and Acquisition Brokers

A. IN GENERAL Except as provided in paragraphs (B) and (C), a Merger and Acquisition Broker shall be exempt from licensing pursuant to C.R.S. § 11-51-402 under this section.

B. EXCLUDED ACTIVITIES – A Merger and Acquisition Broker is not exempt from licensing under this paragraph if such broker does any of the following:

1. Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction.

2. Engages on behalf of an issuer in a public offering of any class of securities that is registered, or is required to be registered, with the United States Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. 78l or with respect to which the issuer files, or is required to file, periodic information, documents, and reports under the Securities Exchange Act of 1934 Section 15 subsection (d), 15 U.S.C. 78o(d).

3. Engages on behalf of any party in a transaction involving a public shell company.

C. DISQUALIFICATIONS – A Merger and Acquisition Broker is not exempt from licensing under this paragraph if such broker is subject to –

1. Suspension or revocation of registration under Section 15(b)(4) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(b)(4);

2. A statutory disqualification described in section 3(a)(39) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(39);

3. A disqualification under the Rules adopted by the United States Securities and Exchange Commission under Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 77d note); or

4. A final order described in paragraph (4)(H) of Section 15(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(b)(4)(H).

D. RULE OF CONSTRUCTION – Nothing in this paragraph shall be construed to limit any other authority of this Commission, to exempt any person, or any class of persons, from any provision of this title, or from any provision of any Rule or regulation thereunder.

E. DEFINITIONS – In this paragraph:

1. CONTROL – The term "control" means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. There is a presumption of control for any person who –

   a. is a director, general partner, member, or manager of a limited liability company, or officer exercising executive responsibility (or has similar status or functions);

   b. has the right to vote 20 percent or more of a class of voting securities or the power to sell or direct the sale of 20 percent or more of a class of voting securities; or

   c. in the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, 20 percent or more of the capital.

2. ELIGIBLE PRIVATELY HELD COMPANY –IN GENERAL – The term "eligible privately held company" means a company meeting both of the following conditions:

   a. The company does not have any class of securities registered, or required to be registered, with the United States Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. 78l, or with respect to which the company files, or is required to file, periodic information, documents, and reports under subsection (d), 15 U.S.C. 78o(d).

   b. In the fiscal year ending immediately before the fiscal year in which the services of the Merger and Acquisition Broker are initially engaged with respect to the securities transaction, the company meets either or both of the following conditions (determined in accordance with the historical financial accounting records of the company):

      i. The earnings of the company before interest, taxes, depreciation, and amortization are less than $25,000,000.

ii. The gross revenues of the company are less than $250,000,000.

3. Merger and Acquisition Broker – The term "Merger and Acquisition Broker" means any broker and any person associated with a broker engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether that broker acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the eligible privately held company –

   a. if the broker reasonably believes that upon consummation of the transaction, any person acquiring securities or assets of the eligible privately held company, acting alone or in concert, will control and, directly or indirectly, will be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company; and

   b. if any person is offered securities in exchange for securities or assets of the eligible privately held company, such person will, prior to becoming legally bound to consummate the transaction, receive or have reasonable access to the most recent fiscal year-end financial statements of the issuer of the securities as customarily prepared by its management in the normal course of operations and, if the financial statements of the issuer are audited, reviewed, or compiled, any related statement by the independent accountant; a balance sheet dated not more than 120 days before the date of the exchange offer; and information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and any material loss contingencies of the issuer.

4. PUBLIC SHELL COMPANY – The term "public shell company" is a company that at the time of a transaction with an eligible privately held company –

   a. has any class of securities registered, or required to be registered, with the United States Securities and Exchange Commission under Section 12, 15 U.S.C. 78l, or with respect to which the company files, or is required to file, periodic information, documents, and reports under subsection (d), 15 U.S.C. 78o(d); and

   b. has no or nominal operations; and

   c. has –

      i. no or nominal assets;

ii. assets consisting solely of cash and cash equivalents; or

iii. assets consisting of any amount of cash and cash equivalents and nominal other assets.

F. INFLATION ADJUSTMENT

1. IN GENERAL – On the date that is five years after the date of the enactment of the Rule, and every five years thereafter, each dollar amount in subparagraph (E)(ii)(II) shall be adjusted by –

a. dividing the annual value of the Employment Cost Index For Wages and Salaries, Private Industry Workers (or any successor index), as published by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of such index (or successor) for the calendar year ending December 31, 2012; and

b. multiplying such dollar amount by the quotient obtained under sub clause (I).

2. ROUNDING – Each dollar amount determined under clause (i) shall be rounded to the nearest multiple of $100,000.

51-3.34. Digital Token Act Registration Exemption – Fees, Notice Filing Forms and Review

51-3.34 (Repealed)

51-3.35 (Repealed)

51-3.36. (Repealed)

CHAPTER 4 LICENSING OF BROKER-DEALERS AND SALES REPRESENTATIVES

51-4.1 Application for a Broker-Dealer License

A. A person applying for a license as a broker-dealer in Colorado shall make application for such license and amendments to such application on Form BD (Uniform Application for Broker-Dealer Registration).

B. A person applying for a license as a broker-dealer in Colorado who is registered under the 34 Act shall send such application and amendments to such application, and any applicable fee, made payable to FINRA (or such other payee as FINRA or CRD may designate), to the CRD with Colorado designated as a recipient state. An application or amendment shall be deemed filed with the Securities Commissioner on the date CRD enters it if CRD verification is not required, or the date CRD verifies it if CRD verification is required.

C. A person applying for a license as a broker-dealer in Colorado who is not registered or registering as such under the 34 Act shall send such application and amendments to such application to the Securities Commissioner.

D. Any applicant for a broker-dealer license must also file a Consent to Service of Process form (see Rule 51-7.1) with the Securities Commissioner.

E. A mortgage broker-dealer whose business is limited exclusively to effecting transactions with financial institutions [as defined in section 11-51-201(6), C.R.S.] is exempt from the licensing 3 requirements of section 11-51-401(1), C.R.S.

51-4.2 Withdrawal of a Broker-Dealer License

A. An application to withdraw as a licensed broker-dealer in Colorado and any amendments to such application shall be made on Form BDW (Uniform Request for Withdrawal from Registration as a Broker-Dealer).

B. A broker-dealer licensed in Colorado who is or was registered under the 34 Act shall send any application for withdrawal and any amendments to such application to the CRD with Colorado designated as a recipient state. An application for withdrawal and any amendments shall be deemed filed with the Securities Commissioner on the date CRD enters it if CRD verification is not required, or the date CRD verifies it if CRD verification is required.

C. A Colorado broker-dealer who is not and was not registered under the 34 Act shall send any such application and any amendments to such application to the Securities Commissioner.

51-4.3 Application for a Sales Representative License

A. A person applying for a license as a sales representative in Colorado shall make application for such license and amendments to such application on Form U-4 (Uniform Application for Securities Industry Registration or Transfer). Every applicant shall, unless covered by paragraphs B or C below or otherwise waived by the Commissioner, have passed, within the two previous consecutive years of the date of application all relevant examinations required by FINRA and accepted by Colorado.

B. A person who has been licensed as a sales representative in any state within the previous two consecutive years from the date of filing an application for a license in Colorado shall not be required to retake the examinations in paragraph A above for that application.

C. A person who has not been licensed as a sales representative in any state for the previous two consecutive years but less than the previous five consecutive years, who has elected to participate in the FINRA Maintaining Qualifications Program ("MQP") pursuant to FINRA Rule 1240(c), and whose appropriate FINRA qualifying examinations remain valid pursuant to effective participation in the MQP shall be deemed in compliance with the examination requirements of paragraph A above. Successful participation in the MQP shall not extend to the Series 66 Examination for purposes of investment adviser representative licensing.

D. A person affiliated with a FINRA broker-dealer applying for a license as a sales representative in Colorado shall send the application, any amendments to such application and any applicable fee, with check made payable to FINRA (or such other payee as FINRA or CRD may designate), through such FINRA broker-dealer, to the CRD with Colorado designated as a recipient state. An application and amendments to such application shall be deemed filed with the Securities Commissioner on the date CRD enters it if CRD verification is not required, or the date CRD verifies it if CRD verification is required.

E. A person who is not affiliated with a FINRA broker-dealer who is applying for a license as a sales representative in Colorado shall send the application and amendments to such application, through the broker-dealer or issuer with which the person is affiliated, to the Securities Commissioner.

F. Any applicant for a sales representative license must also file a Consent to Service of Process form (see Rule 51-7.1) with the Commissioner.

G. An applicant for a license under section 11-51-403, C.R.S., as a sales representative for a broker- dealer who is not registered as a broker-dealer under the 34 Act, including a mortgage sales representative, or for an issuer shall successfully complete the Uniform Securities Agent State Law Examination (Series 63) administered through FINRA.

H. In addition to the examination required by paragraph G above, an applicant for a license under section 11-51-403, C.R.S., as a sales representative for either a broker-dealer who is not registered as a broker-dealer under the 34 Act and whose securities business is limited solely to the offer and sale of direct participation investments involving real estate related securities or an issuer whose business is equally limited, in addition to the examination required in paragraph G above, shall successfully complete the Direct Participation Program Representative Examination (Series 22) or the Direct Participation Principal Examination (Series 39) administered through FINRA.

I. Unless currently licensed as a sales representative with a broker-dealer registered under the 34 Act, the examination requirement described in paragraph G above may be satisfied upon proof that the respective examination was successfully completed within the two (2) year period immediately preceding the date of the application for licensing.

J. A sales representative of an issuer that qualifies for an exemption from registration pursuant to Rule 51-3.15 is exempt from the licensing requirements of section 11-51-401(1), C.R.S. if:

1. That sales representative is an officer, director, partner, trustee, employee or other representative of the issuer; and

2. That individual acts as a sales representative only with respect to the offer and sale of securities for and on behalf of the issuer; and

3. That sales representative receives no commissions, fees or other special remuneration for or arising out of the offer and sale of securities.

K. No FINRA broker-dealer or SEC registered entity shall permit any applicant for a sales representative license in Colorado to apply for such a license, or any affiliated sales representative license in Colorado to continue to perform duties as a sales representative, unless such person has complied with the requirements of subparagraph (1) hereof.

1. Any applicant or affiliated sales representative must provide the applicant's name, address, and social security number. If the applicant does not have a social security number, the applicant shall provide the applicant's individual taxpayer identification number, or another document verifying the applicant's identity.

2. An applicant or affiliated sales representative may verify their identity by producing to the FINRA broker dealer or the SEC registered entity any of the following:

a. Federal Form I-9 Employment Eligibility Verification Form;

b. A state identification (ID) card, expired less than one year,

c. A state issued driver license, expired less than one year,

d. A current US passport or passport card that is not expired,

e. A current foreign passport that is not expired,

f. A US military card (front and back),

g. A Permanent Resident Card,

h. A Certificate of Citizenship,

i. A Certificate of Naturalization, or

j. Another document verifying the applicant's identify as determined by the Commissioner, and

k. A certification by the applicant that the applicant has provided true and correct information verifying their identity.

3. Every FINRA broker-dealer or SEC registered entity shall record, maintain, and preserve in an easily accessible place the documentation, or copies thereof, which the applicant and affiliated sales representative produced which verifies an applicant's identity.

4. A person who is not affiliated with either a FINRA broker-dealer or SEC registered entity, who is applying for a license as a sales representative in Colorado, or continuing to perform duties as a sales representative in Colorado, shall send with their application or renewal to the Securities Commissioner the following documentation:

a. Federal Form I-9 Employment Eligibility Verification Form;

b. A state identification (ID) card, expired less than one year,

c. A state issued driver license, expired less than one year,

d. A current US passport or passport card that is not expired,

e. A current foreign passport that is not expired,

f. A US military card (front and back),

g. A Permanent Resident Card,

h. A Certificate of Citizenship,

i. A Certificate of Naturalization, or

j. Another document verifying the applicant's identify as determined by the Commissioner, and

k. A certification by the applicant that the applicant has provided true and correct information verifying their identity.

51-4.4 Withdrawal of a Sales Representative License

A. An application to withdraw as a sales representative in Colorado and any amendments to such application shall be made on Form U-5 (Uniform Termination Notice for Securities Industry Registration).

B. For a person affiliated with a FINRA broker-dealer, an application to withdraw as a sales representative in Colorado and any amendments to such application shall be sent, through such FINRA broker-dealer, to the CRD with Colorado designated as a recipient state. An application for withdrawal and any amendments to such application shall be deemed filed with the Securities Commissioner on the date CRD enters it if CRD verification is not required, or the date CRD verifies it if CRD verification is required.

C. For a person not affiliated with a FINRA broker-dealer, an application for withdrawal from licensing in Colorado as a sales representative and any amendments to such application shall be sent through the broker-dealer or issuer with which the person is affiliated to the Securities Commissioner.

D. The Securities Commissioner may deem an application for licensing as a broker-dealer or securities sales representative to be abandoned when an applicant fails to adequately respond to any request for additional information required under § 11-51-403, C.R.S. or the regulations thereunder. The Commissioner shall provide written notice of warning 30 calendar days before the applications is deemed abandoned. The applicant may, with the consent of the Commissioner, withdraw the application.

51-4.5 Books and Records Requirements for Licensed Broker-Dealers

Unless otherwise provided by Rule or order of the Securities Commissioner, every broker-dealer must make, maintain and preserve the books and records required under SEC Rules 15g, 15c2-11, 17a-3 and 17a-4, found at 17 CFR 240.15g-1 through g-100, 17 CFR 240.15c2-11, 17 CFR 240.17a-3 and 17 CFR 240.17a-4.

51-4.6 Financial Responsibility and Books and Records Requirements for Mortgage Broker- Dealers

A. A mortgage broker-dealer who does not maintain possession or control of investor funds or securities is not required to satisfy minimum financial responsibility requirements. A mortgage broker-dealer will not be deemed to be in possession of investor funds or securities if:

1. All funds received from an investor in connection with the purchase of securities are deposited no later than within forty-eight (48) hours of receipt in an escrow account maintained for the funds of customers of the mortgage broker-dealer at a financial institution. Investor checks or other forms of payment by which such a purchase is made are made payable to this escrow account. Funds held in the escrow account may only be disbursed to a specific loan escrow account for the purpose of purchasing a particular security;

2. The escrow agreement provides that the escrowed funds will not be subject to any claims of creditors of the mortgage broker-dealer. The escrow agreement further provides a date on which each deposit of an investor placed in the general escrow account will be returned to said investor if not transferred to a specific loan escrow account within sixty (60) days after the date the funds were received by the mortgage broker-dealer from the investor; and

3. Promptly following the disbursement of funds from the escrow account to a specific loan escrow account in connection with the purchase of a security, the mortgage broker-dealer records or causes to be recorded the applicable instruments in the appropriate place.

B. A mortgage broker-dealer who maintains possession or control of investor funds or securities must meet at least one of the following requirements:

1. Maintain minimum net liquid assets of at least twenty-five thousand dollars ($25,000) calculated by totaling all liquid assets then subtracting from that all current liabilities;

2. Maintain minimum net worth of at least one million dollars ($1,000,000) as determined by generally accepted accounting principles; or

3. File a surety bond in the face amount of at least fifty thousand dollars ($50,000) in a form satisfactory to the Securities Commissioner.

C. A mortgage broker-dealer must file an affidavit in connection with the payment of the annual license fee verifying to the Securities Commissioner that at least one of the requirements of paragraph B. above are satisfied. A mortgage broker-dealer failing to meet at least one of these requirements must notify the Securities Commissioner in writing as to such failure within no more than seventy-two (72) hours of the occurrence of such failure, and must immediately cease all sales of securities.

D. Mortgage broker-dealers are exempt from the books and records requirements set out in Rule 51-4.5. However, mortgage broker-dealers must maintain and keep current the following books and records:

1. All checkbooks, bank statements, deposit slips and canceled checks;

2. General and auxiliary ledgers, or other comparable records, reflecting the assets, liabilities, capital, income and expense accounts;

3. Documentation to support the source of and purpose for each receipt of funds in order that the receipts may be reconciled to bank deposits and to the books of the mortgage broker-dealer;

4. Documentation to support all disbursements of funds;

5. Separate loan files for each loan which has been funded or for which the mortgage broker-dealer is soliciting funds, which file shall, at a minimum, contain:

    a. the loan application of the borrower and all supporting documents such as the credit report on the borrower;

    b. a copy of each appraisal relied upon

    c. copies of all documents of title representing current interest in the real property securing the loan;

    d. copies of title insurance policies and any other insurance policies on the real property securing the loan; and

    e. all contracts, letters, notes and memoranda for each customer;

6. Separate investor files for each loan which has been funded or for which the mortgage broker-dealer is soliciting funds, which file shall, at a minimum, contain:

    a. copies of acknowledgment of receipt by each investor of the disclosure information required by Rule 51-4.7.G.1 below;

    b. any subscription agreement; and

    c. all correspondence with the investor relating to the loan;

7. Separate files for all written complaints by investors and action taken by the mortgage broker-dealer, if any, or a separate record of each such complaint and a clear reference to the file containing the correspondence connected with it;

8. Full, correct and complete copies of any and all Forms U-4 and U-5 for their mortgage sales representatives; and

9. For mortgage broker-dealers subject to the requirements of paragraph B. above, such records as are necessary to establish compliance with said paragraph, and:

    a. Separate records of account for each investor;

    b. Copies of all service agreements; and

    c. Ledgers or accounts (or other records) itemizing separately each cash account of every investor, including but not limited to:

        i. funds in the escrow and trust account of the mortgage broker-dealer:

        ii. proceeds of sales;

        iii. refinancing or foreclosure of or similar transaction regarding the property securing all loans; and

        iv. all monies collected from borrowers on behalf of investors.

E. Preservation of Records

1. All mortgage broker-dealers shall preserve for a period of not less than three (3) years [the first two (2) years, in an easily accessible place] such books and records as are required by paragraph D. above. All mortgage broker-dealers shall preserve employment or similar information for a period of not less than three (3) years after a mortgage sales representative has terminated employment or any other association with the mortgage broker-dealer. All books and records as are required by paragraph D. 9. above shall be preserved for the life of the loan and for two (2) years thereafter.

2. If a mortgage broker-dealer subject to the requirements of paragraph D. above withdraws from licensing or otherwise ceases to engage in business as a mortgage broker-dealer, such mortgage broker-dealer shall nonetheless preserve the records required by said paragraph for the period of time specified.

51-4.6.1 Mortgage Broker-Dealer Cybersecurity

A. A mortgage broker-dealer must establish and maintain written procedures reasonably designed to ensure cybersecurity. In determining whether the cybersecurity procedures are reasonably designed, the Commissioner may consider:

1. The firm's size;

2. The firm's relationships with third parties;

3. The firm's policies, procedures, and training of employees with regard to cybersecurity practices;

4. Authentication practice

5. The firm's use of electronic communications;

6. The automatic locking of devices that have access to Confidential Personal Information; and

7. The firm's process for reporting of lost or stolen devices;

B. A mortgage broker-dealer must include cybersecurity as part of its risk assessment.

C. To the extent reasonably possible, the cybersecurity procedures must provide for:

1. An annual assessment by the firm or an agent of the firm of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of Confidential Personal information;

2. The use of secure email for email containing Confidential Personal Information, including use of encryption and digital signatures;

3. Authentication practices for employee access to electronic communications, databases and media;

4. Procedures for authenticating client instructions received via electronic communication; and

5. Disclosure to clients of the risks of using electronic communications.

51-4.7 Unfair and Dishonest Dealings

The following practices shall be deemed to be "unfair and dishonest dealings" for purposes of section 11- 51-410(1)(g), C.R.S.:

A. Executing a transaction for a customer without legal authority or actual authorization of the customer to do so;

B. Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by the broker-dealer or sales representative;

C. Making a recommendation to a retail customer, that places the financial or other interests of the dealer or the salesperson ahead of the interest(s) of the retail customer, recommending the sale or purchase of any security without a reasonable basis to believe that the recommendation is in the best interests of the retail customer based on the customer's investment profile and the potential risks, rewards, and costs associated with the recommendation, or otherwise fail to comply with the obligations set forth in Regulation Best Interest, as set forth in rule 17 C.F.R. 240.15l;

D. Acting in violation of the following SEC Rules [for purposes of this Rule, the terms "broker" and "dealer" as used in the SEC Rules shall have the same meaning as "broker-dealer" as defined in Section 11-51-201(2), C.R.S., and the term "penny stock" shall have the meaning as set forth in SEC Rule 3a51-1, found at 17 CFR 240.3a51-1]:

1.

a. SEC Rule 15c2-6, found at 17 CFR 240.15c2-6;

b. SEC Rule 15c2-11, found at 17 CFR 240.15c2-11;

2. Unless the subject transactions are exempt under SEC Rule 15g-1, found at 17 CFR 240.15g-1, or otherwise:

a. SEC Rule 15g-2, found at 17 CFR 240.15g-2;

b. SEC Rule 15g-3, found at 17 CFR 240.15g-3;

c. SEC Rule 15g-4, found at 17 CFR 240.15g-4;

d. SEC Rule 15g-5, found at 17 CFR 240.15g-5; or

e. SEC Rule 15g-6, found at 17 CFR 240.15g-6;

E. Failing or refusing, after a solicited purchase of securities by a customer in connection with a principal transaction, to execute promptly sell orders in said securities placed by said customer;

F. In connection with a principal transaction, imposing as a condition of the purchase or sale of one security, the purchase or sale of another security;

G. Failure by a sales representative, in connection with a customer's purchase or sale of a security which is not recorded on the books and records of the broker-dealer by which the sales representative is employed or otherwise engaged, to obtain the broker-dealer's prior written approval of the sales representative's participation in the purchase or sale of the security.

H. Failing to comply with any of the following applicable fair practice or ethical standards contained in the following sections of the FINRA Rules:

1. Section 2000, Duties and Conflicts;

2. Section 3000, Supervision and Responsibilities Relating to Associated Persons;

3. Section 4000, Financial and Operational Rules; and

4. Section 5000, Securities Offering and Trading Standards and Practices.

I. In connection with the offer or sale of securities by mortgage broker-dealers and mortgage sales representatives:

1. Failing to provide to each investor prior to the time of the sale a written disclosure document which shall contain at least the following:

a. A description of the priority of the lien created by the security and the total face amount of any senior lien(s). (A title insurance policy running to the benefit of the purchaser may be provided in lieu of the description of the priority liens);

b. A statement as to whether any future advances may have a priority senior to that of the lien created by the security;

c. A copy of the most recent property tax statement covering the real property underlying the security;

d. The value of the real property underlying the security provided by either the tax assessed value if it is one hundred percent (100%) of the true cash value and is on the same property underlying the security, or an appraisal by an independent appraiser [subsequent to July 1, 1991, this appraisal must be performed by a licensed real estate appraiser under section 12-61-701, et seq., C.R.S.];

e. The debtor's payment record on the instrument being sold for the two (2) years immediately preceding the sale or if not available, the payment record to date or a statement that payment records are not available, and a current credit report on the debtor prepared by a credit reporting agency or a current financial statement of the debtor;

f. The terms of any senior lien or a copy of the instrument creating the lien and any assignments;

g. A statement of any commissions, collection fees, and other costs chargeable to the purchaser of the security;

h. A prominent statement of any balloon payments;

i. In the case of a sale of a note, bond or evidence of indebtedness secured by a mortgage or deed of trust on real estate which is junior to one or more senior liens, a statement of the risk of loss on foreclosure of such senior lien(s); and

j. A statement as to whether or not the purchaser of the security will be insured against casualty loss;

2. Failing to deliver to the purchaser or licensed escrow agent or title company the original written evidence of the obligation properly endorsed or a lost instrument bond in twice the amount of the face value of the instrument, together with the original or a certified copy of the instrument creating the lien;

3. Failing in a timely manner to record or cause to be recorded the instrument creating the lien or assignment of lien involved in the county or counties where the property is located;

4. Causing an investor to sign a reconveyance of title, quit claim deed, or any like instrument before such instrument is required in connection with a transaction such as a payoff or a foreclosure;

5. Failing to deliver proceeds due to an investor within a reasonable time after receipt by the mortgage broker-dealer; or

6. In the case of a mortgage broker-dealer who undertakes to provide to an investor management and collection services in connection with the note, bond or evidence of indebtedness involved, failing to provide in writing to the investor that:

a. Payments received will be deposited in a specific loan escrow account immediately upon receipt by the mortgage broker-dealer;

b. Investor funds will not be commingled with those of the mortgage broker-dealer or used in any manner not specifically authorized in advance by the investor;

c. If the mortgage broker-dealer uses funds of the mortgage broker-dealer to make a payment due from the borrower to the investor, the mortgage broker-dealer may recover the amount of such advance from the specific loan escrow account when the past due payment is received by the mortgage broker-dealer from the borrower; and

d. That the mortgage broker-dealer will file a request for notice of default upon any prior encumbrance on the real property securing the obligation that is the subject of the servicing agreement and will promptly notify the investor of any default on such prior encumbrance, or on the obligation.

J.

1. The use of a senior specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be a dishonest and unethical practice in the securities, commodities, and investment business within the meaning of the Colorado Securities Act. The prohibited use of such certifications or professional designation includes, but is not limited to, the following:

   a. use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

   b. use of a nonexistent or self-conferred certification or professional designation;

   c. use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and

   d. use of a certification or professional designation that was obtained from a designating or certifying organization that:

      i. is primarily engaged in the business of instruction in sales and/or marketing;

      ii. does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

      iii. does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

      iv. does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

2.

a. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of paragraph 1(d) above when the organization has been accredited by:

1. The American National Standards Institute; or

2. The National Commission for Certifying Agencies.

b. Certifications or professional designations offered by an organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" may qualify when the certification or professional designation program also specifically meets the paragraph 1(d) requirements listed above.

3. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

a. use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

b. the manner in which those words are combined.

4. For purposes of this Rule, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

a. indicates seniority or standing within the organization; or

b. specifies an individual's area of specialization within the organization

For purposes of this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

5. Nothing in this Rule shall limit the Securities Commissioner's authority to enforce existing provisions of law.

K. Failing to comply with a child support order as described in section 26-13-126, C.R.S. This rule incorporates the requirements of section 26-13-126, C.R.S. An individual may inspect a copy of section 24-13-126, C.R.S. by making such request to the Colorado Department of Human Services at 1575 Sherman Street, 8th Floor, Denver, Colorado 80203 or the Colorado Division of Securities at 1560 Broadway, Suite 900, in Denver, Colorado 80203.

51-4.8 Broker-Dealer Physical Security and Cybersecurity

A. A broker-dealer must establish and maintain written procedures reasonably designed to ensure physical security of records and cybersecurity. In determining whether the cybersecurity procedures are reasonably designed, the Commissioner may consider:

1. The firm's size;

2. The firm’s relationships with third parties;

3. The firm’s policies, procedures, and training of employees with regard to physical security of records and cybersecurity practices;

4. Authentication practices;

5. The firm’s use of electronic communications;

6. The automatic locking of devices that have access to Confidential Personal Information; and

7. The firm’s process for reporting of lost or stolen devices;

B. A broker-dealer must include physical security of records and cybersecurity as part of its risk assessment.

C. To the extent reasonably possible, the cybersecurity procedures must provide for:

1. An annual assessment by the firm or an agent of the firm of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of Confidential Personal information;

2. The use of secure email for email containing Confidential Personal Information, including use of encryption and digital signatures;

3. Authentication practices for employee access to electronic communications, databases and media;

4. Procedures for authenticating client instructions received via electronic communication; and

5. Disclosure to clients of the risks of using electronic communications.

CHAPTER 4 (IA) NOTICE FILING FROM FEDERAL COVERED ADVISERS. LICENSING OF INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

51-4.1(IA) General Provisions

A. Pursuant to section 11-51-403(4), C.R.S., the Securities Commissioner designates the IARD to receive and store filings and collect related fees from investment advisers and investment adviser representatives on behalf of the Securities Commissioner.

B. Unless otherwise provided, all investment adviser and investment adviser representative applications, amendments, reports, notices, related filings and fees required to be filed with the Securities Commissioner on or after July 31, 2001, shall be filed electronically with and transmitted to IARD. The following conditions relate to such electronic filings:

1. When a signature or signatures are required by the particular instructions of any filing to be made through IARD, a duly authorized officer of the applicant or the applicant themselves, shall affix their electronic signature to the filing by typing their name in the appropriate fields and submitting the filing to IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.

2. Solely for the purposes of a filing made through IARD, a document is considered filed with the Securities Commissioner when all fees are received and the filing is accepted by IARD on behalf of the Securities Commissioner.

C. Notwithstanding subsection B. of this Rule, the electronic filing of any particular document and the collection of related processing fees, if any, shall not be required until such time as IARD provides for receipt of such filings and fees and 30 days notice is provided by the Securities Commissioner. The notice provided by the Securities Commissioner may set the effective date for any such electronic filing. Any documents or fees required to be filed with the Securities Commissioner that are not permitted to be filed with or cannot be accepted by IARD shall be filed directly with the Securities Commissioner.

D. Investment advisers or investment adviser representatives licensed or required to be licensed in Colorado who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD may request a temporary hardship exemption from the requirements to file electronically, upon compliance with the following conditions:

1. File Form ADV-H in paper format with the Securities Commissioner no later than one business day after the filing subject to the Form ADV-H was due; and

2. Submit the filing that is the subject of the Form ADV-H in electronic format to IARD no later than seven (7) business days after the filing was due.

The hardship exemption will be deemed effective upon receipt by the Securities Commissioner of the complete Form ADV-H, and only for the period provided in this paragraph F. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the Securities Commissioner.

51-4.2(IA) Notice Filing from a Federal Covered Adviser

A. The notice filing for a federal covered adviser pursuant to section 11-51-403(3), C.R.S., shall be filed with IARD on an executed Form ADV (Uniform Application for Investment Adviser Registration). A notice filing of a federal covered adviser shall be deemed filed when the fee required by section 11-51-403(4), C.R.S., and the Form ADV are filed with and accepted by IARD on behalf of the Securities Commissioner.

B. Until IARD provides for the filing of Part 2 of Form ADV, the Securities Commissioner will deem filed Part 2 of Form ADV if a federal covered adviser provides, within 5 days of a request from the Securities Commissioner, Part 2 of Form ADV. Because the Securities Commissioner deems Part 2 of the Form ADV to be filed, a federal covered adviser is not required to submit Part 2 of Form ADV to the Securities Commissioner unless requested.

C. The annual renewal of the notice filing for a federal covered adviser pursuant to section 11-51- 403, C.R.S., shall be filed with IARD. The renewal of the notice filing for a federal covered adviser shall be deemed filed when the fee required by section 11-51-403(4), C.R.S., is submitted to and accepted by IARD on behalf of the Securities Commissioner.

D. A federal covered adviser must file with IARD, in accordance with the instructions in the Form ADV, any amendments to the federal covered adviser's Form ADV.

E. A federal covered adviser must also file a Consent to Service of Process form (see Rule 51-7.1) with the Securities Commissioner.

51-4.3(IA) Application for an Investment Adviser License

A. A person applying for an initial license as an investment adviser in Colorado shall make application for such license by completing Form ADV (Uniform Application for Investment Adviser Registration) in accordance with the form instructions and by filing the form with IARD.

B. Any applicant for an investment adviser license must also file a Consent to Service of Process form (see Rule 51-7.1) with the Securities Commissioner.

C. An application and any amendments to such application shall be deemed filed with the Securities Commissioner on the date any required fee and all required submissions have been received by the Securities Commissioner.

D. Unless a proceeding under section 11-51-410, C.R.S., is instituted, the license of an investment adviser becomes effective upon the last to occur of the following:

1. The passage of thirty days after the filing of the application or, in the event any amendment is filed before the license becomes effective, the passage of thirty days after the filing of the latest amendment, if the application, including all amendments, if any, was complete at the commencement of the thirty-day period;

2. The requirements of section 11-51-407, C.R.S., are satisfied;

3. The fee required under section 11-51-403, C.R.S., have been paid; and

4. Any other information the Securities Commissioner may reasonably require.

E. The annual license fee required by section 11-51-404, C.R.S., for an investment adviser shall be filed with IARD.

F. Updates and amendments to an investment adviser's Form ADV shall be filed with IARD in accordance with the instructions in Form ADV. An amendment will be considered promptly filed if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment.

G. Within ninety (90) days after the end of the investment adviser’s fiscal year, an investment adviser shall file with IARD an Annual Updating Amendment of Form ADV, which includes updating all information within the Form ADV Part 1A, 1B, 2A (Firm Brochure), and 2B (Brochure Supplement).

H. The Securities Commissioner may authorize an earlier effective date of licensing.

I. The license of an investment adviser is effective until terminated by revocation or withdrawal.

J. Acts or practices which require licensing as an investment adviser and compliance with statutes and Rules pertaining thereto

1. Lawyers, accountants, engineers or teachers

a. A lawyer, accountant, engineer or teacher (professional) must be licensed as an investment adviser or investment adviser representative if the professional provides investment advice or investment advisory services to the professional's clients for a fee, if the advice is not “solely incidental” to the professional's regular professional practice with respect to clients.

b. For purposes of this subparagraph (1), providing investment advice under ANY of the following circumstances would NOT be considered to be “solely incidental”:

i The investment advice the professional or the investment advisory service the professional renders clients is the primary professional advice for which the professional charges or is paid a fee;

ii. The professional advertises or otherwise holds themself out to the public as a provider of investment advice; or

iii. The professional holds funds for clients pursuant to discretionary authority to invest such funds.

c. The following are examples to assist in understanding the meaning of “solely incidental”:

i. If the primary professional advice for which the professional receives a fee involves business or tax planning and the professional neither advertises or otherwise holds themself out as a provider of investment advice, nor holds funds which the professional invests for clients. The professional may also provide investment advice to clients in connection with the planning or other professional services, without being required to become licensed as an investment adviser.

ii. If the professional advertises or otherwise holds themself out as a provider of investment advice, the professional must be licensed as an investment adviser whether or not the professional actually provides investment advice.

iii. If the professional holds client funds which the professional invests for the client, the professional must be licensed as an investment adviser whether or not the professional actually provides investment advice.

2. Broker-dealers and broker-dealer agents

a. A broker-dealer or broker-dealer agent must be licensed as an investment adviser or investment adviser representative if for a fee, the securities broker- dealer or sales agent of the securities broker-dealer provides investment advice to clients if the investment advice is not "solely incidental" to the conduct of business as a broker-dealer or broker-dealer agent.

b. For purposes of this subparagraph, providing investment advice under ANY of the following circumstances would NOT be considered "solely incidental":

i. Providing investment advice to a client for a fee in addition to any commission received in connection with transactions in which the client either purchases or sells securities;

ii. Providing investment advice, for a fee, to clients who are not clients of the broker-dealer with which the agent is licensed; or

iii. Receiving compensation from an investment adviser to whom the broker- dealer or agent refers clients.

3. Insurance agents

a. An insurance agent who, for a fee, provides investment advice to a client must be licensed as an investment adviser or investment adviser representative.

b. An insurance agent who, performs an analysis of a client's estate, for a fee, which recommends that the client purchases or sells either specific securities or specific types of securities must be licensed as an investment adviser or investment adviser representative.

c. An insurance agent who, receives a commission from the sale of insurance to a client who makes such purchase with the proceeds of securities the insurance agent recommended be sold, must be licensed as an investment adviser or investment adviser representative.

4. Others

a. One must be licensed as an investment adviser or investment adviser representative, as appropriate, whether or not described in subparagraphs (1), (2), or (3) of paragraph (J) if:

i. Advertising, or otherwise holding oneself out as a provider of investment advice;

ii. Publishing a newspaper, news column, newsletter, news magazine, or business or financial publication, which, for a fee, gives investment advice based upon the specific investment situations of the clients; or

iii. Receiving a fee from an investment adviser for client referrals.

51-4.4(IA) Application for an Investment Adviser Representative License

A. A person applying for a license as an investment adviser representative in Colorado pursuant to section 11-51-403, C.R.S., shall make application for such license and any amendments to such application by completing Form U-4 (Uniform Application for Securities. Industry Registration or Transfer) in accordance with the form instructions and by filing the Form U-4 with IARD. The application for such initial licensing shall also include the following:

1. The fee required by section 11-51-403, C.R.S.;

2. Documentation verifying the applicant's identity by providing to the affiliated Investment Adviser any of the following documents:

a. Federal Form I-9 Employment Eligibility Verification Form;

b. A state identification (ID) card, expired less than one year,

c. A state issued driver license, expired less than one year,

d. A current US passport or passport card that is not expired,

e. A current foreign passport that is not expired,

f. A US military card (front and back),

g. A Permanent Resident Card,

h. A Certificate of Citizenship,

i. A Certificate of Naturalization, or

j. Another document verifying the applicant's identify as determined by the Securities Commissioner; and

k. A certification by the applicant that the applicant has provided true and correct information verifying their identity.

3. The Investment Adviser shall record, maintain, and preserve in an easily accessible place the documentation, or copies thereof, produced by the applicant or affiliated investment adviser representative in compliance with the subparagraphs (2) and (3) hereof.

4. Any other information the Securities Commissioner may reasonably require.

B. Any applicant for an investment adviser license must also file a Consent to Service of Process form (see Rule 51-7.1) with the Securities Commissioner.

C. An application and any amendments to such application shall be deemed filed with the Securities Commissioner on the date any required fee and all required submissions have been received by the Securities Commissioner.

D. An investment adviser representative is under a continuing obligation to update information required by Form U-4 as changes occur. In this regard, an investment adviser representative and the investment adviser must file promptly with IARD any amendments to the representative's Form U-4 to reflect such changes. Such amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment.

E. Except as otherwise provided in sections F and G below, an applicant for a license under section 11-51-403, C.R.S., as an investment adviser representative shall obtain a passing score on one of the following examinations:

1. The Uniform Investment Advisor Law Examination (Series 65 examination) within the two (2) year period immediately preceding the date of the application for licensing; or

2. The Uniform Combined Law Examination (Series 66 examination) within the two (2) year period immediately preceding the date of the application for licensing and

a. The General Securities Representative Examination (Series 7 examination) within a two (2) year period immediately preceding the date of the application for licensing (Series 7 examination prior to October 1, 2018), or

b. An active agent registration or license (Series 7 examination qualified prior to October 1, 2018) within a two (2) year period immediately preceding the date of the application for licensing, or

c. As of October 1, 2018, The Securities Industry Essentials Examination (SIE examination) within four (4) or more years immediately preceding the date of the application for licensing and the revised Series 7 examination within a two (2) year period immediately preceding the date of the application for licensing, or

d. After October 1, 2018, an active agent registration or license (SIE examination four (4) or more years immediately preceding the date of the application for licensing and the Series 7 examination within a two (2) year period immediately preceding the date of the application for licensing).

F. At the discretion of the Commissioner, an investment adviser representative who has been licensed or registered as an investment adviser representative, or its equivalent, under the securities act of any state or jurisdiction and whose most recent license or registration in such capacity has been terminated for not more than two years immediately before the date of the application for licensing shall not be required to satisfy the examination requirement in section (E) above.

G. The examination requirements described in section (E) above may be satisfied upon proof of alternative qualifications or credentials in good standing including:

1. Designation of Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research;

2. Designation as a Certified Investment Management Analyst (CIMA) by the Investment & Wealth Institute;

3. Certification as a Chartered Financial Consultant (ChFC) granted by The American College;

4. Designation of Certified Financial Planner (CFP) by the Certified Financial Planner Board of Standards;

5. Designation of Personal Financial Specialist (PFS) granted by the American Institute of Certified Public Accountants.

H. The annual license fee required by section 11-51-404, C.R.S. for an investment adviser representative shall be filed with IARD.

I. Regardless of subsection (A) of this provision, an investment adviser representative applicant, who also has an unpaid FINRA arbitration award against them, pursuant to section 11-51-403, C.R.S. must submit a written explanation stating the reason(s) for not paying the award. In addition, the applicant must provide the following:

1. Where the complaint was filed, who filed the complaint, and the facts and circumstances surrounding the complaint;

2. Type of controversy and type of security involved;

3. The final order from arbitration;

4. Any other information reasonably related to the proceeding.

51-4.4.1(IA) Investment Adviser Representative Continuing Education

A. IAR Continuing Education. Every investment adviser representative registered under 11-51-401(1.5), C.R.S. must complete the following IAR continuing education requirements each Reporting Period:

1. IAR Ethics and Professional Responsibility Requirement. An investment adviser representative must complete six (6) Credits of IAR Regulatory and Ethics Content offered by an Authorized Provider, with at least three (3) hours covering the topic of ethics; and

2. IAR Products and Practice Requirement. An investment adviser representative must complete six (6) Credits of IAR Products and Practice Content offered by an Authorized Provider.

B. Agent of FINRA-Registered Broker-Dealer Compliance. An investment adviser representative who is also registered as an agent of a FINRA member broker-dealer and who complies with FINRA's continuing education requirements is considered to be in compliance with this Rule subsection (A)(2) above for each applicable Reporting Period so long as FINRA continuing education content meets all of the following baseline criteria as determined by NASAA:

1. The continuing education content focuses on compliance, regulatory, ethical, and sales practices standards.

2. The continuing education content is derived from state and federal investment advisory statutes, rules and regulations, securities industry rules and regulations, and accepted standards and practices in the financial services industry.

3. The continuing education content requires that its participants demonstrate proficiency in the subject matter of the educational materials.

C. Credentialing Organization Continuing Education Compliance. Credits of continuing education completed by an investment adviser representative who was awarded and currently holds a credential that qualifies for an examination waiver under Rule 51-4.4(IA)(G) comply with this Rule subsections (A)(1) and (2) above provided all of the following are true:

1. The investment adviser representative completes the credits of continuing education as a condition of maintaining the credential for the relevant Reporting Period.

2. The credits of continuing education completed during the relevant Reporting Period by the investment adviser representative are mandatory to maintain the credential.

3. The continuing education content provided by the credentialing organization during the relevant Reporting Period is Approved IAR Continuing Education Content.

D. IAR Continuing Education Reporting. Every investment adviser representative is responsible for ensuring that the Authorized Provider reports the investment adviser representative's completion of the applicable IAR continuing education requirements.

E. No Carry-Forward. An investment adviser representative who completes credits of continuing education in excess of the amount required for the Reporting Period may not carry forward excess credits to a subsequent Reporting Period.

F. Failure to Complete or Report. An investment adviser representative who fails to comply with this rule by the end of a Reporting Period will renew as "CE Inactive" at the close of the calendar year in this state until the investment adviser representative completes and reports all required IAR continuing education credits for all Reporting Periods as required by this rule. An investment adviser who is CE Inactive at the close of the next calendar year is not eligible for investment adviser representative licensing or renewal of an investment adviser representative license.

G. Discretionary Waiver by the Commissioner. The Commissioner may, in the Commissioner's discretion, waive any requirements of this rule.

H. Home State. An investment adviser representative registered or required to be registered in this state who is registered as an investment adviser representative in the individual's Home State is considered to be in compliance with this Rule provided that both of the following are true:

1. The investment adviser representative's Home State has continuing education requirements that are at least as stringent as this Rule.

2. The investment adviser representative is in compliance with the Home State's investment adviser representative continuing education requirements.

I. Unlicensed Periods. An investment adviser representative who was previously licensed under the Act and became unlicensed must complete IAR continuing education for all reporting periods that occurred between the time that the investment adviser representative became unlicensed and when the person became licensed again under the Act unless the investment adviser representative takes and passes the examination as required by Rule 51-4.4(IA) or receives an examination waiver in connection with the subsequent application for licensing.

J. Definitions. As used in this rule, the following terms mean:

1. “Approved IAR Continuing Education Content” means the materials, written, oral, or otherwise that have been approved by NASAA or its designee and which make up the educational program provided to an investment adviser representative under this rule.

2. “Authorized Provider” means a person that NASAA or its designee has authorized to provide continuing education content required by this Rule.

3. “Credit” means a unit that has been designated by NASAA or its designee as at least 50 minutes of educational instruction.

4. “Home State” means the state in which the investment adviser representative has its principal office and place of business.

5. “IAR Ethics and Professional Responsibility Content” means Approved IAR Continuing Education Content that addresses an investment adviser representative’s ethical and regulatory obligation.

6. “IAR Products and Practice Content” means Approved IAR Continuing Education Content that addresses an investment adviser representative’s continuing skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry.

7. “Investment adviser representative” or “IAR” means an individual who meets the definition of “investment adviser representative” under 11-51-201(9.6)(a) and (b), C.R.S.

8. “NASAA” means the North American Securities Administrators Association or a committee designated by its Board of Directors.

9. “Reporting Period” means one twelve-month (12) period as determined by NASAA. An investment adviser representative’s initial Reporting Period with this state commences the first day of the first full Reporting Period after the individual is licensed or required to be licensed with this state.

51-4.4.2(IA) NASAA's Investment Adviser Representative Exam Validity Extension Program ("IAR EVEP Program")

A. A person who terminates their license as an investment adviser representative may maintain the validity of their Series 65 examination or the investment adviser representative portion of the Series 66 examination, as applicable, without being employed by or associated with an investment adviser or federal covered investment adviser for a maximum of five years following the termination of the effectiveness of the investment adviser representative license if the individual meets all of the following:

1. The person previously took and successfully passed the examination for which they seek to maintain validity under this rule;

2. The person was licensed as an investment adviser representative for at least one year immediately preceding the termination of the investment adviser representative license;

3. The person was not subject to a statutory disqualification as defined in Section 3(a)(39) of the 34 Act while licensed as an investment adviser representative or at any period after termination of the license;

4. The person elects to participate in NASAA's IAR EVEP Program within two years from the effective date of the termination of the investment adviser representative license;

5. The person is compliant with and does not have a deficiency under the investment adviser representative continuing education program pursuant to Rule 51-4.4.1(IA) herein at the time the investment adviser representative license becomes ineffective;

6. The person completes annually on or before December 31 of each calendar year in which the person participates in the IAR EVEP Program:

   a. six (6) Credits of IAR CE Ethics and Professional Responsibility Content offered by an Authorized Provider as defined in Rule 51-4.4.1(IA)(J)(2), including at least three (3) hours covering the topic of ethics, and

   b. six (6) Credits of IAR CE Products and Practice Content offered by an Authorized Provider as defined in Rule 51-4.4.1(IA)(J)(2);

7. A person who elects to participate in the IAR EVEP Program is required to complete credits required by paragraph (6) above of this rule for each calendar year that elapses after the individual's investment adviser representative license became ineffective regardless of when the individual elects to participate in the IAR EVEP Program; and

8. A person who complies with the FINRA Maintaining Qualification Program under FINRA Rule 1240(c) shall be considered in compliance with paragraph (6)(b) above of this rule.

51-4.5(IA) Withdrawal of an Investment Adviser or Investment Adviser Representative License

A. An application for withdrawal from licensing as an investment adviser in Colorado and any amendment to such application shall be completed by following the instructions on Form ADV-W (Notice of Withdrawal from Registration as Investment Adviser) and filed upon Form ADV-W with IARD.

B. An application for withdrawal from licensing as an investment adviser representative for an investment adviser or federal covered adviser in Colorado and any amendment to such application shall be completed by following the instructions on Form U-5 (Uniform Termination Notice for Securities Industry Registration) and filed upon Form U-5 with IARD.

C. The Securities Commissioner may deem an application for licensing as an investment adviser or investment adviser representative to be abandoned when an applicant fails to adequately respond to any request for additional information required under § 11-51-403, C.R.S. or the regulations thereunder. The Commissioner shall provide written notice of warning 30 calendar days before such the application is deemed abandoned. The applicant may, with the consent of the Commissioner, withdraw the application.

51-4.6(IA) Books and Records Requirements for Licensed Investment Advisers

A. Except as otherwise provided in section I for out-of-state investment advisers investment advisers, every investment adviser licensed or required to be licensed under the Act shall make and keep true, accurate and current the following books, ledgers and records:

1. A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger;

2. General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts;

3. A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction or non-discretionary client approval received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, of any modification or cancellation of any such order or instruction, and of any trade order entered in error. In any such memorandum, the investment adviser shall:

a. show the terms and conditions of the order, instruction, modification or cancellation;

b. identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order;

c. show the account for which entered, the date of entry, and the bank, broker- dealer by or through whom executed where appropriate;

d. orders entered pursuant to the exercise of discretionary power shall be so designated and orders entered pursuant to the exercise of non-discretionary authority shall document the date and method by which the investment adviser received client approval and

e. show the actions taken to correct orders entered in error.

4. All check books, bank statements, canceled checks and cash reconciliations of the investment adviser;

5. All bills, statements, and invoices (or copies of), paid or unpaid, relating to the investment adviser's business as an investment adviser;

6. All trial balances, financial statements (prepared in accordance with generally accepted accounting principles i.e. accrual basis) and internal audit working papers relating to the investment adviser's business as an investment adviser. [For purposes of this subsection, the term “financial statements” means a balance sheet, an income statement, and a cash flow statement prepared in accordance with generally accepted accounting principles.];

7. Originals of all written communications received and copies of all written communications sent by the investment adviser relating to the business of the investment adviser;

8. A list or other record of all clients and accounts, including a list of services provided to each client/account, the value of each account, and identification of those accounts in which the investment adviser is vested with any discretionary authority;

9. A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser;

10. A copy in writing of each agreement or investment advisory contract entered into by the investment adviser with any client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser;

11. A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication (including by electronic media) the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser), and, if in such notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication (including by electronic media), the investment adviser recommends the purchase or sale of a specific security but does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation;

12. A record of transactions in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership (except transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control, and transactions in securities that are direct obligations of the United States),

    a. such record shall state:

        i. the title and amount of the security involved;

        ii. the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition);

        iii. the price at which it was effected; and

        iv. the name of the broker-dealer or bank with or through whom the transaction was effected.

    b. The record may also contain a statement in which the investment adviser declares that the reporting or recording of any transaction shall not be construed as an admission the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security.

    c. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

    d. For purposes of this Rule subsection (A)(12):

        i. the term “advisory representative” means:

            A. any partner, officer or director of the investment adviser;

B. any employee who participates in any way in the determination of which recommendations shall be made;

C. any employee who, in connection with his/her duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and

D. any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations:

I. any person in a control relationship to the investment adviser;

II. any affiliated person of a controlling person; and

III. any affiliated person of an affiliated person;

ii. the term “control” means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company is presumed to control such company.

e. An investment adviser shall not be deemed to have violated the provisions of this Rule subsection (A)(12) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

13. Notwithstanding the provisions of Rule subsection (A)(12) above, where the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership (except transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and transactions in securities that are direct obligations of the United States),

a. such record shall state:

i. the title and amount of the security involved;

ii. the date and nature of the transaction (i.e., purchase, sale, or other acquisition or disposition);

iii. the price at which it was effected; and

iv. the name of the broker-dealer or bank with or through whom the transaction was effected.

b. The record may also contain a statement in which the investment adviser declares that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security.

c. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

d. For purposes of this Rule subsection (A)(13):

i. An investment adviser is “primarily engaged in a business or businesses other than advising investment advisory clients” when, for each of its most recent three fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50% of:

A. its total sales and revenues; and

B. its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

ii. the term “advisory representative”, when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, means any partner, officer, director or employee of the investment adviser who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons, who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

A. any person in a control relationship to the investment adviser;

B. any affiliated person of a controlling person; and

C. any affiliated person of an affiliated person; and

iii. the term “control” means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company shall be presumed to control such company.

e. An investment adviser shall not be deemed to have violated the provisions of this Rule subsection (A)(13) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

14. A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with the provisions of section 11-51-409.5, C.R.S. and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

15. All accounts, books, internal working papers, and any other records or documents necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts satisfies the requirements of this Rule subsection (A)(11).

16. A file containing a written summary of all oral client complaints and a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint.

17. Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

18. Written procedures to supervise the activities of employees and investment adviser representatives.

    An investment adviser must establish and maintain written supervisory procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

19. A file containing a copy of each document (other than any notices of general dissemination) filed with or received from any state or federal agency or self-regulatory organization and that pertains to the licensee or its advisory representatives as that term is defined in Rule subsection (A)(12)(d) above, which file should contain, but is not limited to, all applications, amendments, renewal filings and correspondence.

20. Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to Disclosure Reporting Pages (DRPs U-4) must be retained by the investment adviser and on behalf of the investment adviser representative for whom it is filing, and must be made available for inspection upon request by the Securities Commissioner.

21. A file memorializing the due diligence conducted for alternative and non-exchange traded investment products recommended to or purchased on behalf of clients.

B. If an investment adviser has custody or possession of securities or funds of any client, the following records are required to be made and kept in addition to those required in section (A) above:

1. A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts;

2. A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits;

3. Copies of confirmations of all transactions effected by or for the account of any client; and

4. A record for each security in which any client has a position, in which record shall be shown the name of each client having any interest in each security, the amount or interest of each client, and the location of each security;

C. Every investment adviser licensed or required to be licensed as such under the Act who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

1. Records in which are shown separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale; and

2. For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each client, and the current amount or interest of the client;

D. Any required books or records may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services are indicated by numerical or alphabetical code or some similar designation;

E. Every investment adviser licensed or required to be licensed as such under the Act shall preserve the following records in the manner prescribed:

1. All books and records required to be made under the provisions of Rule sections (A) and (B) and subsection (C)(1) above, inclusive, [except for books and records required to be made under the provisions of Rule subsections (A)(11) and (16) above], shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years in the principal office of the investment adviser;

2. Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise;

3. Books and records required to be made under the provisions of Rule subsections (A)(11) and (16) above shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media;

4. Books and records required to be made under the provisions of subsections (A)(17)- (A)(20), inclusive, of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was licensed or required to be licensed in the state, if less;

5. Notwithstanding other record preservation requirements of this Rule, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

    a. records required to be preserved under Rule subsections (A)(3), (7)–(10), (14)– (15), (17)–(19), and sections (B) and (C) above, inclusive; and

    b. records or copies required under the provision of Rule subsections (A)(11) and (16) above in which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number.

c. The records will be maintained for the period described in this Rule section (E)

F. An investment adviser licensed or required to be licensed as such under the Act, before ceasing to conduct or discontinuing business as an investment adviser, shall arrange and be responsible for the preservation of the books and records required to be maintained and preserved under this Rule for the remainder of the period specified in this Rule, and shall notify the Securities Commissioner in writing of the exact address where the books and records will be maintained during the period.

1. The records required to be maintained and preserved pursuant to this Rule may be immediately produced or reproduced by photograph on film or, as provided in Rule subsection (F)(2) below, on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:

   a. arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;

   b. be ready at all times to provide promptly any facsimile enlargement of film or computer printout or copy of the computer storage medium that the examiners or other representatives of the Securities Commissioner request;

   c. store separately from the original one other copy of the film or computer storage medium for the time required;

   d. with respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction; and

   e. with respect to records stored on photographic film, at all times have available for the Securities Commissioner's examination of its records pursuant to section 11- 51-409 of the Act, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

2. Pursuant to Rule subsection (F)(1) above, an investment adviser may maintain and preserve on computer tape or disk or other computer storage medium records that, in the ordinary course of the investment adviser's business, are created by the investment adviser on electronic media or are received by the investment adviser solely on electronic media or by electronic data transmission.

G. For purposes of Rule 51-4.6(IA):

1. the term “investment supervisory services” means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and

2. the term “discretionary power” does not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

H. Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 [17 C.F.R. 240.17a-3] and 17a-4 [17 C.F.R. 240.17a-4] under the 34 Act that is substantially the same as the book or other record required to be made, kept, maintained and preserved under this Rule 51-4.6(IA) shall be deemed to be made, kept, maintained and preserved in compliance with this Rule.

I. Every investment adviser licensed or required to be licensed in this state and that has its principal place of business in a state other than this state shall be exempt from the requirements of this Rule, provided the investment adviser is licensed or registered in such state and is in compliance with such state's recordkeeping requirements.

51-4.7(IA) Mandatory Disclosure

A. An investment adviser and its investment adviser representative shall furnish each advisory client and prospective advisory client a copy of Part 2 of the investment adviser's Form ADV.

B. INITIAL DELIVERY. An investment adviser and its investment adviser representative, except as provided in section (F), shall deliver the disclosure statement required by this section to an advisory client or prospective advisory client:

1. not less than 48 hours prior to entering into any written investment advisory contract with such client or prospective client, or

2. at the time of entering into any such contract, if the advisory client has a right to terminate the contract without fees or penalty within five business days after entering into the contract.

C. ANNUAL DELIVERY: An investment adviser and its investment adviser representative, except as provided in section (F) must:

1. Deliver within one hundred twenty days of the end of your fiscal year a free, updated Part 2 of the investment adviser's Form ADV disclosure statement required by this section which include or are accompanied by a summary of the material changes; or

2. Deliver within one hundred twenty days at the end of your fiscal year a free summary of material changes that includes an offer to provide a copy of the updated Part 2 of the investment adviser's Form ADV disclosure statement and information on how the client may obtain a copy of the disclosure statement.

D. An investment adviser and its investment adviser representative shall furnish each advisory client or prospective client participating in a wrap fee program a copy of Part 2 of the investment advisors Form ADV in addition to a copy of Part 2A Appendix 1 of Form ADV (the wrap fee brochure).

E. An investment adviser and its investment adviser representative shall furnish each advisory client or prospective client participating in a pooled investment vehicle, including hedge funds, a copy of Part 2 of the investment adviser's Form ADV.

F. Delivery of the statement required by section (A) need not be made to clients who receive only impersonal advice and who pay less than $500 in fees per year.

G. Nothing in this rule shall relieve any investment adviser or investment adviser representative from any obligation pursuant to any provision of the Act or the Rules and regulations thereunder or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this Rule.

51-4.8(IA) Dishonest and Unethical Conduct

Introduction

A person who is an investment adviser, an investment adviser representative or a federal covered adviser is a fiduciary and has a duty to act primarily for the benefit of its clients. The provisions of this subsection apply to federal covered advisers to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser or an investment adviser representative and its clients and the circumstances of each case, an investment adviser, an investment adviser representative or a federal covered adviser shall not engage in unethical business practices, including the following:

A. Recommending to a client, to whom investment supervisory, management or consulting services are provided, the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser.

B. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specific security that shall be executed, or both.

C. Inducing trading in a client's account that is excessive in size or frequency in view of the client's financial resources, investment objectives and the character of the account in light of the fact that an adviser in such situations can directly benefit from the number of securities transactions effected in a client's account.

D. Placing an order to purchase or sell a security for the account of a client without authority to do so.

E. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

F. Borrowing money or securities from a client, unless the client is a broker-dealer, an affiliate of the investment adviser, a family member, or a financial institution engaged in the business of loaning funds.

G. Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser or a family member.

H. To misrepresent to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or to misrepresent the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they are made, not misleading.

I. Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact. This prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.

J. Charging a client an advisory fee that is unreasonable in light of the type of services to be provided, the experience of the adviser, the sophistication and bargaining power of the client, and whether the adviser has disclosed that lower fees for comparable services may be available from other sources.

K. Failing to disclose to clients, in writing, before any advice is rendered, any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice, including:

1. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

2. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees,

L. Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice to be rendered.

M. Publishing, circulating, or distributing any advertisement which does not comply with Rule 206 (4)-1 under the 40 Act.

N. Disclosing the identity, affairs, or investments of any client, unless required by law to do so, or unless consented to by the client.

O. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the requirements of11-51-407(5)(a)-(f), C.R.S. or Reg. 206 (4) -2 under the 40 Act (for federally covered advisers).

P. Entering into, extending, or renewing any investment advisory contract, unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

Q. Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information in violation of Section 204A of the 40 Act.

R. Entering into, extending, or renewing any investment advisory contract contrary to the provisions of Section 205 of the 40 Act. This provision shall apply to all advisers and investment adviser representatives licensed or required to be licensed under this Act notwithstanding whether such adviser would be exempt from federal registration pursuant to section 203(b) of the 40 Act.

S. To indicate, in an advisory contract any condition, stipulation, or provision binding any person to waive compliance with any applicable provision of this Act, any Rule promulgated thereunder or the 40 Act, or any Rule promulgated thereunder, or to engage in or any other practice that would violate Section 215 of the 40 Act.

T. Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contrary to the provisions of Section 206(4) of the 40 Act notwithstanding the fact that such investment adviser is not registered or required to be registered under Section 203 of the 40 Act.

U. Engaging in any conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of this act or any Rule thereunder. Such conduct or act includes, but is not limited to, that conduct set forth in this Rule. Engaging in other conduct such as forgery, embezzlement, theft, exploitation, non-disclosure, incomplete disclosure or misstatement of material facts, manipulative or deceptive practices, or aiding or abetting any unethical practice, shall be deemed an unethical business practice and shall be grounds for denial, suspension or revocation of a license. The federal statutory and regulatory provisions referenced herein shall apply to all investment advisers and investment adviser representatives only to the extent permitted by the National Securities Markets Improvement Act of 1996.

V. The use of a senior specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be a dishonest and unethical practice in the securities, commodities, and investment business within the meaning of the Colorado Securities Act. The prohibited use of such certifications or professional designation includes, but is not limited to, the following:

1. use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

2. use of a nonexistent or self-conferred certification or professional designation;

3. use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and

4. use of a certification or professional designation that was obtained from a designating or certifying organization that:

    a. is primarily engaged in the business of instruction in sales and/or marketing;

    b. does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

    c. does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

    d. does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

5.

    a. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of paragraph 1(d) above when the organization has been accredited by:

        i. The American National Standards Institute; or

        ii. The National Commission for Certifying Agencies.

    b. Certifications or professional designations offered by an organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" may qualify when the certification or professional designation program also specifically meets the paragraph 1(d) requirements listed above.

6. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

a. use of one or more words such as “senior,” “retirement,” “elder,” or like words, combined with one or more words such as “certified,” “registered,” “chartered,” “adviser,” “specialist,” “consultant,” “planner,” or like words, in the name of the certification or professional designation; and

b. the manner in which those words are combined.

7. For purposes of this Rule, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

a. indicates seniority or standing within the organization; or

b. specifies an individual’s area of specialization within the organization

For purposes of this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

8. Nothing in this Rule shall limit the Securities Commissioner’s authority to enforce existing provisions of law.

W. Failing to provide advisory fee billing information to each client in compliance with the requirements of Rule 51-4.10(IA)(B)(2).

X. Accessing a client’s account by using the client’s own unique identifying information (such as username and password).

Y. Failing to comply with a child support order as described in section 26-13-126, C.R.S. This rule incorporates the requirements of section 26-13-126, C.R.S. An individual may inspect a copy of section 24-13-126, C.R.S. by making such request to the Colorado Department of Human Services at 1575 Sherman Street, 8th Floor, Denver, Colorado 80203 or the Colorado Division of Securities at 1560 Broadway, Suite 900, in Denver, Colorado 80203.

51-4.9(IA) Financial Reporting Requirements for Investment Advisers

Every licensed investment adviser who has custody of client funds or securities other than that provided for in Rule 51-4.10(IA)B.2 and B.3 or requires payment of advisory fees six months or more in advance in excess of $500 for any one client shall file an audited balance sheet with the Commissioner at the end of the adviser’s fiscal year. The balance sheet filed pursuant to this Rule must be:

A. Audited by an independent certified public accountant;

B. Examined in accordance with generally accepted accounting auditing standards and prepared in conformity with GAAP;

C. Accompanied by an opinion of the accountant as to the report of financial position and by note stating the principles used to prepare it.

51-4.10(IA) Custody and Safekeeping Requirements

A. Definitions. For purposes of this section:

1. "Custody" means holding directly or indirectly, client funds or securities, or having any authority to obtain possession of them or has the ability to appropriate them.

a. Custody includes:

i. Any arrangement (including a general power of attorney) under which you are authorized or permitted to withdraw client funds or securities maintained with a custodian upon your instruction to the custodian; and

ii. Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle) that gives you or your supervised person legal ownership of or access to client funds or securities.

2. "Independent representative" means a certified public accountant or attorney who:

a. Acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;

b. Is engaged by you to act as a gatekeeper for the payment of fees, expenses and capital withdrawals from the pooled investment;

c. Does not control, is not controlled by, and is not under common control with the investment adviser, investment adviser representative, or any related entity; and

d. Does not have, and has not had within the past two years, a material business relationship with the investment adviser, investment adviser representative, or any related entity.

3. "Qualified custodian" means the following independent institutions or entities that are not affiliated with the adviser by any direct or indirect common control and have not had a material business relationship with the adviser in the previous two years:

    a. A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;

    b. A licensed broker-dealer holding the client assets in customer accounts;

    c. A registered futures commission merchant registered under Section 4f(a) of the Commodity Exchange Act, holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

    d. A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

B. No investment adviser or investment adviser representative, licensed or required to be licensed 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:

1. The investment adviser or investment adviser representative complies with § 11-51-407 (5)(a)-(f), or

2. If the investment adviser or investment adviser representative has custody as defined in Rule 51-4.10(IA).A.1 due solely by having fees directly deducted from the client accounts and complies and provides the following safeguard requirements:

    a. Written Authorization. Investment advisers directly deducting fees must have written authorization from the client to deduct fees from the account held with the qualified custodian;

    b. Notice of fee deduction. Each time a fee is charged directly to a client or directly deducted from a client account, the investment adviser must concurrently:

        i. Send the qualified custodian an invoice specifying the amount of the fee to be deducted from the client's account; and

ii. Send the client an invoice specifying and itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management or investment advisory services the fee is based on, the amount of time charged and the services provided for hourly billing, and the time period covered by the fee;

c. The qualified custodian sends statements to the clients showing all disbursements for the custodian account, including the amount of the advisory fee. Statements should coincide with the investment adviser or investment adviser representative billing period.

d. The investment adviser notifies the Commissioner in writing that the investment adviser intends to use the safeguards provided above. Such notification is required to be given on Form ADV, or

3. If the investment adviser or investment adviser representative has custody as defined in Rule 51-4.10(IA).A.1 by having an association or an affiliation with a Pooled Investment Vehicle and complies and provides the following safeguard requirements:

a. Engage an Independent Representative. Hire an independent representative to review all fees, expenses and capital withdrawals from the pooled accounts;

b. Review of Fees. Send all invoices or receipts to the independent representative, detailing the amount of the fee, expenses or capital withdrawal and the method of calculation such that the independent representative can:

i. Determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement); and

ii. Forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser.

c. Notice of Safeguards. The investment adviser notifies the Commissioner in writing that the investment adviser intends to use the safeguards provided above. Such notification is required to be given on Form ADV.

51-4.11(IA). Licensing Exemption for Investment Advisers to Private Funds.

A. Definitions. For purposes of this regulation, the following definitions shall apply:

1. "Value of primary residence" means the fair market value of a person's primary residence, subtracted by the amount of debt secured by the property up to its fair market value.

2. "Private fund adviser" means an investment adviser who provides advice solely to one or more qualifying private funds.

3. "Qualifying private fund" means a private fund that meets the definition of a qualifying private fund in SEC Rule 203(m)-1, 17 C.F.R. 275.203(m)-1.

4. "3(c)(1) fund" means a qualifying private fund that is eligible for the exclusion from the definition of an investment company under section 3(c)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(c)(1).

5. "Venture capital fund" means a private fund that meets the definition of a venture capital fund in SEC Rule 203(l)-1, 17 C.F.R. § 275.203(l)-1.

B. Exemption for private fund advisers. Subject to the additional requirements of paragraph (c) below, a private fund adviser shall be exempt from the licensing requirements of Section 11-51- 401(1.5) if the private fund adviser satisfies each of the following conditions:

1. neither the private fund adviser nor any of its advisory affiliates are subject to an event that would disqualify an issuer under Rule 506(d)(1) of SEC Regulation D, 17 C.F.R. § 230.506(d)(1);

2. the private fund adviser files with the state each report and amendment thereto that an exempt reporting adviser is required to file with the Securities and Exchange Commission pursuant to SEC Rule 204-4, 17 C.F.R. § 275.204-4; and

3. the private fund adviser pays the fees prescribed by the Securities Commissioner.

C. Additional requirements for private fund advisers to certain 3(c)(1) funds. In order to qualify for the exemption described in paragraph (b) of this regulation, a private fund adviser who advises at least one (3)(c)(1) fund that is not a venture capital fund shall, in addition to satisfying each of the conditions specified in paragraphs (b)(1) through (b)(3), comply with the following requirements:

1. The private fund adviser shall advise only those 3(c)(1) funds (other than venture capital funds) whose outstanding securities (other than short-term paper) are beneficially owned entirely by persons who, after deducting the value of the primary residence from the person's net worth, would each meet the definition of a qualified client in SEC Rule 205- 3, 17 C.F.R. § 275.205-3, at the time the securities are purchased from the issuer;

2. At the time of purchase, the private fund adviser shall disclose the following in writing to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:

   a. all services, if any, to be provided to individual beneficial owners;

   b. all duties, if any, the investment adviser owes to the beneficial owners; and

   c. any other material information affecting the rights or responsibilities of the beneficial owners.

3. The private fund adviser shall obtain on an annual basis audited financial statements of each 3(c)(1) fund that is not a venture capital fund, and shall deliver a copy of such audited financial statements to each beneficial owner of the fund.

D. Federal covered investment advisers. If a private fund adviser is licensed with the Securities and Exchange Commission, the adviser shall not be eligible for this exemption and shall comply with the state notice filing requirements applicable to federal covered investment advisers in Section 11-51-401(1.6)

E. Investment adviser representatives. A person is exempt from the licensing requirements of Section 11-51-403 if he or she is employed by or associated with an investment adviser that is exempt from licensing in this state pursuant to this regulation and does not otherwise act as an investment adviser representative.

F. Electronic filing. The report filings described in paragraph (B)(2) above shall be made electronically through the IARD. A report shall be deemed filed when the report and the fee prescribed by the Securities Commissioner are filed and accepted by the IARD on the state's behalf.

G. Transition. An investment adviser who becomes ineligible for the exemption provided by this Rule must comply with all applicable laws and Rules requiring licensing or notice filing within ninety (90) days from the date the investment adviser’s eligibility for this exemption ceases.

H. Waiver Authority with Respect to Statutory Disqualification. Paragraph (B)(1) shall not apply upon a showing of good cause and without prejudice to any other action of the Colorado Securities Commissioner, if the Securities Commissioner determines that it is not necessary under the circumstances that an exemption be denied.

51-4.12(IA) Investment Adviser Written Policies and Procedures

A. It is unlawful for an investment adviser licensed or required to be licensed pursuant to 11-51-401(1.5), C.R.S. to provide investment advice to clients unless the investment adviser establishes, maintains, and enforces written policies and procedures tailored to the investment adviser's business model, taking into account the size of the firm, type(s) of services provided, and the number of locations of the investment adviser. The written policies and procedures must provide for at least the following:

1. Compliance Policies and Procedures. The investment adviser must establish, maintain, and enforce written compliance policies and procedures reasonably designed to prevent violations by the investment adviser of the Act and the rules that the Commissioner has adopted under the Act;

2. Supervisory Policies and Procedures. The investment adviser must establish, maintain, and enforce written supervisory policies and procedures reasonably designed to prevent violations by the investment adviser's supervised persons of the Act and the rules that the Commissioner has adopted under the Act;

3. Physical Security and Cybersecurity Policies and Procedures. An investment adviser must establish and maintain written procedures reasonably designed to ensure physical security and cybersecurity.

   a. In determining whether the cybersecurity procedures are reasonably designed, the Commissioner may consider:

      i. The firm's size;

      ii. The firm's relationships with third parties;

      iii. The firm's policies, procedures, and training of employees with regard to cybersecurity practices;

      iv. Authentication practices;

      v. The firm's use of electronic communications;

      vi. The automatic locking of devices that have access to Confidential Personal Information; and

      vii. The firm's process for reporting of lost or stolen devices;

   b. An investment adviser must include physical security and cybersecurity as part of its risk assessment.

c. To the extent reasonably possible, the cybersecurity procedures must provide for:

i. An annual assessment by the firm or an agent of the firm of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of Confidential Personal Information;

ii. The use of secure email containing Confidential Personal Information, including use of encryption and digital signatures;

iii. Authentication practices for employee access to electronic communications, databases and media;

iv. Procedures for authenticating client instructions received via electronic communication; and

v. Disclosure to clients of the risks of using electronic communications

d. Privacy Policy. The investment adviser must deliver upon the investment adviser's engagement by a client, and on an annual basis thereafter, a privacy policy to each client that is reasonably designed to aid in the client's understanding of how the investment adviser collects and shares, to the extent permitted by State and Federal law, non-public personal information. The investment adviser must promptly update and deliver to each client an amended privacy policy if any of the information in the policy becomes inaccurate.

4. Code of Ethics.

a. The investment adviser must establish, maintain, and enforce a written code of ethics that, at a minimum, includes:

i. A standard (or standards) of business conduct that the investment adviser requires of its supervised persons, which must reflect the investment adviser's fiduciary obligations and those of its supervised persons;

ii. Provisions requiring the investment adviser's supervised persons to comply with applicable State and Federal securities laws;

iii. Provisions requiring all of the investment adviser's access persons to report, and the investment adviser to review, their personal securities- transactions and holdings periodically as provided below;

iv. Provisions requiring supervised persons to report any violations of the investment adviser's code of ethics promptly to its chief compliance officer or, provided the investment adviser's chief compliance officer also receives reports of all violations, to other persons designated in the investment adviser's code of ethics; and

v. Provisions requiring the investment adviser to provide each of its supervised persons with a copy of the investment adviser's code of ethics and any amendments, and requiring the investment adviser's supervised persons to provide it with a written acknowledgment of their receipt of the code and any amendments.

b. Holdings reports. The code of ethics must require the investment adviser's access persons to submit to its chief compliance officer or other persons designated in the investment adviser's code of ethics a report of the access person's current securities holdings that meets the following requirements:

i. Content of holdings reports. Each holdings report must contain, at a minimum:

1. The title and type of security, and as applicable the exchange ticker symbol or CUSIP number, number of shares, and principal amount of each reportable security in which the access person has any direct or indirect beneficial ownership;

2. The name of any broker, dealer, or bank with which the access person maintains an account in which any securities are held for the access person's direct or indirect benefit; and

3. The date the access person submits the report.

ii. Timing of holdings reports. The investment adviser's access persons must each submit a holdings report:

1. No later than 10 days after the person becomes an access person, and the information must be current as of a date no more than 45 days prior to the date the person becomes an access person.

2. At least once each 12-month period thereafter on a date selected by the investment adviser, and the information must be current as of a date no more than 45 days prior to the date the report was submitted.

c. Transaction reports. The code of ethics must require access persons to submit to the investment adviser's chief compliance officer or other persons designated in the investment adviser's code of ethics quarterly securities transactions reports that meet the following requirements:

i. Content of transaction reports. Each transaction report must contain, at minimum, the following information about each transaction involving a reportable security in which the access person had, or as a result of the transaction acquired, any direct or indirect beneficial ownership:

1. The date of the transaction, the title, and as applicable the exchange ticker symbol or CUSIP number, interest rate and maturity date, number of shares, and principal amount of each reportable security involved;

2. The nature of the transaction (i.e., purchase, sale or any other type of acquisition or disposition);

3. The price of the security at which the transaction was effected;

4. The name of the broker, dealer, or bank with or through which the transaction was effected; and

5. The date the access person submits the report.

d. Timing of transaction reports. Each access person must submit a transaction report no later than 30 days after the end of each calendar quarter, which report must cover, at a minimum, all transactions during the quarter.

e. Exceptions from reporting requirements. The investment adviser's code of ethics need not require an access person to submit:

i. Any report with respect to securities held in accounts over which the access person had no direct or indirect influence or control;

ii. A transaction report with respect to transactions effected pursuant to an automatic investment plan in which regular periodic purchases or withdrawals are made automatically in or from investment accounts in accordance with a predetermined schedule and allocation, including a dividend reinvestment plan;

iii. A transaction report if the report would duplicate information contained in broker trade confirmations or account statements that the investment adviser holds in its records so long as the investment adviser receives the confirmations or statements no later than 30 days after the end of the applicable calendar quarter.

f. Pre-approval of certain investments. The investment adviser's code of ethics must require its access persons to obtain the investment adviser's approval before they directly or indirectly acquire beneficial ownership in any security in an initial public offering or in a limited offering.

g. Small advisers. If the investment adviser has only one access person, it is not required to submit reports to itself or to obtain its own approval for investments in any security in an initial public offering or in a limited offering, if the investment adviser maintains records of all of its holdings and transactions that this section would otherwise require the investment adviser to report.

5. Material Non-Public Information Policy and Procedures. The investment adviser must establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by the investment adviser or any person associated with the investment adviser.

6. Business Continuity and Succession Plan. The investment adviser must establish, maintain, and enforce written policies and procedure relating to a business continuity and succession plan. The plan must provide for at least the following:

a. The protection, backup, and recovery of books and records.

b. Alternate means of communications with customers, key personnel, employees, vendors, service providers (including third-party custodians),and regulators, including, but not limited to, providing notice of a significant business interruption or the death or unavailability of key personnel or other disruptions or cessation of business activities.

c. Office relocation in the event of temporary or permanent loss of a principal place of business.

d. Assignment of duties to qualified responsible persons in the event of the death or unavailability of key personnel.

e. Otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption.

B. Annual review. The investment adviser must review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation.

C. Chief Compliance Officer. The investment adviser must designate a supervised person as the chief compliance officer responsible for administering the investment adviser's policies and procedures.

D. Definitions. As used in this rule, the following terms mean:

1. "Access person" means:

a. Any of the investment adviser's supervised persons:

i. Who has access to non-public information regarding any client's purchase or sale of securities, or non-public information regarding the portfolio holdings of any reportable fund, or

ii. Who is involved in making securities recommendations to clients, or who has access to such recommendations that are non-public.

b. If providing investment advice is the investment adviser's primary business, all of its directors, officers and partners are presumed to be access persons.

2. "Chief compliance officer" means a supervised person with the authority and resources to develop and enforce the investment adviser's policies and procedures. The individual designated to serve as chief compliance officer must be registered as an investment adviser representative and must have the background and skills appropriate for fulfilling the responsibilities of the position.

3. "Federal securities laws" means the Securities Act of 1933 (15 U.S.C. 77a-aa), the Securities Exchange Act of 1934 (15 U.S.C. 78a-mm), the Investment Company Act of 1940 (15 U.S.C. 80a), the Investment Advisers Act of 1940 (15 U.S.C. 80b), title V of the Gramm-Leach-Bliley Act (Pub. L. 106-102, 113 Stat. 1338 (1999), the Sarbanes-Oxley Act of 2002 (Pub. L. 107-204, 116 Stat. 745 (2002)), any rules adopted by the U.S. Securities and Exchange Commission under any of these statutes, the Bank Secrecy Act (31 U.S.C. 5311-5314; 5316-5332) as it applies to funds and investment advisers, and any rules adopted thereunder by the U.S. Securities and Exchange Commission or the U.S. Department of the Treasury.

4. "Fund" means an investment company registered under the Investment Company Act.

5. "Initial public offering" means an offering of securities registered under the Securities Act of 1933 (15 U.S.C. 77a), the issuer of which, immediately before the registration, was not subject to the reporting requirements of sections 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)).

6. "Limited offering" means an offering that is exempt from registration under the Securities Act of 1933 pursuant to section 4(2) or section 4(5) (15 U.S.C. 77d(2) or 77d(5)) or pursuant to §§ 230.504, 230.505, or 230.506 of this chapter.

7. "Material, nonpublic information" is material information that has not been disseminated in a manner making it available to investors generally. Information is material when it is substantially likely that the information would be important to a reasonable investor making an investment decision or is likely to have a significant impact on valuation.

8. "Purchase or sale of a security" includes, among other things, the writing of an option to purchase or sell a security.

9. "Reportable security" means a security as defined in section 202(a)(18) of the Securities Act of 1933(15 U.S.C. 80b-2(a)(18)), except that it does not include:

    a. Direct obligations of the Government of the United States;

    b. Bankers' acceptances, bank certificates of deposit, commercial paper and high quality short-term debt instruments, including repurchase agreements;

    c. Shares issued by money market funds;

    d. Shares issued by open-end funds other than reportable funds; and

e. Shares issued by unit investment trusts that are invested exclusively in one or more open-end funds, none of which are reportable funds.

10. "State securities laws" means all applicable state securities statutes, rules, and regulations, including, without limitation, the registration, permit or qualification requirements thereunder and the Protection of Vulnerable Adults from Financial Exploitation Act at 11-51-1001, C.R.S.

11. ''Supervised person'' means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser. The definition includes investment adviser representatives, employees, independent contractors, or other associated persons and supervised personnel, or other person acting on the behalf of the investment adviser.

51-4.13(IA) Net Worth Requirements

A. Liquid Net Worth Requirements:

1. Positive Liquid Net Worth Requirement for Investment Advisers. An investment adviser must maintain a positive net worth at all times calculated under the requirements of Rule 51-4.6(IA)(A)(6).

2. Minimum Liquid Net Worth for Investment Advisers with Discretionary Authority. An investment adviser with discretionary authority over client funds or securities must maintain a minimum liquid net worth of ten thousand dollars ($10,000) at all times, unless the investment adviser is subject to the greater requirements of subdivision (3) below.

3. Minimum Liquid Net Worth for Investment Advisers with Custody. An investment adviser with custody of client funds or securities must maintain a minimum liquid net worth of thirty-five thousand dollars ($35,000) at all times, except investment advisors with custody solely because the investment adviser has fees directly deducted from client accounts and the investment adviser complies with the safekeeping requirements in 51-4.10(IA) above and the recordkeeping requirements of 51-4.6(IA);

4 Notification. An investment adviser must notify the Commissioner by the close of business on the next business day if the investment adviser's liquid net worth is less than the minimum required. After filing the notice, the investment adviser must file a report with the Commissioner of its financial condition by the close of business on the business day following notice including:

a. A trial balance of all ledger accounts;

b. A statement of all client funds or securities that are not segregated;

c. A computation of the aggregate amount of client ledger debit balances; and

d. A statement indicating the number of client accounts.

5. Appraisals. The Commissioner may require an investment adviser to submit a current appraisal to establish the worth of any asset.

6. Exception for Out-of-State Advisers. An investment adviser with its principal place of business in a state other than Colorado, properly licensed in that state must maintain the minimum capital required by that state.

B. Surety Bond.

1. Additional Bond Requirement. An investment adviser with discretionary authority or custody who does not meet the minimum liquid net worth requirement of subdivisions (A)(2) and (3) above must also be bonded for the amount of the liquid net worth deficiency rounded up to the nearest five thousand dollars ($5,000) and file a Form U-SB with the Commissioner.

2. Exemptions. An investment adviser is exempt from the requirements of subdivision (1) above if the investment adviser:

a. Does not have discretionary authority; or

b. Has its principal place of business in a state other than Colorado, is properly licensed in that state, and satisfies the bonding requirements of that state.

51-4.14(IA) Performance-Based Compensation Exemption for Investment Advisers

Any licensed investment adviser who wishes to charge a fee based on a share of the capital gains or the capital appreciation of the funds or any portion of the funds of a client must comply with SEC Rule 205-3 (17 Code of Federal Regulations §275.205-3), which permits the use of such fee if the client is a “qualified client” as defined therein.

CHAPTER 5 (Reserved for future use)

CHAPTER 6 PROCEDURES FOR HEARINGS CONDUCTED BY THE COLORADO SECURITIES BOARD AND THE OFFICE OF ADMINISTRATIVE COURTS

51-6.0 Definitions.

In addition to those terms defined in Rule 51-2.1, unless the context otherwise requires, the following are defined:

1. "Administrative Law Judge." An administrative law judge with the Office of Administrative Courts appointed pursuant to section 24-30-1001, et seq., C.R.S.

2. "Authorized Representative". An attorney, or other person authorized by a Party to represent themselves in a cease and desist proceeding.

3. "Board". The Colorado Securities Board as created pursuant to section 11-51-702.5, C.R.S.

4. "Business Day". Any calendar day except Saturday or Sunday, New Year's day, Dr. Martin Luther King Jr. day, Washington-Lincoln day, Memorial day, Independence day, Labor day, Columbus day, Veteran's day, Thanksgiving, Christmas, or any other day upon which the Division is not open for business.

5. "Party". The Division and/or the specifically named Person(s) whose legal rights, duties or privileges are being determined in a cease and desist proceeding; any other Person(s) who, as a matter of constitutional right or by any provision of the law, is entitled to participate fully in the proceeding.

6. "Presiding Member". The member of the Board designated by the chairperson to preside over a cease and desist proceeding before the Board.

7. "Person". Those individuals, entities or organizations set forth in section 11-51-201(12), C.R.S.

8. "Respondent". Party(ies) who are named in the petition filed by the Division initiating the cease and desist proceeding.

51-6.10 Representation

A. At all hearings, an individual may appear on his or her own behalf, or be represented by an attorney authorized to engage in the practice of law in Colorado. Any other person or entity who is a Party must be represented by an attorney who is licensed or otherwise authorized to engage in the practice of law in Colorado, except as described by § 13-1-127, C.R.S.

B. An attorney representing a Respondent shall enter his or her appearance with the Division, and as the case may be, with either the Office of Administrative Courts or the Board prior to the time a written answer is due. The entry of appearance shall contain the attorney's name, address, telephone number, bar number, facsimile number, the firm name, if the attorney is a member of a law firm, and the name, address and telephone number of the Party represented.

51-6.1 Hearings to Review Either Summary Stop Orders or Summary Orders Suspending an Exemption

A. Any person against whom the Commissioner has entered either a summary stop order or a summary order suspending an exemption pursuant to section 11-51-606(3) (a) or (b), C.R.S. may make a written request for a hearing before the Colorado Securities Board (the "Board"). A written request in the form provided for by this Rule must be received by the Division within twenty-one (21) calendar days from the date of the order that is the subject of the appeal, or the Commissioner's order shall become final twenty-one days after entry if no such request is received.

B. The written request for hearing shall respond to each provision of the Commissioner's order and shall state with reasonable particularity the reasons why the order should not be continued. The written request shall further specify any dates within the next twenty-one (21) calendar days on which the requesting party shall be unable to attend a hearing.

C. Upon receipt of a satisfactory written request for a hearing, the Commissioner immediately shall notify the chairperson of the Board who, after consulting with other Board members, the Commissioner and the Attorney General's Office, shall set a date and time for the requested hearing within twenty-one (21) calendar days from the date the written request was received by the Division. Written notice of the date and time of the haring shall be provided immediately by mail to the parties. No continuance of the hearing shall be granted by the Board except as necessary to enable Board members to attend or as agreed to by mutual consent of all parties to the hearing.

D. The Board chairperson shall designate three (3) member of the Board to serve as a hearing panel to conduct the hearing and issue an initial decision on behalf of the Board. If a member of the hearing panel shall recuse himself or herself from participation, the remaining panel members shall conduct the hearing and issue the initial decision.

E. The sole issues for review at the hearing shall be whether the Commissioner's summary order was based upon sufficient evidence of violations of the securities laws and whether immediate issuance of the summary order was imperatively necessary for the protection of investors.

F. The hearing shall be conducted pursuant to section 24-4-105, C.R.S., the hearings provisions of the state Administrative Procedures Act. The hearing panel may order such procedures as may be necessary to conduct a fair hearing within the expedited time period, including, but not limited to: expedited discovery procedures, restrictions on the number of witnesses and length of testimony presented and limits on the length of argument and the extent of any motion practice.

G. A person requesting a hearing shall be represented by legal counsel, who shall enter an appearance when the request for hearing is filed, unless that person is an individual appearing on his or her own behalf. Notices concerning the hearing shall be mailed first class to the attorney of record or to the person if appearing on his or her own behalf.

H. No later than fourteen (14) calendar days following the completion of the hearing, unless extended by the hearing panel for good cause, the hearing panel shall issue its initial decision, accompanied by findings of fact and conclusions of law. A copy of the initial decision shall be mailed to the attorneys for the parties, and to any individual appearing on his or her own behalf. The Commissioner shall enter his final decision, based upon the initial decision of the Board, that shall be a final order for purposes of judicial review.

51-6.2 Hearings on Orders to Show Cause Why a Securities License Should Not be Suspended Summarily

A. At the time of entry of an order to show cause pursuant to section 11-51-606(4), C.R.S. the Commissioner shall contact the chairperson of the Colorado Securities Board (the “Board”) and obtain a date and time for a hearing before the board to consider the order to show cause. The hearing shall commence no sooner than seven (7), nor later than twenty (20), calendar days following the date the order to show cause is mailed to the persons against whom the order has been entered. The notice sent to such persons shall contain a copy of the order to show cause and specify the date and time for the hearing, which date shall not be continued. The notice shall be mailed as required by section 11-51-606(4) (b) and contain a certificate by an employee of the Division that the statutory requirements for providing notice have been met. Once commenced, the hearing may be recessed only if necessary to permit Board members to participate or upon mutual consent of the parties and approval by the Board.

B. No later than five (5) business days prior to the hearing date, the respondent shall file a written answer to the order to show cause responding specifically to the provisions of the order to show cause and raising any defenses that the respondent believes are applicable. A copy of the answer shall be filed with the Division, which shall provide copies immediately of the chairperson of the Board and the office of the attorney general.

C. The Board chairperson shall designate three (3) members of the Board to serve as a hearing panel to conduct the hearing and issue an initial decision on behalf of the Board. If a member of the hearing panel shall recuse themselves from participation, the remaining panel members shall conduct the hearing and issue the initial decision.

D. If the respondent does not appear at the date and time of the hearing, the Division shall present evidence that notification was promptly sent to the respondent as required by section 11-51- 606(4) (b), C.R.S. and evidence to establish there is a reasonable basis to believe the respondent either received actual notice, or, after reasonable search by the Division, cannot be located. The Division shall have the burden to present evidence to establish that the securities license of the respondent should be suspended summarily or that the securities activities of the respondent should be limited or conditions imposed summarily pending final determination of a proceeding under the State Administrative Procedures Act.

E. The sole issues for review at the hearing shall be whether there is sufficient evidence that any of the grounds specified in section 11-51-410(1) exist so as to warrant summary suspension of respondent's securities license or the imposition of limitations on respondent's securities activities pending full administrative review.

F. The hearing shall be conducted pursuant to section 24-4-105, C.R.S., the hearings provision of the state Administrative Procedures Act. The hearing panel may order such procedures as may be necessary to conduct a fair hearing within the expedited time period, including, but not limited to: expedited discovery procedures, restrictions on the number of witnesses and length of testimony presented and limits on the length of argument and the extent of any motion practice.

G. Any respondent who is not an individual shall be represented at the hearing by legal counsel, who shall enter an appearance at the time the written answer is due. An individual respondent may appear on his or her own behalf.

H. Promptly after the conclusion of the hearing, the hearing panel shall enter findings of fact, conclusions of law, and its initial decision recommending to the Commissioner what action should be taken. A copy of the initial decision shall be mailed immediately to legal counsel for the parties at the hearing, or directly to respondent, if not represented by legal counsel, at the last known mailing address or if respondent as shown on the records of the Division. Within ten (10) calendar days of the date of entry of the initial decision, either respondent or the Division may file written exceptions to the initial decision with the Commissioner; provided, however, that if the initial decision is mailed on a date later than the date the initial decision was entered, the ten (10) day period shall begin on the date the initial decision was mailed. On the basis of the initial decision and any written exceptions, the Commissioner shall then issue his order, that shall be a final order for purposes of judicial review.

51-6.3 Hearings on Orders to Show Cause Why a Cease and Desist Order Should Not Enter.

A. Scope of this Rule

1. Pursuant to section 11-51-606(1.5)(d)(III), C.R.S., this Rule 51-6.3 shall govern cease and desist proceedings under section 11-51-606(1.5), C.R.S., and shall be supplemented by the Administrative Procedures Act as adopted in Colorado, and specifically section 24- 4-105, C.R.S., the hearings provision of the State Administrative Procedures Act.

2. To the extent a specific provision of this Rule is in conflict with the State Administrative Procedures Act, the provision of this Rule shall govern.

3. To the extent a specific provision of this Rule is in conflict with the Rules of Procedure for the Office of Administrative Courts, the provisions of this Rule shall govern.

B. Commencement of Cease and Desist Proceedings

1. The Division may commence a cease and desist proceeding by filing with the Commissioner a Petition, signed by an officer or employee of the Division, requesting the Commissioner issue an order to the named Respondent(s) to show cause why the Commissioner should not enter a final order directing such person(s) to cease and desist from the unlawful act or practice specified, or impose such other sanctions as provided in section 11-51-606(1.5)(d)(IV), C.R.S.

2. The Petition shall state clearly and concisely the facts which are the grounds for the unlawful act or practice in question as set forth in section 11-51-606(1.5)(b), C.R.S., the relief sought, and any other additional information or documents in support of the grounds in the Petition.

3. The Commissioner, upon issuance of the order to show cause, may refer, in his or her sole discretion, the matter for conduct of the hearing either to an Administrative Law Judge or the Board, based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter.

4. Within two calendar days of issuance of an order to show cause pursuant to section 11- 51-606(1.5)(a), C.R.S., the Commissioner shall notify the Board or the Office of Administrative Courts, and obtain a date, time, and place for a hearing on the Order to Show Cause. The hearing shall commence no sooner than ten (10), nor later than twenty-one (21) calendar days following service or transmission of the Notice, the Order to Show Cause, and other information as required by section 11-51-606(1.5)(c), C.R.S. The hearing may be continued by agreement of all of the Parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than thirty-five (35) calendar days following the service or transmission of the Notice as required by section 11-51-606(1.5)(c), C.R.S.

5. The Notice shall be delivered, transmitted or served as required by section 11-51- 606(1.5)(c), C.R.S., and contain a certificate by an employee or officer of the Division that the statutory requirements for providing notice have been met. Such certificate shall be deemed competent evidence of service of the Notice.

6. In cases referred to the Board by the Commissioner, the chairperson of the Board shall designate no less than three (3) members of the Board to serve as the Hearing Panel to conduct the hearing on the Order to Show Cause. The Board chairperson shall also designate the Presiding Member for purposes of the hearing. The Hearing Panel, through the Presiding Member, shall have the authority to do all things necessary and appropriate to discharge their duties, including, but not limited to, the following:

    a. Administering oaths and affirmations;

    b. Signing and issuing subpoenas as authorized by law, subject to the provisions of subparagraph E.9., below;

    c. Regulating the course of the proceeding and the conduct of the Parties and their counsel;

    d. Allowing the appearance or participation of Hearing Panel members, witnesses, or Parties by telephone, as the Panel, in its sole discretion, deems appropriate;

e. Conducting such prehearing conferences or proceedings as the Hearing Panel deems appropriate, and issuing appropriate orders that shall control the subsequent course of the proceedings;

f. Allowing recusal of any Hearing Panel member from participating in the proceedings or hearing, in which case the remaining panel members shall conduct the hearing and issue findings of fact, conclusions of law, and the Hearing Panel's initial decision;

g. Requiring the filing of briefs and proposed findings of fact and conclusions of law by the Parties in preparation for the initial decision;

h. Disposing of motions made during the course of the hearing;

i. Ruling on admissibility or exclusion of evidence; and

j. Preparing and transmitting the initial decision to the Commissioner as required in section 11-51-606(1.5)(d)(III), C.R.S.

7. No later than three (3) business days prior to the hearing date, the Respondent(s) shall file a written answer to the Order to Show Cause admitting, denying, or otherwise specifically responding to the allegations and assertions in the Order and Petition, and raising any defenses that the Respondent(s) believes are applicable. A copy of the answer shall be filed in accordance with Rule 51-6.3.D.3., and served on the other Parties to the proceeding.

8. No later than three (3) business days prior to the hearing date, the Parties shall file a written statement in accordance with Rule 51-6.3.D.3., with service on the other Parties, setting forth the name, address, telephone number, and a brief statement of the substance of the testimony for each witness the Party intends to call at the hearing, including any expert witness. The Hearing Panel or the Administrative Law Judge, in their discretion, may permit modification of, or divergence from the written statement prior to or during the hearing, for good cause shown.

9. All discovery, either by deposition or in writing, including requests for production of documents, shall not be allowed in cease and desist proceedings.

10. In cases referred to the Office of Administrative Courts by the Commissioner, Rule 18 of Office of Administrative Courts' Rules of Procedure shall apply as to subpoenas.

11. In a matter referred to the Board by the Commissioner, the Hearing Panel, through the Presiding Member, as identified below in this Rule, may issue subpoenas requiring the attendance and testimony of witnesses in accordance with the following provisions:

    a. A Party may make a written application to the Hearing Panel no later than three (3) business days prior to the hearing date. The Hearing Panel may issue the subpoena requested in the name of the Commissioner, and the Presiding Member for the Hearing Panel may sign the subpoena. Where it appears to the Hearing Panel that the subpoena sought may be unreasonable, oppressive, excessive in scope, unduly burdensome, or may result in undue delay in the proceedings, the Presiding Member may, in his or her discretion, require the Party requesting the subpoena to show the general relevance and reasonable scope of the testimony or evidence sought. In the event the Hearing Panel and Presiding Member, after consideration of all the circumstances, determine that the subpoena or any of its terms are unreasonable, oppressive, excessive in scope, unduly burdensome, or will result in undue delay, they may refuse to issue the subpoena, or issue the subpoena only upon such terms and conditions as fairness requires.

    b. Every subpoena shall show on its face the name and address of the requesting Party. Notice to the other Parties shall not be required for issuance of a subpoena. The form of the subpoena shall adhere to the form used in administrative hearings before the Division Administrative Hearings in the Department of General Support Services.

    c. Any Person to whom a subpoena is directed may, no later than three (3) calendar days prior to the date set for the hearing, file in writing a motion that the subpoena be vacated or modified. The Presiding Member shall give prompt notice to the Party who requested issuance of the subpoena of the motion. The Hearing Panel, through the Presiding Member, may grant the petition in whole, or in part, upon a finding that the testimony or evidence requested does not relate with reasonable directness to any matter in question, or upon a finding that the subpoena is unreasonable, oppressive, excessive in scope, unduly burdensome, or will cause undue delay in the proceedings, or has not been served with forty-eight (48) hours of the commencement of hearing, as required by Rule 45 of the Colorado Rules of Civil Procedure.

    d. A subpoena issued under this Rule shall be delivered to the Party requesting the subpoena and served by such Party in the same manner as a subpoena issued by a district court in Colorado.

e. Except for witnesses subpoenaed by the Division, witnesses subpoenaed pursuant to this Rule shall be paid by the requesting Party the same fees for attendance and mileage at the time of service, as are paid witnesses in the district courts of the state of Colorado.

f. Upon the failure or refusal of any witness to comply with a subpoena issued and served upon them under this Rule, the Board, through the Division, may petition the District Court for the City and County of Denver for an order citing such witness in contempt for such failure or refusal. The procedure for such contempt proceedings shall be governed pursuant to section 24-4-105(5), C.R.S..

C. Pleadings; Signatures; Copies; Computation of Time; Service

1. Pleadings and other papers filed in a cease and desist proceeding shall contain the caption “BEFORE THE SECURITIES COMMISSIONER, STATE OF COLORADO,” the title of the proceeding, designated as “IN THE MATTER OF (name of Respondent(s)),” the docket number and the name of the pleading. Such pleadings and papers shall be submitted on 8 ½ -inch by 11-inch paper, with left-hand margins not less than 1 ½ inches wide and the other margins not less than 1 inch. The impression contained on such pleadings or papers shall be only on one side of the page.

2. Pleadings and papers filed in cease and desist proceedings shall be signed and dated by the Party on whose behalf the filing is made or by the Party’s Authorized Representative, and also contain the address, telephone number and facsimile number of such Party or Authorized Representative. Signature constitutes a certification by the signer that he has read the document, knows the contents thereof, that such statements are true, that it is not interposed for delay, and that if the document has been signed by an Authorized Representative, that such Representative has full power and authority to do so.

3. Each Party filing pleadings or papers in cases referred to the Board by the Commissioner will file the original and two copies, with the original and one copy filed with the Board, and one copy filed with the Division, unless otherwise directed by the Commissioner or the Board. Such pleadings and papers shall be filed by sending or delivering them to the Board, in care of the Division at its current address, and to the Division at its current address. In cases referred to an Administrative Law Judge by the Commissioner, each Party will file the original pleading or papers with the Office of Administrative Courts and one copy filed with the Division.

4. Except when otherwise provided by this Rule, service of all pleadings and other papers by a Party shall be made by personal delivery, U.S. Mail (including express or overnight mail or delivery), or facsimile transmission as follows:

   a. Service of such pleadings or papers shall be deemed complete as of the date of delivery by hand, the date of deposit in the United States mails, postage prepaid, or the date a facsimile is transmitted and received. A Party who has served a pleading or paper shall attach proof of service to the original filed in accordance with this Rule, which proof of service shall be in affidavit form and specify the method of service, the identity of the server, the person served (if by personal service), the date and place of service, and the address to which the materials were mailed. If the service is made by certified or registered mail, the mailing receipt shall be attached to the affidavit of service. If service is made by facsimile transmission, a copy of the cover page indicating the documents transmitted, the date of transmission, the person transmitting the materials, the Party receiving the transmission, and successful transmission of the materials shall be attached to the affidavit of service.

   b. In computing any period of time prescribed or allowed by this Rule, the provisions of Rule 6(e) of the Colorado Rules of Civil Procedure shall apply.

5. Unless otherwise specifically provided by law, computation of any time period referred to in this Rule 51-6.3 shall begin with the first day following the act that initiates the running of the time period. The last day of the time period so computed is to be included unless it is a Saturday, Sunday, legal holiday, or any other day on which the Division is closed, in which event the period shall run until the end of the next following business day. When the time period is less than seven (7) days, intervening days when the Division is closed shall be excluded in the computation.

6. In cases referred to the Board by the Commissioner, the Division will maintain all records of, and filings received by the Board in accordance with statutory requirements.

7. An attorney representing a Party in a cease and desist proceeding may withdraw his or her appearance of the Party only upon notice of such withdrawal being filed no later than two (2) business days before the scheduled hearing, with such notice served upon the Party as provided in this Rule. Any such withdrawal shall not be effective unless approved by the Board or the Administrative Law Judge. The approved withdrawal shall not constitute grounds for continuance of the commencement of the hearing in the cease and desist proceeding.

D. Conduct of the Hearing

1. The sole issues for determination at the hearing shall be whether Respondents have engaged, or are about to engage in any of the acts or practices specified in section 11- 51-606(1.5)(b), C.R.S. so as to warrant the imposition of sanctions as provided in section 11-51-606(1.5)(d)(IV), C.R.S.

2. The burden of proof at the hearing shall be on the Division to establish that the Respondent(s) have or are about to commit any of the acts or practices set forth in section 11-51-606(1.5)(b), C.R.S. by a preponderance of the evidence. Any Party asserting an affirmative defense, including any exemption, exception or exclusion, shall have the burden of proof to establish such defense, exemption, exception or exclusion by a preponderance of the evidence.

3. In the event the Respondent(s) does not appear at the date and time of the hearing, the Division shall present evidence as follows:

   a. That notification was properly sent or served upon such Respondent(s) as required by section 11-51-606(1.5)(c), C.R.S.; and

   b. To establish there is a reasonable basis to believe the Respondent(s) either received the notification, or, after reasonable search by the Division, cannot be located.

4. In the event the Respondent(s) fails to file an answer as provided in this Rule, in addition to the Division presenting the evidence as set forth in clauses (a) and (b) of this subparagraph D.3., the Division shall present evidence, or request the Hearing Panel or the Administrative Law Judge to take Administrative Notice, that the Respondent(s) failed to file an answer as provided in this Rule.

5. Unless otherwise provided by law, the Hearing Panel and the Administrative Law Judge shall observe a relaxed standard in applying the Colorado Rules of Evidence. The Hearing Panel and the Administrative Law Judge shall, however, observe the Rules of privilege as provided by law. Evidence admissible at the hearing includes, but shall not be limited to, such evidence as may be admissible in a civil non-jury case in Colorado under the Colorado Rules of Evidence; hearsay evidence, unless the Hearing Panel or Administrative Law Judge determines that the potential prejudice of such evidence clearly outweighs its probative value; certified or self-authenticated documents, orders, or other papers; and any record, investigative report, document and stipulation which is offered and is not determined to be irrelevant or immaterial by the Hearing Panel or Administrative Law Judge. The Hearing Panel or Administrative Law Judge may take notice of any fact that may be judicially noticed by the courts of Colorado, or of general, technical or scientific facts within the Panel's specialized knowledge, and which is specified in the record. The Hearing Panel or Administrative Law Judge will notify the Parties of the material so noticed and provide the Parties an opportunity to contest the facts so noticed.

6. Evidence objected to may be received by the Hearing Panel or Administrative Law Judge, and rulings on the admissibility or exclusion of such evidence, if not made at the hearing, shall be made as part of the findings of fact, conclusions of law, and initial decision. The Hearing Panel or Administrative Law Judge shall be authorized to impose limits on the number of witnesses and documentary or other evidence on any issue to prevent undue delay, waste of time, or the needless presentation of cumulative evidence. This authority shall include the power to limit or preclude the testimony of any expert witness called by any Party.

7. The weight to be attached to any evidence on the record will rest within the sound discretion of the Hearing Panel or Administrative Law Judge. The Hearing Panel or Administrative Law Judge may require any Party, with appropriate notice to the other Parties, to submit additional evidence on any matter relevant to the issues in the hearing.

8. The proceedings conducted in connection with the hearing shall be electronically or stenographically recorded. Transcripts of the proceedings shall be supplied to any Party, upon reasonable request, at the expense of the requesting Party. In such event, a copy of the transcript and the record, as defined herein, shall be provided to the Board, through the Division, at no expense to the Board, and upon such other terms as the Commissioner shall order. The record of the hearing shall include, in addition to the transcript, all pleadings, motions, papers and filings; all evidence received or considered, including a statement of matters officially noted; questions or offers of proof, objections, and rulings on such objections; findings of fact, conclusions of law, and initial decision; and the final order entered by the Commissioner.

9. In the case of any hearing not continued by agreement of the parties, the hearing shall conclude no later than twenty-six (26) calendar days following the service or transmission of the Notice as required by section 11-51-606(1.5)(c), C.R.S. In the case of any hearing continued by agreement of the parties, the hearing shall conclude no later than forty (40) calendar days following the service or transmission of the Notice as required by section 11-51-606(1.5)(c), C.R.S. The Hearing Panel or Administrative Law Judge shall not evade the time limits contained herein by commencing the hearing within the time requirements and then recessing or continuing the hearing, or conducting any portion of the hearing, past the time limits for concluding the hearing set forth herein.

E. Initial Decision; Final Order

1. After the conclusion of the hearing, the Hearing Panel or Administrative Law Judge shall enter written findings of fact, conclusions of law, and its initial decision based on the record of the hearing, recommending to the Commissioner that a final order be issued affirming, denying, vacating, or otherwise modifying the Order to Show Cause. These findings of fact, conclusions of law and initial decision shall be issued within ten calendar days after the conclusion of the hearing and shall be promptly submitted to the Commissioner, with courtesy copies served on the Parties by the Division.

2. If, after reviewing the findings of fact, conclusions of law, and initial decision, and the record of the hearing, the Commissioner reasonably finds that the Respondent(s) has engaged, or is about to engage, in any of the acts or practices set forth in section 11-51- 606(1.5)(b), C.R.S., and upon making the findings required by section 11-51-704(2), C.R.S., the Commissioner may issue a final cease and desist order imposing one or more of the sanctions set forth in section 11-51-606(1.5)(d)(IV), C.R.S. The Commissioner shall provide notice of the final order within ten calendar days after receiving the initial decision.

3. The Division shall promptly provide notice of the final order to all the Parties and each Party against whom such order has been entered pursuant to section 11-51-606(1.5)(c), C.R.S.

51-6.4 Hearings on the denial, suspension or revocation of a registration statement and the denial or revocation of exemption from registration.

A. Following the filing of request for any hearing filed pursuant to 11-51-310, C.R.S., the Commissioner shall notify the Office of Administrative Courts, and obtain a date, time, and place for a hearing. The hearing shall commence no later than 120 calendar days following filing at the Office of Administrative Courts of the Notice to Set, Notice of Duty to Answer or Notice of Charges. The hearing may be continued by agreement of all of the Parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter. The hearing shall be conducted pursuant to section 24-4-105, C.R.S., the hearings provision of the state Administrative Procedures Act.

B. An attorney representing a Party in a hearing on a denial, suspension or revocation of a registration statement and the denial or revocation of exemption from registration may withdraw his or her appearance of the Party only upon notice of such withdrawal being filed no later than two (2) business days before the scheduled hearing, with such notice served upon the Party as provided in this Rule. Any such withdrawal shall not be effective unless approved by the Board or the Administrative Law Judge. The approved withdrawal shall not constitute grounds for continuance of the commencement of the hearing in the denial, suspension or revocation proceeding.

51-6.5 Hearings on the denial of an applicant or suspension, revocation, censure, limit or other conditions on the securities activities of a broker-dealer, sales representative, investment adviser or investment adviser representative.

A. Following the filing of request for any hearing filed pursuant to 11-51-410, C.R.S., the Commissioner shall notify the Office of Administrative Courts or the Board, and obtain a date, time, and place for a hearing. The hearing shall commence no later than 120 calendar days following filing at the Office of Administrative Courts or the Board of the Notice of Duty to Answer or Notice of Charges. The hearing may be continued by agreement of all of the Parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter. The hearing shall be conducted pursuant to section 24-4-105, C.R.S., the hearings provision of the state Administrative Procedures Act.

B. An attorney representing a Party in hearing on the suspension or revocation or the denial of an application of a license as broker-dealer, sales representative, investment advisor or investment advisor representative may withdraw his or her appearance of the Party only upon notice of such withdrawal being filed no later than two (2) business days before the scheduled hearing, with such notice served upon the Party as provided in this Rule. Any such withdrawal shall not be effective unless approved by the Board or the Administrative Law Judge. The approved withdrawal shall not constitute grounds for continuance of the commencement of the hearing in the denial of an applicant or suspension, revocation, censure, limit or other condition on the securities activities proceeding.

CHAPTER 7 ADMINISTRATION AND FEES

51-7.1 Consent to Service of Process

A. An applicant who files Form BD, ADV, or U-4, pursuant to Chapter 4 or Chapter 4 (IA) of these Rules, shall file the required Consent to Service of Process by completing the relevant portion of Form BD, ADV or U-4.

B. An applicant who is registered or registering with FINRA or who is affiliated with a FINRA broker- dealer shall file the Consent to Service of Process, through such FINRA broker-dealer, with the CRD. The Consent to Service of Process shall be deemed to be filed with the Securities Commissioner on the date CRD enters it if CRD verification is not required, or the date CRD verifies it if CRD verification is required.

C. An applicant who is registered or registering with the SEC, or is licensed or licensing with the Securities Commissioner as an investment adviser, or who is affiliated with an investment adviser or federal covered adviser shall file the Consent to Service of Process, through such investment adviser, with the IARD. The Consent to Service of Process shall be deemed to be filed with the Securities Commissioner on the date all fees are received and the filing is accepted by IARD on behalf of the Securities Commissioner.

D. The Consent to Service of Process of a sales representative who is not registered or registering with FINRA or who is not affiliated with a FINRA broker-dealer shall be filed through the broker- dealer, or issuer with which the person is affiliated with the Securities Commissioner.

E. Any other person who must file a Consent to Service of Process form shall file Forms U-2 (Uniform Consent to Service of Process) and U-2A (Uniform Corporate Resolution), if applicable, with the Securities Commissioner.

51-7.2 Requests for Notification of Rule Making

A. Pursuant to section 24-4-103(3) (b), C.R.S. (1989), the Division shall keep a list of persons who request to be notified of proposed rule making.

B. Any person who requests to be placed on this list must send a written request to the Securities Commissioner.

C. It is the responsibility of the person requesting such notification to keep the Division informed in writing of any changes in the address to which the notice is to be sent.

D. A person may request such notification only on his or her own behalf.

51-7.3 Filing of Forms and Payment of Fees

Unless otherwise specified by the Colorado Securities Act or by Rule or order promulgated thereunder:

A. All forms or notices required to be filed under the Colorado Securities Act and the Rules and orders promulgated thereunder must be filed with the Securities Commissioner at the following address:

Colorado Division of Securities 1560 Broadway, Suite 900 Denver, Colorado 80202

B. All fees shall be made by check or warrant payable to the “Colorado State Treasurer.”

51-7.4 Form and Content of Financial Statements

A. The annual financial statements, or any other financial statements required to be filed with the Commissioner, except as noted in B. below, shall be audited by a Certified Public Accountant (“CPA”) and contain:

An Unqualified Auditor's Report, Balance Sheet,

Statement of Operations,

Statement of Changes in Shareholders' Equity, Statement of Cash Flows, and

All notes and disclosures as required by generally accepted accounting principles (“GAAP”)

Comparative financial statements shall be prepared for all entities that have been in operation for more than 12 months.

B. The interim financial statements required to be filed with the Commissioner shall be reviewed by a CPA and contain:

A CPA's Unqualified Accountant's Review Report, Balance Sheet,

Statement of Operations,

Statement of Changes in Shareholders' Equity, Statement of Cash Flows, and

All notes and disclosures as required by GAAP unless waived by order of the Commissioner.

Comparative financial statements shall be prepared for all entities that have been in operation for more than 12 months.

C. Any and all other presentations of financial data including, but not limited to, projections and supplementary data shall be reviewed by a CPA and be covered by an Unqualified Accountant's Review Report issued by a CPA.

CHAPTER 8 EFFECTIVE DATE

51-8.1 Savings Provisions

For the purposes of section 11-51-802(3), C.R.S. (1990), the phrase "... an offering begun in good faith before July 1, 1990 …" means an offering of securities in which at least one offer was made in good faith in Colorado prior to July 1, 1990.

CHAPTER 9 LOCAL GOVERNMENT INVESTMENT POOL TRUST FUNDS

51-9.1 Authority

The regulations provided in this Chapter 9 have been adopted pursuant to the authority granted to the Securities Commissioner in sections 11-51-901, et seq. C.R.S. and 24-75-701, et seq., C.R.S.

51-9.2 Definitions

For purposes of this Rule, the terms identified below shall have the following meanings:

A. "Board of trustees" shall have the same meaning as that term is defined in section 24-75-701(2), C.R.S.;

B. "Investment adviser" shall have the same meaning as that term is defined in section 24-75- 701(5), C.R.S.;

C. "Local government investment pool trust fund" shall have the same meaning as that term is defined in section 24-75-701(9), C.R.S., and as established pursuant to sections 11-51-901, et seq., and 24-75-701, et seq., C.R.S. ("LGIP");

D. "Participating local government" shall have the same meaning as that term is defined in 24-75- 701(10), C.R.S.; and

E. "Securities Commissioner" shall have the same meaning as that term is defined in section 24-75- 701(11), C.R.S.

51-9.3 Registration, Reports and Bookkeeping of the Local Government Investment Pool Trust Funds

A. Prior to an LGIP's investment of any trust fund assets, the LGIP board of trustees must register the LGIP with the Securities Commissioner pursuant to section 11-51-905, C.R.S.

B. Quarterly reports to the Securities Commissioner pursuant to section 11-51-906(2), C.R.S., shall be filed by all LGIPs with the Securities Commissioner within thirty (30) days after the end of the quarter and shall contain the following information:

1. Financial statements that contain a balance sheet, an income statement, and a statement of changes in net assets for the previous quarter; and

2. The quarterly report to participating local governments.

C. The quarterly report to participating local governments shall include, at a minimum, the following information:

1. A statement of net assets;

2. A statement of operations;

3. A statement of changes in net assets;

4. A listing of portfolio assets that, at a minimum, describes each investment instrument by issuer, face value, yield at purchase, final maturity date, cost, and market value;

5. The average daily yield for the month and the average annualized yield;

6. The expense ratio;

7. A diversification report that, at a minimum, identifies the percentage of the total net assets of the fund by each issuer and the percentage of the total issue the fund invested in any individual issue; and

8. The weighted average maturity to final and the weighted average maturity to reset.

9. Any other material information.

51-9.4 Written Policies and Procedures

All LGIPs shall establish, maintain, and enforce written policies and procedures that are reasonably designed to achieve compliance with the following requirements:

A. Written policies and procedures intended to ensure that each entity that seeks to become a participating local government, and entities actively participating in an LGIP are "local governments" as that term is defined in section 24-75-701(8), C.R.S., for the duration of the local governments' participation in an LGIP.

B. Written policies and procedures to ensure that the LGIP complies with GASB Statement No. 79, Certain External Investment Pools and Pool Participants, if the LGIP elects to report on an amortized cost basis. An LGIP that does not comply with GASB Statement No. 79 may continue to operate as a stable Net Asset Value pool but must use fair value for financial reporting purposes in accordance with GASB Statement No. 31, Accounting and Financial Reporting for Certain Investments and for External Investment Pools, or FASB Accounting Standards Codification 820, Fair Value Measurement.

C. Written investment policies and procedures that define the credit, liquidity, maturity, and diversification objectives of the LGIP and the means to achieve these objectives. These policies and procedures shall, at a minimum, address:

1. Safety of capital as a priority so as to ensure preservation of principal;

2. Sufficient liquidity be maintained to enable funding of all reasonably expected cash needs given the participant composition and history as well as economic and market conditions;

3. Investment return, taking into consideration a pool's cash flow expectations;

4. Diversification of investment, including deposits adequate to reduce portfolio risks from an over concentration in any specific maturity, issuer, counterparty, depository, security, or class of securities;

5. Defining, monitoring and controlling interest rate risk; and,

6. Compliance with section 24-75-601.1,C.R.S.

D. Written policies and procedures that require the LGIP to monitor redemptions and reduce risk of unusually high redemptions in order to meet participants' daily cash flow needs. The written policies and procedures shall require the LGIP to position its portfolio so as to be able to fund unexpected withdrawals. The level of liquidity may be adjusted to take into consideration the distinctive characteristics and composition of the participating local governments and historical redemption patterns for the pool. A minimum of 90 percent of an LGIP's portfolio should be comprised of highly liquid investments and deposits. Liquid investments and deposits are investments and deposits that can be redeemed or sold within five business days.

E. Written policies and procedures for managing credit that require a thorough, constant and independent credit analysis process that adequately assess and manage the credit risk of an LGIP's investments. These policies shall at a minimum require:

1. Utilization of an experienced credit analyst that has the ability to manage and analyze credit risk;

2. For securities other than U.S. Treasuries and Agencies, an approved issuer list that is updated regularly; and

3. Policies that address assessing and liquidating positions in distressed credit situations as well as assessing and monitoring the credit quality and value of pledged collateral.

F. Written policies and procedures requiring LGIP's to perform and maintain the results of, and assumptions used in connection with, monthly, or more frequent, stress testing. Such written policies and procedures shall further require the board of trustees and investment adviser of the LGIP to review the results of each stress test performed.

G. Written policies and procedures that require each LGIP that utilizes amortized cost accounting to calculate a "shadow" NAV daily.

H. Written policies and procedures that require compliance reviews to be performed at least weekly to assure compliance with investment policies, guidelines and procedures.

I. Written policies and procedures intended to ensure that private information of an LGIP's participants remains confidential at all times;

J. Written policies and procedures intended to ensure that LGIP's and its investment adviser(s)' computers, servers, cloud storage and backup system(s), and web-based portals and applications are reasonably protected against cyber-attacks and hardware failure;

K. Written business continuity plan intended to ensure continuous, efficient and timely critical business operations in the event of an emergency and/or unforeseen disruption to normal business operations of the LGIP and/or its investment adviser(s).

51-9.5 Recordkeeping

A. For a period of not less than five years following an LGIP's replacement of any written policies or procedures with new written policies or procedures, the LGIP must maintain and preserve copies of the replaced policies and/or procedures.

B. For a period of not less than five years following a board of trustees' considerations and actions in connection with the discharge of the board of trustees' responsibilities, a written record of such considerations and actions must be maintained and preserved by the LGIP.

51-9.6 Notice to the Commissioner

Each LGIP shall promptly notify the Securities Commissioner, or the Securities Commissioner's designee, by electronic mail of any:

A. Default or insolvency of any issuer of a security that is held by the LGIP; and

B. Instance wherein a board of trustees believes that the applicable LGIP may be unable to comply with an actual or potential request by a participating local government to liquidate the participating local government's funds.

51-9.7 Incorporation by Reference

A. GASB Statement No. 79, *Certain External Investment Pools and Pool Participants*, as effective on December 2015, is hereby incorporated by reference. No later amendment or edition of GASB Statement No. 79 is incorporated into this Section 51-9.3. All referenced laws and regulations shall be available for copying or public inspection during regular business hours from the Division of Securities, Department of Regulatory Agencies, 1560 Broadway, Suite 900, Denver, CO 80202. The Division of Securities will provide certified copy of the material incorporated at cost or will provide the requester with information on how to obtain a certified copy.

B. GASB Statement No. 31, *Accounting and Financial Reporting for Certain Investments and for External Investment Pools*, as effective on December 2015, is hereby incorporated by reference. No later amendment or edition of GASB Statement No. 31 is incorporated into this Section 51-9.3. All referenced laws and regulations shall be available for copying or public inspection during regular business hours from the Division of Securities, Department of Regulatory Agencies, 1560 Broadway, Suite 900, Denver, CO 80202. The Division of Securities will provide certified copy of the material incorporated at cost or will provide the requester with information on how to obtain a certified copy.

C. FASB Accounting Standards Codification 820, *Fair Value Measurement*, as effective on May 2011 is hereby incorporated by reference. No later amendment or edition of FASB Accounting Standards Codification 820 is incorporated into this Section 51-9.3. All referenced laws and regulations shall be available for copying or public inspection during regular business hours from the Division of Securities, Department of Regulatory Agencies, 1560 Broadway, Suite 900, Denver, CO 80202. The Division of Securities will provide certified copy of the material incorporated at cost or will provide the requester with information on how to obtain a certified copy.

Editor's Notes

History

Rules 51-3.5, 51-3.7, 51-4.7, 51-4.8(1A) eff. 12/01/2008.

Rules 51-2.1; 51-3.9(a-g), 51-3.10b; 51-4.1B, 51-4.3, 51-4.4; 51-4.1(1A)(C-D), 51-4.3(1A)(G-I), 51-4.4(1A) A, E-H, 51-4.5(1A)C, 51-4.6(1A)A15(c), 51-4.8(1A)R, 51-4.10(1A), 51-7.1 eff. 11/30/2010.

Rule 51-2.1.1.B eff. 10/15/2013.

Rules 51-4.7.G-51-4.7.I eff. 01/30/2015.

Rules 51-4.3.K, 51-4.4(IA).I eff. 06/01/2015.

Rules 51-3.20-51-3.30 emer. rules eff. 08/05/2015.

Rules 51-3.20-51.3.30 eff. 10/15/2015.

Rules 51-3.1, 51-3.7 eff. 01/30/2016.

Rules 51-2.1 B-C, 51-3.5, 51-3.9 H, 51-3.13, 51-3.24.K-L, 51-3.31, 51-3.32, Rule 3.33, 51-4.5, 51-4.8, 51-4.3(IA) J, 51-4.4(IA) J, 51-4.6(IA) 19, 51-4.6(IA) E.4, 51-4.7(IA), 51-4.8(IA) R, 51-4.11(IA), 51-4.12(IA), 51-4.13(IA), 51-4.14(IA), 51-4.15(IA), Chapter 6, rule 51-9.3 eff. 07/15/2017.

Rules 51-2.1, 51-3.13 C, 51-3.20.E, 51-3.22.C, 51-3.23.A.3, 51-3.24.F, 51-3.24.M, 51-3.27, 51-3.29.A.2, 51-4.3.F-G, 51-4.4(IA) F, 51-4.6(IA) A.19, 51-4.7(IA), 51-4.10(IA) B.2.b.ii, 51-4.11(IA).F, 51-4.13(IA) A.4, 51-4.13(IA) B.2.a, 51-6.10 A, 51-6.3 B.9, 51-6.3 D.9 eff. 07/31/2018. Rules 51-4.9(IA), 51-4.11(IA).I repealed eff. 07/31/2018.

Rules 51-3.34, 51-3.35, 51-3.36, Forms DT-1, DT-2 emer. rules eff. 08/02/2019; expired 11/30/2019.

Rules 51-3.34, 51-3.35, 51-3.36, 51-4.3 K, 51-4.6.1, 51-4.7 G, 51-4.4(IA) E, 51-4.4(IA) I, 51-4.6(IA) A.6, 51-4.6(IA) A.8, 51-4.6(IA) A.10, 51-4.6(IA) 15-21, 51-4.7(IA) A, 51-4.8(IA) Introduction, 51-4.8(IA) O, 51-4.8(IA) V-X, 51-4.9(IA), 51-4.10(IA) B.2.a-b, 51-4.13(IA) A-B.1, 51-6.5 A, Forms DT-1, DT-2 eff. 12/15/2019. Rule 51-3.5 repealed eff. 12/15/2019.

Rules 51-3.27, 51-4.7 J, 51-4.8(IA) Y, 51-6.3 D.4 eff. 03/30/2020.

Rules 51-2.1, 51-2.1.1, 51-3.2, 51-3.4.B.3, 51-3.13, 51-3.15, 51-3.16, 51-3.19, 51-3.20, 51-3.22.C, 51-3.24, 51-3.31, 51-3.32, 51-3.34, 51-3.35, 51-3.36, 51-4.3, 51-4.6.1, 51-4.7, 51-4.8, 51-4.1(IA), 51-4.3(IA), 51-4.4(IA), 51-4.4.1(IA), 51-4.6(IA), 51-4.7(IA), 51-4.8(IA)(P), 51-4.9(IA), 51-4.11(IA), 51-4.12(IA), 51-4.13(IA), 51-4-15(IA), 51-6.0, 51-6.2, 51-9.1, 51-9.2, Form DT-1, Form DT-2. eff. 03/30/2023.

Rules 51-4.3, 51-4.4(IA) G.2, 51-4.4.2(IA), 51-9.7 eff. 01/14/2026. Rules 51-3.34, 51-3.35, 51-3.36 repealed eff. 01/14/2026.