

R164. Commerce, Securities.

R164-18. Procedures.

R164-18-6. Procedures for Administrative Actions.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 63G-4-202, 63G-4-203, 63G-4-503, and 61-1-24.

(2) The purpose of this rule is to:

(a) designate those actions which the Division shall deem to be requests for initial agency action;

(b) designate those categories of adjudicative proceedings which will be conducted on an informal basis, in accordance with the Utah Administrative Procedures Act and the Rules of Procedure for Adjudicative Proceedings before the Department of Commerce;

(c) set forth circumstances in which hearings shall be required or permitted; and

(d) clarify certain Division policies regarding declaratory orders.

(B) Definitions

(1) "Act" means Title 61, Chapter 1, Utah Uniform Securities Act.

(2) "CRD" means the Central Registration Depository, Inc.

(3) "Director" means the Director of the Division of Securities, Utah Department of Commerce.

(4) "Division" means Division of Securities, Utah Department of Commerce.

(C) Categorization of Adjudicative Proceedings

All adjudicative proceedings under the Act are designated as informal adjudicative proceedings, except that the director may convert proceedings to formal adjudicative proceedings in accordance with the provisions of Subsection 63G-4-202(3).

(D) Commencement of Adjudicative Proceedings

Filing of the following documents with the Division shall be deemed to be a request for initial Division action:

(1) SEC Form BD - Uniform Application for Broker-Dealer Registration pursuant to Sections 61-1-4 and R164-4-1 (whether filed with the division or the CRD);

(2) NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer pursuant to Sections 61-1-4 and R164-4-1 (whether filed with the division or the CRD);

(3) SEC Form ADV - Uniform Application for Investment Adviser Registration pursuant to Sections 61-1-4 and R164-4-2 (whether filed with the division or the CRD);

(4) NASAA Form U-1 - Uniform Application to Register Securities pursuant to Sections 61-1-9 and R164-9-1;

(5) Form 10-2-1 - Application for Registration by Qualification pursuant to Sections 61-1-10 and R164-10-2;

(6) Request for declaratory order designating a person as not being within the definition of "broker-dealer" as defined in Subsection 61-1-13(1)(c), or "agent" as defined in Subsection 61-1-13(1)(b);

(7) Request for declaratory order designating a person as not being within the definition of "investment adviser" as defined in Subsection 61-1-13(1)(q), or "investment adviser representative" as defined in Subsection 61-1-13(1)(r);

(8) Request for order finding that registration is not necessary or appropriate pursuant to Subsection 61-1-14(1)(i) (exempt securities);

(9) Request for order finding that registration is not necessary or appropriate pursuant to Subsection 61-1-14(2)(v) (exempt transactions);

(10) Request for order releasing impounded funds pursuant to Section R164-11-7b;

(11) Request for confirmation of exchange listing exemption pursuant to Section R164-14-1(e);

(12) Request for confirmation of investment company exemption pursuant to Subsection 61-1-14(1)(h);

(13) Request for confirmation of manual listing exemption pursuant to Section R164-14-2b;

(14) Request for confirmation of secondary trading exemption pursuant to Section R164-14-2m;

(15) Request for confirmation of reorganization exemption pursuant to Section R164-14-2p.

(E) Procedures for Informal Adjudicative Proceedings

A hearing will be held only if required by the Act or by the provisions of this section. When a hearing is permitted but not required, a hearing will be held only if requested by a party within 30 days from the date a notice of agency action is mailed.

(F) Hearings: When Held

(1) Under the Act, a hearing is not required and will not be held in the following adjudicative proceedings:

(a) Licensing of broker-dealer, agent, investment adviser, or investment adviser representative pursuant to Section 61-1-4;

(b) Order requiring applicant to publish announcement of application pursuant to Subsection 61-1-4(1)(c);

(c) Cancellation of registration or application of broker-dealer, agent, investment adviser, or investment adviser representative pursuant to Subsection 61-1-6(5);

(d) Grant of registration by coordination pursuant to Section 61-1-9;

(e) Stop order based on failure to file price amendments pursuant to Subsection 61-1-9(5);

(f) Grant of registration by qualification pursuant to Section 61-1-10;

(g) Order requiring additional information or verification pursuant to Subsection 61-1-10(2)(q);

(h) Order imposing conditions of registration pursuant to Subsection 61-1-11(7);

(i) Order vacating or modifying stop order pursuant to Subsection 61-1-12(2);

(j) Order designating a person as not being within the definition of a "broker-dealer" pursuant to Subsection 61-1-13(1)(c), or "agent" pursuant to Subsection 61-1-13(1)(b);

(k) Order designating a person as not being within the definition of "investment advisor" pursuant to Subsection 61-1-13(1)(q), or "investment adviser representative" pursuant to Subsection 61-1-13(1)(r);

(l) Order finding that registration is not necessary or appropriate pursuant to Subsection 61-1-14(1)(i) (exempt securities);

(m) Order finding that registration is not necessary or appropriate pursuant to Subsection 61-1-14(2)(v) (exempt transactions);

(n) Order requiring filing of prospectus, sales literature, etc. pursuant to Section 61-1-15;

(o) Order releasing impounded funds pursuant to Section R164-11-7b;

(p) Order to show cause pursuant to Subsection 61-1-20(1)(a);

(q) Confirmation of exchange listing exemption pursuant to Section R164-14-1(e);

(r) Confirmation of investment company exemption pursuant to Subsection 61-1-14(1)(h);

(s) Confirmation of manual listing exemption pursuant to Section R164-14-2b;

(t) Confirmation of secondary trading exemption pursuant to Section R164-14-2m;

(u) Confirmation of reorganization exemption pursuant to R164-14-2p.

(2) In the following proceedings, a hearing will be held only if timely requested:

(a) Petition for order denying, suspending or revoking registration of broker-dealer, agent, investment adviser, or investment adviser representative pursuant to Section 61-1-6;

(b) Petition for stop order denying, suspending or revoking effectiveness of a securities registration statement pursuant to Section 61-1-12;

(c) Order denying or revoking exemption under Subsection 61-1-14(2)(p)(v);

(d) Petition for order denying or revoking exemption from registration pursuant to Subsection 61-1-14(4);

(e) Order denying or revoking exemption under Subsection 61-1-14(2)(j)(ii)(E)(II).

(G) Declaratory Orders

(1) The Division will not issue declaratory orders when a petition requests a ruling with respect to the applicability of Section 61-1-1.

(2) A request for a "no-action" letter under Section R164-25-5 shall be deemed to be a petition for a declaratory order.

KEY: securities regulation, adjudicative procedure

Date of Enactment or Last Substantive Amendment: February 2, 2010

Notice of Continuation: July 3, 2017

Authorizing, and Implemented or Interpreted Law: 61-1-18.3; 61-1-4; 61-1-11