

Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 08-0389.01 Thomas Morris

HOUSE BILL 08-1237

HOUSE SPONSORSHIP

Judd,

SENATE SPONSORSHIP

(None),

House Committees
Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE REGULATION OF QUALIFIED INTERMEDIARIES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Requires registration of persons and entities that facilitate like-kind exchanges pursuant to the federal tax code ("qualified intermediaries and qualified intermediary officers"). Specifies procedures for qualified intermediaries and qualified intermediary officers and prohibits certain practices. Gives the director of the division of registrations within the department of regulatory agencies rule-making and regulatory authority. Establishes registration standards. Requires record-keeping. Specifies complaint, investigation, and disciplinary procedures. Repeals the law in the year 2018, subject to sunset review.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 INSURANCE CORPORATION, THE NATIONAL CREDIT UNION SHARE
2 INSURANCE FUNDS, OR OTHER SIMILAR OR SUCCESSOR PROGRAMS OF
3 FEDERAL INSURANCE, AND THAT IS OPERATING UNDER STATE OR FEDERAL
4 CHARTER.

5 (4) "LIKE-KIND EXCHANGE" MEANS A SECTION 1031 EXCHANGE
6 THAT IS TAX-DEFERRED AND NOT TAX-FREE.

7 (5) "PERSON" MEANS, IN ADDITION TO THE SINGULAR, PERSONS,
8 GROUPS OF PERSONS, COOPERATIVE ASSOCIATIONS, LIMITED LIABILITY
9 COMPANIES, FIRMS, PARTNERSHIPS, CORPORATIONS, OR OTHER LEGAL
10 ENTITIES, AND INCLUDES THE AGENTS AND EMPLOYEES OF ANY SUCH
11 PERSON.

12 (6) "PRINCIPAL OFFICER" MEANS A PRESIDENT, VICE PRESIDENT,
13 SECRETARY, OR TREASURER IN THE CASE OF A CORPORATION; EACH
14 GENERAL PARTNER IN THE CASE OF A PARTNERSHIP; A MANAGER OR
15 MANAGING MEMBER IN THE CASE OF A LIMITED LIABILITY COMPANY; THE
16 OWNER IN THE CASE OF A SOLE PROPRIETORSHIP; AND EACH PERSON WHO
17 HAS A CONTROLLING INTEREST IN A REGISTRANT.

18 (7) "PROPERTY" MEANS REAL PROPERTY LOCATED IN COLORADO
19 AND PERSONAL PROPERTY THAT IS LOCATED IN COLORADO AT THE TIME OF
20 A LIKE-KIND EXCHANGE.

21 (8) "PUBLICLY TRADED COMPANY" MEANS A CORPORATION WHOSE
22 SECURITIES ARE PUBLICLY TRADED ON A STOCK EXCHANGE THAT IS
23 REGULATED BY THE FEDERAL SECURITIES AND EXCHANGE COMMISSION.
24 THE TERM ALSO INCLUDES ALL SUBSIDIARIES OF SUCH PUBLICLY TRADED
25 COMPANY.

26 (9) (a) "QUALIFIED INTERMEDIARY" MEANS A PERSON WHO HOLDS
27 A TAXPAYER'S EXCHANGE FUNDS AND WHO:

1 (I) FOR A FEE, FACILITATES AN EXCHANGE OF LIKE-KIND PROPERTY
2 BY ENTERING INTO AN AGREEMENT WITH A TAXPAYER BY WHICH THE
3 QUALIFIED INTERMEDIARY ACQUIRES FROM THE TAXPAYER THE
4 CONTRACTUAL RIGHTS TO SELL THE TAXPAYER'S RELINQUISHED PROPERTY
5 LOCATED IN THIS STATE AND TRANSFER A REPLACEMENT PROPERTY TO THE
6 TAXPAYER AS A QUALIFIED INTERMEDIARY, AS THAT TERM IS DEFINED IN
7 26 CFR 1.1031 (k)-1 (g) (4), OR ENTERS INTO AN AGREEMENT WITH A
8 TAXPAYER TO TAKE TITLE TO A PROPERTY IN THIS STATE AS AN EXCHANGE
9 ACCOMMODATION TITLEHOLDER, AS THAT TERM IS DEFINED IN FEDERAL
10 INTERNAL REVENUE SERVICE REVENUE PROCEDURE 2000-37, OR ENTERS
11 INTO AN AGREEMENT WITH A TAXPAYER TO ACT AS A QUALIFIED TRUSTEE
12 OR QUALIFIED ESCROW HOLDER, AS THOSE TERMS ARE DEFINED IN 26 CFR
13 1.1031 (k)-1 (g) (3), EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b)
14 OF THIS SUBSECTION (9);

15 (II) MAINTAINS AN OFFICE IN THIS STATE FOR THE PURPOSE OF
16 SOLICITING BUSINESS AS A QUALIFIED INTERMEDIARY; OR

17 (III) HOLDS HIMSELF, HERSELF, OR ITSELF OUT AS A QUALIFIED
18 INTERMEDIARY BY ADVERTISING SERVICES OR SOLICITING CUSTOMERS IN
19 PRINTED PUBLICATIONS, DIRECT MAIL, TELEVISION OR RADIO
20 ADVERTISEMENTS, TELEPHONE CALLS, FACSIMILE TRANSMISSIONS, OR
21 OTHER ELECTRONIC COMMUNICATIONS DIRECTED TO THE GENERAL PUBLIC
22 IN THIS STATE SUCH AS E-MAIL OR TEXT MESSAGES.

23 (b) "QUALIFIED INTERMEDIARY" DOES NOT INCLUDE:

24 (I) THE TAXPAYER OR DISQUALIFIED PERSON AS THAT TERM IS
25 DEFINED UNDER 26 CFR 1.1031 (k)-1 (k) SEEKING TO QUALIFY FOR THE
26 NONRECOGNITION PROVISIONS OF 26 U.S.C. SEC. 1031;

27 (II) A FINANCIAL INSTITUTION THAT IS MERELY ACTING AS A

1 DEPOSITORY FOR EXCHANGE FUNDS OR THAT IS ACTING SOLELY AS A
2 QUALIFIED ESCROW HOLDER OR QUALIFIED TRUSTEE, AS THOSE TERMS ARE
3 DEFINED IN 26 CFR 1.1031 (k)-1 (g) (3), AND IS NOT OTHERWISE
4 FACILITATING EXCHANGES;

5 (III) A PERSON WHO ADVERTISES FOR AND TEACHES SEMINARS OR
6 CLASSES, OR OTHERWISE GIVES PRESENTATIONS TO ATTORNEYS,
7 ACCOUNTANTS, REAL ESTATE PROFESSIONALS, TAX PROFESSIONALS, OR
8 OTHER PROFESSIONALS, WHERE THE PRIMARY PURPOSE IS TO TEACH THE
9 PROFESSIONALS ABOUT TAX-DEFERRED EXCHANGES OR TRAIN THEM TO
10 ACT AS QUALIFIED INTERMEDIARIES;

11 (IV) A QUALIFIED INTERMEDIARY, AS THAT TERM IS DEFINED IN 26
12 CFR 1.1031 (k)-1 (g) (4), WHOSE SOLE BUSINESS IN THIS STATE AS A
13 QUALIFIED INTERMEDIARY CONSISTS OF HOLDING EXCHANGE FUNDS FROM
14 THE DISPOSITION OF RELINQUISHED PROPERTY LOCATED OUTSIDE THIS
15 STATE; OR

16 (V) AN ENTITY THAT IS WHOLLY OWNED BY A REGISTRANT OR IS
17 WHOLLY OWNED BY THE OWNER OF A REGISTRANT AND IS USED BY THAT
18 REGISTRANT TO FACILITATE EXCHANGES OR TO TAKE TITLE TO PROPERTY
19 IN COLORADO AS AN EXCHANGE ACCOMMODATION TITLEHOLDER, AS THAT
20 TERM IS DEFINED IN FEDERAL INTERNAL REVENUE SERVICE REVENUE
21 PROCEDURE 2000-37.

22 (c) FOR PURPOSES OF THIS SUBSECTION (9), "FEE" MEANS
23 COMPENSATION OF ANY NATURE, DIRECT OR INDIRECT, MONETARY OR
24 IN-KIND, THAT IS RECEIVED BY A PERSON OR A RELATED PERSON AS
25 DEFINED IN 26 U.S.C. SEC. 267 (b) OR 26 U.S.C. SEC. 707 (b) FOR ANY
26 SERVICES RELATING TO OR INCIDENTAL TO THE EXCHANGE OF LIKE-KIND
27 PROPERTY UNDER 26 U.S.C. SEC. 1031.

1 (10) "QUALIFIED INTERMEDIARY OFFICER" MEANS:

2 (a) AN ATTORNEY OR CERTIFIED PUBLIC ACCOUNTANT ADMITTED
3 TO PRACTICE IN ANY STATE OR TERRITORY OF THE UNITED STATES;

4 (b) A CERTIFIED EXCHANGE SPECIALIST AS CERTIFIED BY AN
5 ORGANIZATION THAT MEETS QUALIFICATIONS ESTABLISHED BY THE
6 DIRECTOR BY RULE PROMULGATED PURSUANT TO SECTION 12-61-1003; OR

7 (c) AN INDIVIDUAL PERSON WHO HAS BEEN ACTIVELY CONDUCTING
8 THE BUSINESS OF QUALIFIED INTERMEDIARY FULL TIME FOR THE THREE
9 YEARS IMMEDIATELY PRECEDING DESIGNATION BY THE REGISTRANT AS A
10 QUALIFIED INTERMEDIARY OFFICER OR WHO OTHERWISE MEETS
11 QUALIFICATIONS ESTABLISHED BY THE DIRECTOR BY RULE PROMULGATED
12 PURSUANT TO SECTION 12-61-1003.

13 (11) "REGISTRANT" MEANS A PERSON REGISTERED UNDER THIS
14 PART 10 TO CONDUCT BUSINESS AS A QUALIFIED INTERMEDIARY OR
15 QUALIFIED INTERMEDIARY OFFICER.

16 (12) "RELATED COMPANY" MEANS ANY COOPERATIVE
17 ASSOCIATION, LIMITED LIABILITY COMPANY, FIRM, PARTNERSHIP,
18 CORPORATION, OR OTHER LEGAL ENTITY OWNED BY A REGISTRANT TO
19 FURTHER THE REGISTRANT'S BUSINESS AS A QUALIFIED INTERMEDIARY
20 WHEN AT LEAST EIGHTY PERCENT OF THE VALUE OF THE OUTSTANDING
21 STOCK, SHARES, OR SIMILAR CERTIFICATES OF OWNERSHIP IN THE RELATED
22 COMPANY ARE OWNED, DIRECTLY OR INDIRECTLY, BY OR FOR THE
23 REGISTRANT.

24 (13) "SECTION 1031 EXCHANGE" MEANS AN EXCHANGE
25 CONDUCTED PURSUANT TO 26 U.S.C. SEC. 1031 THAT ALLOWS INVESTORS
26 TO DEFER THE TAX ON CAPITAL GAINS.

27 (14) "TAXPAYER EXCHANGE FUNDS" MEANS MONEY A TAXPAYER

1 ENTRUSTS TO A QUALIFIED INTERMEDIARY.

2 **12-61-1003. Rules.** BY JANUARY 1, 2009, THE DIRECTOR SHALL
3 ADOPT RULES IN ACCORDANCE WITH SECTION 24-4-103, C.R.S., AS THE
4 DIRECTOR DEEMS NECESSARY FOR THE EFFECTIVE ADMINISTRATION AND
5 ENFORCEMENT OF THIS PART 10.

6 **12-61-1004. Registration required.** ON OR AFTER JULY 1, 2009,
7 A PERSON SHALL NOT ACT AS A QUALIFIED INTERMEDIARY OR QUALIFIED
8 INTERMEDIARY OFFICER UNLESS THE PERSON IS REGISTERED BY THE
9 DIRECTOR AS A QUALIFIED INTERMEDIARY OR QUALIFIED INTERMEDIARY
10 OFFICER OR IS A WHOLLY OWNED SUBSIDIARY OF A PERSON THAT IS SO
11 REGISTERED. IF THE QUALIFIED INTERMEDIARY IS NOT A NATURAL
12 PERSON, A PUBLICLY TRADED CORPORATION, OR A SUBSIDIARY OF A
13 PUBLICLY TRADED CORPORATION, EACH SHAREHOLDER, MEMBER, OR
14 OTHER OWNER WHO OWNS A CONTROLLING INTEREST IN THE VOTING
15 STOCK, SHARES, OR OTHER OWNERSHIP INTEREST OF THE QUALIFIED
16 INTERMEDIARY SHALL BE REGISTERED.

17 **12-61-1005. Application for registration.** (1) A PERSON
18 DESIRING TO BE REGISTERED AS A QUALIFIED INTERMEDIARY OR QUALIFIED
19 INTERMEDIARY OFFICER SHALL FILE AN APPLICATION AND PAY A
20 PRESCRIBED FEE TO THE DIRECTOR PURSUANT TO SECTION 12-61-1014.
21 THE APPLICATION SHALL SET FORTH:

22 (a) THE NAME, DATE OF BIRTH, CRIMINAL HISTORY, AND BUSINESS
23 ADDRESS OF THE APPLICANT AND THE APPLICANT'S PRINCIPAL OFFICERS;

24 (b) A SUMMARY DESCRIPTION OF THE BUSINESS OF THE APPLICANT;

25 (c) A LIST OF ANY SIMILAR LICENSES OBTAINED AND MAINTAINED
26 IN OTHER STATES AND INFORMATION REGARDING REVOCATION,
27 SUSPENSION, OR OTHER DISCIPLINARY ACTION IMPOSED IN REGARD TO ANY

1 SUCH LICENSES;

2 (d) THE TAX IDENTIFICATION NUMBER OF THE APPLICANT;

3 (e) A CURRENT CERTIFICATE OF GOOD STANDING FOR THE
4 APPLICANT FROM THE STATE IN WHICH THE APPLICANT IS FORMED IF THE
5 APPLICANT IS NOT A NATURAL PERSON; AND

6 (f) SUCH OTHER INFORMATION AS THE DIRECTOR MAY
7 REASONABLY REQUIRE.

8 (2) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF
9 THIS SUBSECTION (2), CONTEMPORANEOUSLY WITH THE APPLICATION,
10 EACH APPLICANT AND PRINCIPAL OFFICER WHO WILL BE CONDUCTING THE
11 BUSINESS OF THE APPLICANT IN THIS STATE AND WHO HAS THE AUTHORITY
12 TO DEPOSIT, TRANSFER, OR DISBURSE EXCHANGE FUNDS HELD BY THE
13 APPLICANT SHALL SUBMIT A SET OF FINGERPRINTS TO THE COLORADO
14 BUREAU OF INVESTIGATION FOR THE PURPOSE OF CONDUCTING A STATE
15 AND NATIONAL FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK
16 UTILIZING RECORDS OF THE COLORADO BUREAU OF INVESTIGATION AND
17 THE FEDERAL BUREAU OF INVESTIGATION. THE APPLICANT SHALL PAY THE
18 FEE ESTABLISHED BY THE COLORADO BUREAU OF INVESTIGATION FOR
19 CONDUCTING THE FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK
20 TO THE COLORADO BUREAU OF INVESTIGATION. UPON COMPLETION OF
21 THE CRIMINAL HISTORY RECORD CHECK, THE COLORADO BUREAU OF
22 INVESTIGATION SHALL FORWARD THE RESULTS TO THE DIRECTOR. THE
23 DIRECTOR MAY ACQUIRE A NAME-BASED CRIMINAL HISTORY RECORD
24 CHECK FOR AN APPLICANT WHO HAS TWICE SUBMITTED TO A
25 FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK AND WHOSE
26 FINGERPRINTS ARE UNCLASSIFIABLE.

27 (b) THIS SUBSECTION (2) SHALL NOT APPLY TO AN APPLICANT OR

1 PRINCIPAL OFFICER WHO IS CURRENTLY SUBJECT TO AND IN COMPLIANCE
2 WITH A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK
3 REQUIREMENT IMPOSED BY A PROVISION OF STATE LAW OTHER THAN THIS
4 PART 10.

5 **12-61-1006. Investigation and issuance.** (1) THE DIRECTOR
6 SHALL INVESTIGATE THE INFORMATION FURNISHED BY AN APPLICANT AND
7 MAY REQUIRE THE APPLICANT TO FURNISH ADDITIONAL INFORMATION.

8 (2) UNLESS THE DIRECTOR DETERMINES THAT THE APPLICANT HAS
9 COMMITTED AN ACT THAT WOULD BE GROUNDS FOR DISCIPLINARY ACTION
10 UNDER SECTION 12-61-1016, THE DIRECTOR SHALL APPROVE AN
11 APPLICATION AFTER THE APPLICANT HAS:

12 (a) SUBMITTED A COMPLETE APPLICATION, INCLUDING ANY
13 ADDITIONAL INFORMATION REQUESTED PURSUANT TO SUBSECTION (1) OF
14 THIS SECTION;

15 (b) COMPLIED WITH SECTIONS 12-61-1007 (1), 12-61-1009, AND
16 12-61-1011; AND

17 (c) OTHERWISE COMPLIED WITH THE REQUIREMENTS OF THIS PART
18 10.

19 (3) A DECISION OF THE DIRECTOR ADVERSE TO THE APPLICANT
20 MAY BE REVIEWED IN THE DISTRICT COURT.

21 **12-61-1007. Registration requirements.** (1) EVERY PERSON
22 DESIRING TO BE REGISTERED AS A QUALIFIED INTERMEDIARY OR QUALIFIED
23 INTERMEDIARY OFFICER SHALL:

24 (a) HAVE AND MAINTAIN A PRINCIPAL PLACE OF BUSINESS IN THIS
25 STATE; OR

26 (b) MAINTAIN A REGISTERED AGENT IN THIS STATE WHO MEETS
27 THE REQUIREMENTS SPECIFIED IN SECTION 7-90-701, C.R.S.

1 (2) EVERY REGISTRANT SHALL NOTIFY THE DIRECTOR IN WRITING
2 WITHIN TEN BUSINESS DAYS AFTER ANY CHANGE IN THE LOCATION OF ITS
3 PRINCIPAL PLACE OF BUSINESS IN THIS STATE OR ITS DESIGNATED
4 REGISTERED AGENT IN THIS STATE AND SHALL PROMPTLY PROVIDE OTHER
5 INFORMATION AS MAY BE REQUIRED BY THE DIRECTOR.

6 (3) A REGISTRANT MAY ESTABLISH ONE OR MORE BRANCH OFFICES
7 IN THIS STATE IF THE REGISTRANT PROVIDES WRITTEN NOTICE OF SUCH
8 ESTABLISHMENT TO THE DIRECTOR WITHIN THIRTY DAYS AFTER
9 ESTABLISHMENT OF EACH BRANCH OFFICE. A REGISTRANT WHOSE
10 PRINCIPAL PLACE OF BUSINESS IS LOCATED OUTSIDE THIS STATE AND WHO
11 DESIRES TO ESTABLISH A BRANCH OFFICE WITHIN THIS STATE SHALL FIRST
12 REGISTER UNDER THIS PART 10.

13 (4) EACH QUALIFIED INTERMEDIARY BUSINESS SHALL BE
14 CONDUCTED UNDER THE DIRECT MANAGEMENT OF A QUALIFIED
15 INTERMEDIARY OFFICER.

16 **12-61-1008. Registration - renewal.** (1) IMMEDIATELY UPON
17 THE APPROVAL OF AN APPLICATION AND PAYMENT OF THE REGISTRATION
18 FEE, THE DIRECTOR SHALL REGISTER THE APPLICANT AS A QUALIFIED
19 INTERMEDIARY OR QUALIFIED INTERMEDIARY OFFICER. THE
20 REGISTRATION SHALL BE EFFECTIVE ONLY UPON THE APPLICANT'S FILING
21 WITH THE DIRECTOR EVIDENCE THAT BONDS AND INSURANCE, OR DEPOSITS
22 OR IRREVOCABLE LETTERS OF CREDIT PERMITTED IN LIEU THEREOF, AS
23 PROVIDED IN SECTIONS 12-61-1009 AND 12-61-1011, HAVE BEEN
24 OBTAINED. A QUALIFIED INTERMEDIARY OR QUALIFIED INTERMEDIARY
25 OFFICER REGISTRATION IS NONTRANSFERABLE. THE REGISTRATION SHALL
26 BE RENEWED ANNUALLY, EACH JULY 1, UPON PAYMENT OF THE ANNUAL
27 RENEWAL FEE AND THE FINDING OF THE DIRECTOR, FROM THE

1 INFORMATION CONTAINED IN AN ANNUAL RENEWAL APPLICATION OF THE
2 REGISTRANT OR INVESTIGATION OR HEARING, THAT THE REGISTRANT:

3 (a) CONTINUES TO MEET THE QUALIFICATIONS FOR REGISTRATION;
4 AND

5 (b) HAS CONTINUED IN FORCE THE BONDS AND INSURANCE OR THE
6 DEPOSITS PERMITTED IN LIEU THEREOF AS PROVIDED IN SECTIONS
7 12-61-1009 AND 12-61-1011.

8 **12-61-1009. Financial assurance.** A REGISTRANT SHALL AT ALL
9 TIMES MAINTAIN A FIDELITY BOND OR BONDS EXECUTED BY AN INSURER
10 AUTHORIZED TO DO BUSINESS IN THIS STATE, OR SUCH OTHER SECURITY AS
11 MAY BE APPROVED BY THE DIRECTOR, IN THE AMOUNT OF ONE MILLION
12 DOLLARS OR SUCH HIGHER AMOUNT AS THE DIRECTOR MAY ESTABLISH ON
13 A CLASS OR CASE-BY-CASE BASIS PURSUANT TO PROCEDURES REQUIRED BY
14 ARTICLE 4 OF TITLE 24, C.R.S.

15 **12-61-1010. Action on financial assurance.** THE DIRECTOR OR
16 ANY PERSON CLAIMING TO HAVE SUSTAINED DAMAGE BY REASON OF THE
17 FAILURE OF A REGISTRANT TO COMPLY WITH THIS PART 10 MAY FILE A
18 CLAIM AGAINST THE REGISTRANT TO RECOVER DAMAGES FROM THE BONDS
19 OR OTHER SECURITY.

20 **12-61-1011. Errors and omissions insurance.** (1) A
21 REGISTRANT AT ALL TIMES SHALL EITHER:

22 (a) MAINTAIN A POLICY OF ERRORS AND OMISSIONS INSURANCE IN
23 AN AMOUNT NOT LESS THAN TWO HUNDRED FIFTY THOUSAND DOLLARS, OR
24 SUCH HIGHER AMOUNT ESTABLISHED BY THE DIRECTOR, EXECUTED BY AN
25 INSURER AUTHORIZED TO DO BUSINESS IN THIS STATE AND APPROVED BY
26 THE DIRECTOR; OR

27 (b) DEPOSIT AN AMOUNT OF CASH OR SECURITIES OR PROVIDE

1 IRREVOCABLE LETTERS OF CREDIT IN AN AMOUNT NOT LESS THAN TWO
2 HUNDRED FIFTY THOUSAND DOLLARS, OR SUCH HIGHER AMOUNT
3 ESTABLISHED BY THE DIRECTOR, UNDER SUCH TERMS AND CONDITIONS AS
4 ARE ACCEPTABLE TO THE DIRECTOR.

5 **12-61-1012. Cancellation of financial assurance - withdrawal**
6 **of deposits.** THE BONDS, INSURANCE, OR OTHER SECURITY REQUIRED BY
7 THIS PART 10 SHALL NOT BE CANCELLED OR WITHDRAWN AS TO FUTURE
8 ACCRUING LIABILITY EXCEPT UPON THIRTY DAYS' PRIOR WRITTEN NOTICE
9 TO THE DIRECTOR. THE DIRECTOR SHALL SUSPEND A REGISTRANT'S
10 REGISTRATION UPON THE CANCELLATION OR WITHDRAWAL OF ANY BOND,
11 INSURANCE, OR OTHER SECURITY UNLESS SUBSTITUTE SECURITY DEEMED
12 ADEQUATE BY THE DIRECTOR HAS BEEN DEPOSITED WITH THE DIRECTOR
13 ON OR BEFORE THE DATE OF CANCELLATION.

14 **12-61-1013. Modification of bonds or insurance.** IF THE
15 DIRECTOR DETERMINES THAT THE FINANCIAL ASSURANCE OR INSURANCE
16 REQUIRED BY THIS PART 10 ARE NOT COMMERCIALY AND REASONABLY
17 AVAILABLE, THE DIRECTOR SHALL MODIFY THE REQUIREMENT FOR SUCH
18 FINANCIAL ASSURANCE OR INSURANCE FOR A PERIOD OF TIME TO BE
19 DETERMINED BY THE DIRECTOR SO AS TO ADEQUATELY PROTECT A
20 TAXPAYER'S EXCHANGE FUNDS.

21 **12-61-1014. Registration fees.** A REGISTRANT SHALL SUBMIT
22 REGISTRATION FEES TO THE DIRECTOR IN AMOUNTS ESTABLISHED
23 PURSUANT TO SECTION 24-34-105, C.R.S. THE DIRECTOR SHALL
24 TRANSMIT ALL FEES RECEIVED TO THE STATE TREASURER, WHO SHALL
25 DEPOSIT THEM IN THE DIVISION OF REGISTRATIONS CASH FUND CREATED
26 IN SECTION 24-34-105, C.R.S.

27 **12-61-1015. Accounting rules.** (1) EVERY REGISTRANT SHALL

1 ACT AS A CUSTODIAN FOR ALL EXCHANGE FUNDS, INCLUDING MONEY,
2 PROPERTY, OTHER CONSIDERATION, OR INSTRUMENTS RECEIVED BY THE
3 REGISTRANT FROM OR ON BEHALF OF THE TAXPAYER, EXCEPT FUNDS
4 RECEIVED AS THE REGISTRANT'S COMPENSATION. A REGISTRANT SHALL
5 INVEST OR DEPOSIT EXCHANGE FUNDS FOR THE BENEFIT OF THE TAXPAYER
6 IN INVESTMENTS THAT MEET A STANDARD OF CARE THAT AN ORDINARILY
7 PRUDENT PERSON WOULD USE WHEN DEALING WITH THE PROPERTY OF
8 ANOTHER AND SHALL SATISFY INVESTMENT GOALS OF LIQUIDITY AND
9 PRESERVATION OF PRINCIPAL AS ESTABLISHED BY THE DIRECTOR BY RULE.
10 FOR PURPOSES OF THIS SECTION, A PRUDENT PERSON STANDARD OF CARE
11 SHALL BE DEEMED TO HAVE BEEN VIOLATED IF:

12 (a) A TAXPAYER'S EXCHANGE FUNDS ARE COMMINGLED BY THE
13 REGISTRANT WITH THE OPERATING ACCOUNTS OF THE REGISTRANT OR
14 WITH THE EXCHANGE FUNDS OF ANOTHER TAXPAYER;

15 (b) EXCHANGE FUNDS ARE LOANED OR OTHERWISE TRANSFERRED
16 TO ANY PERSON OR ENTITY AFFILIATED WITH OR RELATED TO THE
17 REGISTRANT; EXCEPT THAT THIS PARAGRAPH (b) SHALL NOT APPLY TO A
18 TRANSFER OR LOAN MADE TO A FINANCIAL INSTITUTION THAT IS THE
19 PARENT OF OR RELATED TO THE REGISTRANT; OR

20 (c) EXCHANGE FUNDS ARE INVESTED IN A MANNER THAT DOES NOT
21 PROVIDE SUFFICIENT LIQUIDITY TO MEET THE REGISTRANT'S CONTRACTUAL
22 OBLIGATIONS TO THE TAXPAYER AND DOES NOT PRESERVE THE PRINCIPAL
23 OF THE EXCHANGE FUNDS.

24 (2) EXCHANGE FUNDS ARE NOT SUBJECT TO EXECUTION OR
25 ATTACHMENT ON ANY CLAIM AGAINST A REGISTRANT. A REGISTRANT
26 SHALL NOT KNOWINGLY KEEP OR CAUSE TO BE KEPT ANY MONEY IN A
27 BANK, CREDIT UNION, OR OTHER FINANCIAL INSTITUTION UNDER ANY

1 NAME DESIGNATING THE MONEY AS BELONGING TO A TAXPAYER UNLESS
2 THE MONEY EQUITABLY BELONGS TO THE TAXPAYER AND WAS ACTUALLY
3 ENTRUSTED TO THE REGISTRANT BY THE TAXPAYER.

4 (3) TAXPAYER EXCHANGE FUNDS IN EXCESS OF SUCH AMOUNT AS
5 THE DIRECTOR DETERMINES BY RULE SHALL BE INVESTED OR DEPOSITED
6 IN SUCH MANNER AS TO REQUIRE BOTH THE TAXPAYER'S AND THE
7 QUALIFIED INTERMEDIARY'S COMMERCIALY REASONABLE MEANS OF
8 AUTHORIZATION FOR WITHDRAWAL AS DETERMINED BY THE DIRECTOR BY
9 RULE PROMULGATED PURSUANT TO SECTION 12-61-1003.

10 **12-61-1016. Disciplinary actions.** (1) THE DIRECTOR MAY
11 REVOKE, SUSPEND, DENY, OR REFUSE TO RENEW A REGISTRATION, PLACE
12 A REGISTRANT ON PROBATION, OR ISSUE A CEASE-AND-DESIST ORDER OR
13 LETTER OF ADMONITION TO A REGISTRANT OR APPLICANT IN ACCORDANCE
14 WITH THIS SECTION UPON PROOF THAT THE REGISTRANT OR APPLICANT
15 HAS:

16 (a) MADE ANY MATERIAL MISREPRESENTATIONS CONCERNING A
17 REGISTRANT'S OR APPLICANT'S TRANSACTION THAT ARE INTENDED TO
18 MISLEAD ANOTHER;

19 (b) PURSUED A CONTINUED OR FLAGRANT COURSE OF
20 MISREPRESENTATION OR MADE FALSE STATEMENTS THROUGH
21 ADVERTISING OR OTHERWISE;

22 (c) FAILED, WITHIN A REASONABLE TIME, TO ACCOUNT FOR ANY
23 MONEY OR PROPERTY BELONGING TO OTHERS THAT MAY BE IN THE
24 POSSESSION OR UNDER THE CONTROL OF THE REGISTRANT OR APPLICANT;

25 (d) ENGAGED IN ANY CONDUCT CONSTITUTING FRAUDULENT OR
26 DISHONEST DEALING;

27 (e) BEEN CONVICTED OF, OR, IN THE CASE OF AN ENTITY, ONE OR

1 MORE OF ITS OWNERS, OFFICERS, DIRECTORS, OR EMPLOYEES WHO HAS
2 ACCESS TO EXCHANGE FUNDS HAS BEEN CONVICTED OF, ANY CRIME
3 INVOLVING FRAUD, MISREPRESENTATION, DECEIT, EMBEZZLEMENT,
4 MISAPPROPRIATION OF FUNDS, ROBBERY, OR OTHER THEFT OF PROPERTY;
5 EXCEPT THAT CONVICTION OF SUCH CRIME BY AN OFFICER, DIRECTOR, OR
6 EMPLOYEE SHALL NOT BE CAUSE FOR REVOCATION OR SUSPENSION IF THE
7 EMPLOYMENT OR APPOINTMENT OF SUCH OFFICER, DIRECTOR, OR
8 EMPLOYEE HAS BEEN TERMINATED AND NO CUSTOMERS OF THE
9 REGISTRANT OR APPLICANT WERE HARMED OR FULL RESTITUTION HAS
10 BEEN MADE TO ALL HARMED CUSTOMERS;

11 (f) WILFULLY FAILED TO FULFILL A REGISTRANT'S OR APPLICANT'S
12 CONTRACTUAL DUTIES TO THE TAXPAYER TO DELIVER PROPERTY OR FUNDS
13 TO THE TAXPAYER UNLESS SUCH FAILURE IS DUE TO CIRCUMSTANCES
14 BEYOND THE CONTROL OF THE REGISTRANT OR APPLICANT;

15 (g) HAD A RECEIVER OR CONSERVATOR APPOINTED TO TAKE
16 CONTROL OF THE ASSETS OF THE REGISTRANT OR APPLICANT OR THE
17 REGISTRANT ENTITY HAS BEEN DISSOLVED OR DECLARED BANKRUPT;

18 (h) VIOLATED THIS ARTICLE OR AIDED OR ABETTED OR KNOWINGLY
19 PERMITTED ANY PERSON TO VIOLATE THIS ARTICLE, A RULE ADOPTED
20 UNDER THIS ARTICLE, OR ANY LAWFUL ORDER OF THE DIRECTOR;

21 (i) COMMITTED AN ACT THAT DOES NOT MEET GENERALLY
22 ACCEPTED STANDARDS OF PRACTICE FOR QUALIFIED INTERMEDIARIES OR
23 QUALIFIED INTERMEDIARY OFFICERS OR FAILED TO PERFORM AN ACT
24 NECESSARY TO MEET GENERALLY ACCEPTED STANDARDS OF PRACTICE FOR
25 QUALIFIED INTERMEDIARIES OR QUALIFIED INTERMEDIARY OFFICERS;

26 (j) FAILED TO KEEP APPROPRIATE RECORDS OR FALSIFIED OR MADE
27 INCORRECT ENTRIES OF AN ESSENTIAL NATURE ON SUCH RECORDS;

1 (k) FALSIFIED INFORMATION IN AN APPLICATION OR ATTEMPTED TO
2 OBTAIN OR OBTAINED A REGISTRATION BY FRAUD, DECEPTION, OR
3 MISREPRESENTATION;

4 (l) FAILED TO NOTIFY THE DIRECTOR, IN WRITING, OF THE ENTRY
5 OF A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION IN FAVOR
6 OF ANY PARTY AND AGAINST THE REGISTRANT OR APPLICANT RELATING TO
7 THE REGISTRANT'S OR APPLICANT'S ACTS AS A QUALIFIED INTERMEDIARY
8 OR QUALIFIED INTERMEDIARY OFFICER OR ANY SETTLEMENT BY THE
9 REGISTRANT OR APPLICANT IN RESPONSE TO CHARGES OR ALLEGATIONS
10 RELATING TO THE REGISTRANT'S OR APPLICANT'S ACTS AS A QUALIFIED
11 INTERMEDIARY OR QUALIFIED INTERMEDIARY OFFICER. THE NOTICE SHALL
12 BE GIVEN WITHIN NINETY DAYS AFTER THE ENTRY OF THE JUDGMENT OR
13 SETTLEMENT AND, IN THE CASE OF A JUDGMENT, SHALL CONTAIN THE
14 NAME OF THE COURT, THE CASE NUMBER, AND THE NAMES OF ALL PARTIES
15 TO THE ACTION.

16 (m) BEEN DISCIPLINED IN ANY WAY BY A NATIONAL CERTIFYING
17 AGENCY OR BY A REGULATORY AGENCY OF ANOTHER JURISDICTION;

18 (n) BEEN CONVICTED OF OR PLED GUILTY OR NOLO CONTENDERE
19 TO A FELONY OR ANY CRIME DEFINED IN TITLE 18, C.R.S., THAT RELATES
20 TO THE REGISTRANT'S OR APPLICANT'S EMPLOYMENT AS A QUALIFIED
21 INTERMEDIARY OR QUALIFIED INTERMEDIARY OFFICER. A CERTIFIED COPY
22 OF THE JUDGMENT OF A COURT OF COMPETENT JURISDICTION OF THE
23 CONVICTION OR PLEA SHALL BE PRIMA FACIE EVIDENCE OF THE
24 CONVICTION OR PLEA. IN CONSIDERING THE DISCIPLINARY ACTION, THE
25 DIRECTOR SHALL BE GOVERNED BY SECTION 24-5-101, C.R.S.

26 (o) ADVERTISED, REPRESENTED, OR HELD HIMSELF OR HERSELF
27 OUT, IN ANY MANNER, AS BEING A REGISTRANT OR REGISTERED IN

1 COLORADO OR ACTED AS A QUALIFIED INTERMEDIARY OR QUALIFIED
2 INTERMEDIARY OFFICER UNLESS REGISTERED OR EXEMPT UNDER THIS
3 ARTICLE;

4 (p) ACTED AS A QUALIFIED INTERMEDIARY OR QUALIFIED
5 INTERMEDIARY OFFICER DURING THE TIME THE PERSON'S REGISTRATION
6 WAS EXPIRED, SUSPENDED, OR REVOKED;

7 (q) ACTED AS A QUALIFIED INTERMEDIARY OR QUALIFIED
8 INTERMEDIARY OFFICER WITHOUT BEING REGISTERED;

9 (r) FAILED TO NOTIFY THE DIRECTOR OF THE SUSPENSION,
10 PROBATION, OR REVOCATION OF THE PERSON'S PAST OR CURRENTLY HELD
11 LICENSE, CERTIFICATE, OR REGISTRATION REQUIRED TO PRACTICE AS A
12 QUALIFIED INTERMEDIARY OR QUALIFIED INTERMEDIARY OFFICER IN THIS
13 OR ANY OTHER JURISDICTION; OR

14 (s) BEEN DISCIPLINED IN ANOTHER STATE, TERRITORY, OR
15 COUNTRY. THIS PARAGRAPH (s) SHALL APPLY ONLY TO DISCIPLINE THAT
16 IS BASED UPON AN ACT OR OMISSION IN SUCH OTHER STATE, TERRITORY,
17 OR COUNTRY THAT IS SUBSTANTIALLY THE SAME AS CONDUCT SPECIFIED
18 IN THIS SUBSECTION (1).

19 (2) WHEN THE DIRECTOR SUSPENDS OR REVOKES A REGISTRATION,
20 THE DIRECTOR MAY APPOINT A DIFFERENT REGISTRANT AS A RECEIVER
21 REGISTRANT OR SUCCESSOR REGISTRANT FOR THE PURPOSE OF WINDING UP
22 AND COMPLETING EXISTING EXCHANGES, BUT THAT RECEIVER OR
23 SUCCESSOR REGISTRANT SHALL NOT HAVE AUTHORITY TO ACCEPT ANY
24 NEW BUSINESS AS A QUALIFIED INTERMEDIARY OR QUALIFIED
25 INTERMEDIARY OFFICER ON BEHALF OF THE REGISTRANT WHOSE
26 REGISTRATION HAS BEEN SUSPENDED OR REVOKED.

27 (3) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (1) OF THIS

1 SECTION, THE DIRECTOR NEED NOT FIND THAT THE ACTIONS THAT ARE
2 GROUNDS FOR DISCIPLINE WERE WILLFUL BUT MAY CONSIDER WHETHER
3 SUCH ACTIONS WERE WILLFUL WHEN DETERMINING THE NATURE OF
4 DISCIPLINARY SANCTIONS TO BE IMPOSED.

5 (4) THE DIRECTOR MAY COMMENCE A PROCEEDING TO DISCIPLINE
6 A REGISTRANT WHEN THE DIRECTOR HAS REASONABLE GROUNDS TO
7 BELIEVE THAT THE REGISTRANT HAS COMMITTED AN ACT ENUMERATED IN
8 THIS SECTION.

9 (5) DISCIPLINARY PROCEEDINGS SHALL BE CONDUCTED IN
10 ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., AND THE HEARING AND
11 OPPORTUNITY FOR REVIEW SHALL BE CONDUCTED PURSUANT TO THAT
12 ARTICLE BY THE DIRECTOR OR BY AN ADMINISTRATIVE LAW JUDGE, AT THE
13 DIRECTOR'S DISCRETION. THE DIRECTOR HAS THE AUTHORITY TO EXERCISE
14 ALL POWERS AND DUTIES CONFERRED BY THIS ARTICLE DURING THE
15 DISCIPLINARY PROCEEDINGS.

16 (6) (a) THE DIRECTOR MAY REQUEST THE ATTORNEY GENERAL TO
17 SEEK AN INJUNCTION, IN ANY COURT OF COMPETENT JURISDICTION, TO
18 ENJOIN A PERSON FROM COMMITTING AN ACT PROHIBITED BY THIS
19 ARTICLE. WHEN SEEKING AN INJUNCTION UNDER THIS PARAGRAPH (a),
20 THE ATTORNEY GENERAL SHALL NOT BE REQUIRED TO ALLEGE OR PROVE
21 THE INADEQUACY OF ANY REMEDY AT LAW OR THAT SUBSTANTIAL OR
22 IRREPARABLE DAMAGE IS LIKELY TO RESULT FROM A CONTINUED
23 VIOLATION OF THIS ARTICLE.

24 (b) (I) IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., AND
25 THIS ARTICLE, THE DIRECTOR IS AUTHORIZED TO INVESTIGATE, HOLD
26 HEARINGS, AND GATHER EVIDENCE IN ALL MATTERS RELATED TO THE
27 EXERCISE AND PERFORMANCE OF THE POWERS AND DUTIES OF THE

1 DIRECTOR.

2 (II) IN ORDER TO AID THE DIRECTOR IN ANY HEARING OR
3 INVESTIGATION INSTITUTED PURSUANT TO THIS SECTION, THE DIRECTOR OR
4 AN ADMINISTRATIVE LAW JUDGE APPOINTED PURSUANT TO PARAGRAPH (c)
5 OF THIS SUBSECTION (6) IS AUTHORIZED TO ADMINISTER OATHS, TAKE
6 AFFIRMATIONS OF WITNESSES, AND ISSUE SUBPOENAS COMPELLING THE
7 ATTENDANCE OF WITNESSES AND THE PRODUCTION OF THE ORIGINALS OR
8 COPIES OF ALL RECORDS, PAPERS, BOOKS, DOCUMENTS, AND MATERIALS OF
9 THE REGISTRANT OR ANOTHER PERSON CONTAINING INFORMATION
10 RELEVANT TO THE HEARING OR INVESTIGATION.

11 (III) UPON FAILURE OF ANY WITNESS OR REGISTRANT TO COMPLY
12 WITH A SUBPOENA OR PROCESS, THE DISTRICT COURT OF THE COUNTY IN
13 WHICH THE SUBPOENAED WITNESS OR REGISTRANT RESIDES OR CONDUCTS
14 BUSINESS, UPON APPLICATION BY THE DIRECTOR WITH NOTICE TO THE
15 SUBPOENAED WITNESS OR REGISTRANT, MAY ISSUE TO THE WITNESS OR
16 REGISTRANT AN ORDER REQUIRING THAT WITNESS OR REGISTRANT TO
17 APPEAR BEFORE THE DIRECTOR; TO PRODUCE THE RELEVANT PAPERS,
18 BOOKS, RECORDS, DOCUMENTARY EVIDENCE, OR MATERIALS IF SO
19 ORDERED; OR TO GIVE EVIDENCE TOUCHING THE MATTER UNDER
20 INVESTIGATION OR IN QUESTION. IF THE WITNESS OR REGISTRANT FAILS TO
21 OBEY THE ORDER OF THE COURT, THE WITNESS OR REGISTRANT MAY BE
22 HELD IN CONTEMPT OF COURT.

23 (c) THE DIRECTOR MAY APPOINT AN ADMINISTRATIVE LAW JUDGE
24 PURSUANT TO PART 10 OF ARTICLE 30 OF TITLE 24, C.R.S., TO CONDUCT
25 HEARINGS, TAKE EVIDENCE, MAKE FINDINGS, AND REPORT SUCH FINDINGS
26 TO THE DIRECTOR.

27 (7) IF THE DIRECTOR FINDS THE CHARGES PROVED AND ORDERS

1 THAT DISCIPLINE BE IMPOSED, THE DIRECTOR MAY REQUIRE, AS A
2 CONDITION OF REGISTRATION, THAT THE REGISTRANT TAKE SUCH COURSES
3 OF TRAINING OR EDUCATION AS MAY BE NEEDED TO CORRECT ANY
4 DEFICIENCY FOUND AS A CONDITION FOR CONTINUING OR REINSTATING
5 REGISTRATION PURSUANT TO THIS ARTICLE. UPON THE FAILURE OF THE
6 REGISTRANT TO COMPLY WITH ANY CONDITIONS IMPOSED BY THE
7 DIRECTOR PURSUANT TO THIS SUBSECTION (7), UNLESS DUE TO CONDITIONS
8 BEYOND THE REGISTRANT'S CONTROL, THE DIRECTOR MAY ORDER
9 SUSPENSION OF THE REGISTRANT'S REGISTRATION UNTIL SUCH TIME AS THE
10 REGISTRANT COMPLIES WITH SUCH CONDITIONS.

11 (8) (a) THE DIRECTOR, THE DIRECTOR'S STAFF, A PERSON ACTING
12 AS A WITNESS OR CONSULTANT TO THE DIRECTOR, A WITNESS TESTIFYING
13 IN A PROCEEDING AUTHORIZED UNDER THIS ARTICLE, AND A PERSON WHO
14 LODGES A COMPLAINT PURSUANT TO THIS ARTICLE SHALL BE IMMUNE
15 FROM LIABILITY IN ANY CIVIL ACTION BROUGHT AGAINST HIM OR HER FOR
16 ACTS OCCURRING WHILE ACTING IN HIS OR HER CAPACITY AS DIRECTOR,
17 STAFF, CONSULTANT, OR WITNESS, RESPECTIVELY, IF SUCH INDIVIDUAL
18 WAS ACTING IN GOOD FAITH WITHIN THE SCOPE OF HIS OR HER RESPECTIVE
19 CAPACITY, MADE A REASONABLE EFFORT TO OBTAIN THE FACTS OF THE
20 MATTER AS TO WHICH HE OR SHE ACTED, AND ACTED IN THE REASONABLE
21 BELIEF THAT THE ACTION TAKEN BY HIM OR HER WAS WARRANTED BY THE
22 FACTS.

23 (b) A PERSON PARTICIPATING IN GOOD FAITH IN MAKING A
24 COMPLAINT OR REPORT OR IN AN INVESTIGATIVE OR ADMINISTRATIVE
25 PROCEEDING PURSUANT TO THIS SECTION SHALL BE IMMUNE FROM ANY
26 CIVIL OR CRIMINAL LIABILITY THAT OTHERWISE MIGHT RESULT BY REASON
27 OF THE PARTICIPATION.

1 (9) A JUDICIAL PROCEEDING TO ENFORCE AN ORDER OF THE
2 DIRECTOR MAY BE INSTITUTED IN ACCORDANCE WITH SECTION 24-4-106,
3 C.R.S.

4 (10) A REGISTRANT SHALL REPORT TO THE DIRECTOR ANY
5 DISCIPLINARY ACTION TAKEN AGAINST A PRINCIPAL OFFICER OR THE
6 RESIGNATION OF A PRINCIPAL OFFICER IN LIEU OF DISCIPLINARY ACTION
7 FOR CONDUCT THAT VIOLATES THIS ARTICLE.

8 (11) (a) WHEN A COMPLAINT OR INVESTIGATION DISCLOSES AN
9 INSTANCE OF MISCONDUCT THAT, IN THE OPINION OF THE DIRECTOR, DOES
10 NOT WARRANT FORMAL ACTION BY THE DIRECTOR BUT SHOULD NOT BE
11 DISMISSED AS BEING WITHOUT MERIT, THE DIRECTOR MAY ISSUE A LETTER
12 OF ADMONITION TO THE REGISTRANT OR A PRINCIPAL OFFICER BY
13 CERTIFIED MAIL.

14 (b) WHEN THE DIRECTOR SENDS A LETTER OF ADMONITION TO A
15 REGISTRANT OR PRINCIPAL OFFICER, THE REGISTRANT OR PRINCIPAL
16 OFFICER SHALL BE ADVISED THAT HE OR SHE HAS THE RIGHT TO REQUEST
17 THAT FORMAL DISCIPLINARY PROCEEDINGS BE INITIATED TO ADJUDICATE
18 THE PROPRIETY OF THE CONDUCT UPON WHICH THE LETTER OF
19 ADMONITION IS BASED. THE REGISTRANT OR PRINCIPAL OFFICER SHALL
20 MAKE THE REQUEST IN WRITING WITHIN TWENTY DAYS AFTER RECEIPT OF
21 THE LETTER.

22 (c) IF THE REQUEST FOR ADJUDICATION IS TIMELY MADE, THE
23 LETTER OF ADMONITION SHALL BE DEEMED VACATED AND THE MATTER
24 SHALL BE PROCESSED BY MEANS OF FORMAL DISCIPLINARY PROCEEDINGS.

25 (12) WHEN A COMPLAINT OR INVESTIGATION DISCLOSES AN
26 INSTANCE OF CONDUCT THAT DOES NOT WARRANT FORMAL ACTION BY THE
27 DIRECTOR AND, IN THE OPINION OF THE DIRECTOR, THE COMPLAINT

1 SHOULD BE DISMISSED, BUT THE DIRECTOR HAS NOTICED INDICATIONS OF
2 POSSIBLE ERRANT CONDUCT BY THE REGISTRANT THAT COULD LEAD TO
3 SERIOUS CONSEQUENCES IF NOT CORRECTED, THE DIRECTOR MAY ISSUE A
4 CONFIDENTIAL LETTER OF CONCERN TO THE REGISTRANT.

5 (13) WHEN A COMPLAINT OR AN INVESTIGATION DISCLOSES AN
6 INSTANCE OF MISCONDUCT THAT, IN THE OPINION OF THE DIRECTOR,
7 WARRANTS FORMAL ACTION, THE COMPLAINT SHALL NOT BE RESOLVED BY
8 A DEFERRED SETTLEMENT, ACTION, JUDGMENT, OR PROSECUTION.

9 (14) (a) IF IT APPEARS TO THE DIRECTOR, BASED UPON CREDIBLE
10 EVIDENCE AS PRESENTED IN A WRITTEN COMPLAINT BY ANY PERSON, THAT
11 A REGISTRANT IS ACTING IN A MANNER THAT CAUSES OR CONSTITUTES AN
12 IMMINENT THREAT TO THE WELFARE OF THE PUBLIC, OR A PERSON IS
13 ACTING OR HAS ACTED WITHOUT THE REQUIRED REGISTRATION, THE
14 DIRECTOR MAY ISSUE AN ORDER TO CEASE AND DESIST SUCH ACTIVITY.
15 THE ORDER SHALL SET FORTH THE STATUTES AND RULES ALLEGED TO
16 HAVE BEEN VIOLATED, THE FACTS ALLEGED TO HAVE CONSTITUTED THE
17 VIOLATION, AND THE REQUIREMENT THAT ALL UNLAWFUL ACTS OR
18 UNREGISTERED PRACTICES IMMEDIATELY CEASE.

19 (b) WITHIN TEN CALENDAR DAYS AFTER SERVICE OF THE ORDER TO
20 CEASE AND DESIST PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION
21 (14), THE RESPONDENT MAY REQUEST A HEARING ON THE QUESTION OF
22 WHETHER ACTS OR PRACTICES IN VIOLATION OF THIS ARTICLE HAVE
23 OCCURRED. THE HEARING SHALL BE CONDUCTED PURSUANT TO SECTIONS
24 24-4-104 AND 24-4-105, C.R.S.

25 (15) (a) IF IT APPEARS TO THE DIRECTOR, BASED UPON CREDIBLE
26 EVIDENCE AS PRESENTED IN A WRITTEN COMPLAINT BY ANY PERSON, THAT
27 A PERSON HAS VIOLATED ANY OTHER PORTION OF THIS ARTICLE, IN

1 ADDITION TO ANY SPECIFIC POWERS GRANTED PURSUANT TO THIS ARTICLE,
2 THE DIRECTOR MAY ISSUE TO THE PERSON AN ORDER TO SHOW CAUSE AS
3 TO WHY THE DIRECTOR SHOULD NOT ISSUE A FINAL ORDER DIRECTING THE
4 PERSON TO CEASE AND DESIST FROM THE UNLAWFUL ACT OR
5 UNREGISTERED PRACTICE.

6 (b) A PERSON AGAINST WHOM AN ORDER TO SHOW CAUSE HAS
7 BEEN ISSUED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (15)
8 SHALL BE NOTIFIED PROMPTLY BY THE DIRECTOR OF THE ISSUANCE OF THE
9 ORDER, ALONG WITH A COPY OF THE ORDER, THE FACTUAL AND LEGAL
10 BASIS FOR THE ORDER, AND THE DATE SET BY THE DIRECTOR FOR A
11 HEARING ON THE ORDER. THE NOTICE MAY BE SERVED ON THE PERSON
12 AGAINST WHOM THE ORDER HAS BEEN ISSUED BY PERSONAL SERVICE, BY
13 FIRST-CLASS, POSTAGE PREPAID UNITED STATES MAIL, OR IN ANOTHER
14 MANNER AS MAY BE PRACTICABLE.

15 (c) (I) THE HEARING ON AN ORDER TO SHOW CAUSE SHALL BE HELD
16 NO SOONER THAN TEN CALENDAR DAYS AND NO LATER THAN FORTY-FIVE
17 CALENDAR DAYS AFTER THE DATE OF TRANSMISSION OR SERVICE OF THE
18 NOTIFICATION BY THE DIRECTOR AS PROVIDED IN PARAGRAPH (b) OF THIS
19 SUBSECTION (15). THE HEARING MAY BE CONTINUED BY AGREEMENT OF
20 ALL PARTIES BASED UPON THE COMPLEXITY OF THE MATTER, THE NUMBER
21 OF PARTIES TO THE MATTER, AND THE LEGAL ISSUES PRESENTED IN THE
22 MATTER, BUT IN NO EVENT SHALL THE HEARING BE HELD LATER THAN
23 SIXTY CALENDAR DAYS AFTER THE DATE OF TRANSMISSION OR SERVICE OF
24 THE NOTIFICATION.

25 (II) IF A PERSON AGAINST WHOM AN ORDER TO SHOW CAUSE HAS
26 BEEN ISSUED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (15) DOES
27 NOT APPEAR AT THE HEARING, THE DIRECTOR MAY PRESENT EVIDENCE

1 THAT NOTIFICATION WAS PROPERLY SENT OR SERVED ON THE PERSON
2 PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (15) AND SUCH OTHER
3 EVIDENCE RELATED TO THE MATTER AS THE DIRECTOR DEEMS
4 APPROPRIATE. SUCH HEARING SHALL BE CONDUCTED PURSUANT TO
5 SECTIONS 24-4-104 AND 24-4-105, C.R.S. THE DIRECTOR SHALL ISSUE
6 THE ORDER WITHIN TEN CALENDAR DAYS AFTER THE DIRECTOR'S
7 DETERMINATION RELATED TO REASONABLE ATTEMPTS TO NOTIFY THE
8 RESPONDENT, AND THE ORDER SHALL BECOME FINAL AS TO THAT PERSON
9 BY OPERATION OF LAW.

10 (III) IF THE DIRECTOR REASONABLY FINDS THAT THE PERSON
11 AGAINST WHOM THE ORDER TO SHOW CAUSE WAS ISSUED IS ACTING OR
12 HAS ACTED WITHOUT THE REQUIRED REGISTRATION, OR HAS ENGAGED OR
13 IS ABOUT TO ENGAGE IN ACTS OR PRACTICES CONSTITUTING VIOLATIONS
14 OF THIS ARTICLE, A FINAL CEASE-AND-DESIST ORDER MAY BE ISSUED,
15 DIRECTING THE PERSON TO CEASE AND DESIST FROM FURTHER UNLAWFUL
16 ACTS OR UNREGISTERED PRACTICES.

17 (IV) THE DIRECTOR SHALL PROVIDE NOTICE, IN THE MANNER SET
18 FORTH IN PARAGRAPH (b) OF THIS SUBSECTION (15), OF THE FINAL
19 CEASE-AND-DESIST ORDER WITHIN TEN CALENDAR DAYS AFTER THE
20 HEARING CONDUCTED PURSUANT TO THIS PARAGRAPH (c) TO EACH PERSON
21 AGAINST WHOM THE FINAL ORDER HAS BEEN ISSUED. THE FINAL ORDER
22 ISSUED PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH (c) SHALL
23 BE EFFECTIVE WHEN ISSUED AND SHALL BE A FINAL ORDER FOR PURPOSES
24 OF JUDICIAL REVIEW.

25 (16) IF IT APPEARS TO THE DIRECTOR, BASED UPON CREDIBLE
26 EVIDENCE PRESENTED TO THE DIRECTOR, THAT A PERSON HAS ENGAGED OR
27 IS ABOUT TO ENGAGE IN AN UNREGISTERED ACT OR PRACTICE; AN ACT OR

1 PRACTICE CONSTITUTING A VIOLATION OF THIS ARTICLE, A RULE
2 PROMULGATED PURSUANT TO THIS ARTICLE, OR AN ORDER ISSUED
3 PURSUANT TO THIS ARTICLE; OR AN ACT OR PRACTICE CONSTITUTING
4 GROUNDS FOR ADMINISTRATIVE SANCTION PURSUANT TO THIS ARTICLE,
5 THE DIRECTOR MAY ENTER INTO A STIPULATION WITH THE PERSON.

6 (17) IF ANY PERSON FAILS TO COMPLY WITH A FINAL
7 CEASE-AND-DESIST ORDER OR A STIPULATION, THE DIRECTOR MAY
8 REQUEST THE ATTORNEY GENERAL OR THE DISTRICT ATTORNEY FOR THE
9 JUDICIAL DISTRICT IN WHICH THE ALLEGED VIOLATION EXISTS TO BRING,
10 AND IF SO REQUESTED SUCH ATTORNEY SHALL BRING, SUIT FOR A
11 TEMPORARY RESTRAINING ORDER AND FOR INJUNCTIVE RELIEF TO
12 PREVENT ANY FURTHER OR CONTINUED VIOLATION OF THE FINAL ORDER.

13 (18) A PERSON AGGRIEVED BY A FINAL CEASE-AND-DESIST ORDER
14 MAY SEEK JUDICIAL REVIEW OF THE DIRECTOR'S DETERMINATION OR OF
15 THE DIRECTOR'S FINAL ORDER AS PROVIDED IN SECTION 12-61-1006 (3).

16 **12-61-1017. Costs.** IF THE DIRECTOR UNDERTAKES AN
17 INVESTIGATION AND A REGISTRANT'S REGISTRATION IS REVOKED,
18 SUSPENDED, DENIED, OR REFUSED TO BE RENEWED OR THERE IS A FINAL
19 DETERMINATION THAT A REGISTRANT HAS VIOLATED THIS PART 10, A RULE
20 ADOPTED PURSUANT TO THIS PART 10, OR AN ORDER OF THE DIRECTOR
21 PURSUANT TO THIS PART 10, THE REGISTRANT SHALL BEAR THE
22 REASONABLE EXPENSES OF THE INVESTIGATION.

23 **12-61-1018. Penalty.** (1) A PERSON WHO VIOLATES ANY
24 PROVISION OF THIS PART 10, AS DETERMINED BY THE DIRECTOR, SHALL BE
25 SUBJECT TO AN ADMINISTRATIVE PENALTY OF UP TO ONE THOUSAND
26 DOLLARS PER DAY FOR EACH DAY THAT THE VIOLATION CONTINUES.

27 (2) AN ACTION TAKEN TO IMPOSE OR COLLECT THE PENALTY

1 PROVIDED FOR IN THIS SECTION SHALL BE CONSIDERED A CIVIL OR
2 ADMINISTRATIVE ACTION.

3 **12-61-1019. Repeal of part.** THIS PART 10 IS REPEALED,
4 EFFECTIVE JULY 1, 2018. PRIOR TO SUCH REPEAL, THE REGISTRATION OF
5 QUALIFIED INTERMEDIARIES AND QUALIFIED INTERMEDIARY OFFICERS
6 SHALL BE REVIEWED AS PROVIDED FOR IN SECTION 24-34-104, C.R.S.

7 **SECTION 2.** 24-34-104 (49), Colorado Revised Statutes, is
8 amended to read:

9 **24-34-104. General assembly review of regulatory agencies**
10 **and functions for termination, continuation, or reestablishment.**

11 (49) The following agencies, functions, or both, shall terminate on July
12 1, 2018:

13 (a) The environmental management system permit program,
14 created in article 6.6 of title 25, C.R.S.;

15 (b) THE REGISTRATION OF QUALIFIED INTERMEDIARIES AND
16 QUALIFIED INTERMEDIARY OFFICERS PURSUANT TO PART 10 OF ARTICLE 61
17 OF TITLE 12, C.R.S.

18 **SECTION 3. Effective date - applicability.** This act shall take
19 effect upon passage and shall apply to acts occurring on or after said date.

20 **SECTION 4. Safety clause.** The general assembly hereby finds,
21 determines, and declares that this act is necessary for the immediate
22 preservation of the public peace, health, and safety.