

## CHAPTER 280

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**FINANCIAL INSTITUTIONS**

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## HOUSE BILL 18-1388

BY REPRESENTATIVE(S) Garnett, Humphrey, McKean, Michaelson Jenet, Rosenthal, Valdez, Van Winkle;  
also SENATOR(S) Tate.

**AN ACT**

**CONCERNING AN EXEMPTION FROM THE REQUIREMENT TO REGISTER A SECURITY IF THE SECURITY IS SUBJECT TO A NOTICE FILING AS PERMITTED UNDER FEDERAL LAW.**

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

**SECTION 1.** In Colorado Revised Statutes, **amend** 11-51-301 as follows:

**11-51-301. Requirement for registration of securities.** It is unlawful for any person to offer to sell or sell any security in this state unless it is registered under this article ~~or unless~~ **51**; the security or transaction is exempted under section 11-51-307, 11-51-308, 11-51-308.5, or 11-51-309; OR THE SECURITY IS A FEDERAL COVERED SECURITY FOR WHICH A NOTICE FILING HAS BEEN MADE PURSUANT TO SECTION 11-51-304.5.

**SECTION 2.** In Colorado Revised Statutes, 11-51-302, **amend** (7)(a); and **repeal** (7)(b) as follows:

**11-51-302. General registration provisions.** (7) (a) ~~Except as provided in paragraph (b) of this subsection (7);~~ A registration statement filed and effective under section 11-51-303 is effective for one year after its effective date and thereafter is effective during the period or periods, but only those periods, when the prospectus contained in the registration statement filed under the federal "Securities Act of 1933", AS AMENDED, meets the requirements of ~~subsection (a) of section 10~~ SECTION 10 (a) of ~~such~~ THE federal "Securities Act of 1933", AS AMENDED, 15 U.S.C. SEC. 77j (a).

~~(b) (i) A registration statement filed and effective under section 11-51-303 or 11-51-304 on behalf of an investment company registered under the federal "Investment Company Act of 1940" is effective for one year after its effective date~~

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*Capital letters or bold & italic numbers indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

and may be renewed by filing a renewal notice with the securities commissioner.

~~(H) Any person filing a renewal notice pursuant to this paragraph (b) shall pay a renewal fee pursuant to section 11-51-707.~~

**SECTION 3.** In Colorado Revised Statutes, **add** 11-51-304.5 as follows:

**11-51-304.5. Notice filing - investment companies.** (1) WITH RESPECT TO A SECURITY THAT IS A FEDERAL COVERED SECURITY AS DEFINED IN SECTION 18 (b)(2) OF THE FEDERAL "SECURITIES ACT OF 1933", AS AMENDED, 15 U.S.C. SEC. 77r (b)(2), THAT IS NOT OTHERWISE EXEMPT UNDER SECTION 11-51-307, 11-51-308, 11-51-308.5, OR 11-51-309, BEFORE THE INITIAL OFFER OF THE SECURITY, THE ISSUER MUST FILE WITH THE SECURITIES COMMISSIONER A FORM NF ESTABLISHED BY THE NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, OR AN ANALOGOUS FORM PRESCRIBED BY THE SECURITIES COMMISSIONER, ALONG WITH A NOTICE FILING FEE, WHICH FEE SHALL BE DETERMINED AND COLLECTED PURSUANT TO SECTION 11-51-707.

(2) A NOTICE FILING UNDER THIS SECTION IS EFFECTIVE ONLY FOR SECURITIES SOLD WITHIN TWELVE MONTHS AFTER THE DATE ON WHICH THE FORM NF WAS FILED WITH THE SECURITIES COMMISSIONER. ON OR BEFORE THE EXPIRATION DATE, THE ISSUER MAY RENEW A NOTICE FILING BY FILING ANOTHER FORM NF AND PAYING A RENEWAL FEE, WHICH FEE SHALL BE DETERMINED AND COLLECTED PURSUANT TO SECTION 11-51-707. THE RENEWED NOTICE FILING BECOMES EFFECTIVE UPON THE EXPIRATION OF THE FILING BEING RENEWED.

(3) IF THE SECURITIES COMMISSIONER FINDS THERE IS A FAILURE TO COMPLY WITH A NOTICE FILING OR FEE REQUIREMENT OF THIS SECTION, THE SECURITIES COMMISSIONER MAY ISSUE A STOP ORDER SUSPENDING THE OFFER OR SALE OF THOSE SECURITIES FOR WHICH NOTICE FILING HAS NOT BEEN MADE OR THE NOTICE FILING FEE HAS NOT BEEN PAID. IF THE SECURITIES COMMISSIONER FINDS THAT A DEFICIENCY IS CORRECTED, THE STOP ORDER IS VOID AND NO PENALTY WILL BE IMPOSED.

**SECTION 4.** In Colorado Revised Statutes, **amend** 11-51-305 as follows:

**11-51-305. Filing of sales literature.** (1) The securities commissioner may, by rule or order, require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature addressed or intended for distribution to prospective investors, unless:

(a) The security or the transaction is exempted by section 11-51-307, 11-51-308, or 11-51-309; OR

(b) THE SECURITY IS SUBJECT TO THE FILING REQUIREMENTS OF SECTION 11-51-304.5.

**SECTION 5.** In Colorado Revised Statutes, 11-51-307, **repeal** (1)(k) and (2) as follows:

**11-51-307. Exempt securities.** (1) The following securities are exempted from

sections 11-51-301 and 11-51-305:

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

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

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

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

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

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

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

**SECTION 6.** In Colorado Revised Statutes, 11-51-707, **amend** (3)(a) as follows:

**11-51-707. Collection of fees - division of securities cash fund created.**

(3) (a) The division shall set the amount of each fee ~~which~~ THAT it is authorized by law to collect under this article **51**. The budget request and the fees for the division ~~shall~~ MUST reflect direct and indirect costs. The division, in the discretion of the

securities commissioner, may set:

(I) Registration fees payable under section 11-51-302, according to a scale of rates applied to the dollar amount of securities to be registered, with a maximum fee specified;

~~(II) The division, in the discretion of the securities commissioner, may set an investment company registration renewal fee payable under section 11-51-302 (7) and an exemption fee payable under section 11-51-307 (1)(k)~~ A NOTICE FILING FEE AND NOTICE FILING RENEWAL FEE PAYABLE UNDER SECTION 11-51-304.5 for each series, portfolio, separate account, or fund of an open-end management company or unit investment trust;

~~(III) The division, in the discretion of the securities commissioner, may set~~ Registration fees payable under section 11-51-905 (4), according to a scale of rates applied to the asset size of the trust fund as of the date of registration; AND

~~(IV) The division, in the discretion of the securities commissioner, may set~~ Annual fees payable under section 11-51-906 (4)(e), according to a scale of rates applied to the asset size of the trust fund as of the date of the filing of the annual audit.

**SECTION 7. Act subject to petition - effective date - applicability.** (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to conduct occurring on or after the applicable effective date of this act.

Approved: May 29, 2018