COLORADO

Department of Regulatory Agencies

Colorado Office of Policy, Research & Regulatory Reform

2025 Sunset Review

Colorado Securities Act

October 15, 2025

COLORADO
Department of Regulatory Agencies
Executive Director's Office

October 15, 2025

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Pursuant to section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) at the Department of Regulatory Agencies (DORA) undertakes a robust review process culminating in the release of multiple reports each year on October 15.

A national leader in regulatory reform, COPRRR takes the vision of their office, DORA and more broadly of our state government seriously. Specifically, COPRRR contributes to the strong economic landscape in Colorado by ensuring that we have thoughtful, efficient, and inclusive regulations that reduce barriers to entry into various professions and that open doors of opportunity for all Coloradans.

As part of this year's review, COPRRR has completed an evaluation of the Colorado Securities Act. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2026 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Article 51 of Title 11, C.R.S. The report also discusses the effectiveness of the Securities Commissioner and the Division of Securities in carrying out the intent of the statutes and makes recommendations for statutory changes for the review and discussion of the General Assembly.

To learn more about the sunset review process, among COPRRR's other functions, visit coprrr.colorado.gov.

Sincerely,

Patty Salazar
Executive Director

Colorado Securities Act

Background

What is regulated?

The Colorado Securities Act (Act) establishes a framework for the registration of securities, the licensing of securities firms and professionals and it establishes anti-fraud provisions related to securities. It also empowers the Securities Commissioner (Commissioner) and the Division of Securities to enforce the Act. The Act also creates the five-member, Governor-appointed Securities Board to advise the Commissioner.

Why is it regulated?

Regulation serves to protect consumers from fraudulent schemes and ensures the integrity of the securities markets in which Coloradans invest and upon which millions of businesses rely to raise capital, thus benefiting the economy overall.

Who is regulated?

In fiscal year 23-24, the Commissioner licensed 1,873 broker-dealer firms, 254,030 broker-dealer sales representatives, 3,309 federal covered investment advisers, 774 state-licensed investment advisers and 16,119 investment adviser representatives. That same year, 135 securities offerings were registered with the Commissioner, in an amount exceeding $53 billion.

How is it regulated?

In general, securities offered for sale in Colorado must be registered with the Commissioner, unless exempt. Additionally, the Commissioner licenses broker-dealer firms, broker-dealer sales representatives, investment adviser firms and investment adviser representatives. While many of these are also regulated at the federal level, the Commissioner has exclusive jurisdiction over investment adviser representatives, as well as investment adviser firms with less than $100 million in assets under management. With regard to securities fraud, the Commissioner can file civil suits or refer cases to the Attorney General or the state's district attorneys for criminal prosecution.

What does it cost?

In fiscal year 23-24, the Commissioner spent approximately $5.7 million and dedicated 28 full-time equivalent employees to administer the Act.

What disciplinary activity is there?

In fiscal year 23-24, the Commissioner took a variety of enforcement actions, including but not limited to 3 license revocations, 15 administrative or civil referrals and 4 criminal referrals, and obtained over $2 million in restitution.

Key Recommendations

- **Continue the Act for 11 years, until 2037.**
- **Continue the Securities Board for 11 years, until 2037.**
- **Clarify that deficiency letters are not public documents.**
- **Revise the process by which the Commissioner issues cease and desist orders and summary suspensions.**

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Background

Sunset Criteria

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria[1] and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are guided by statutory criteria and sunset reports are organized so that a reader may consider these criteria while reading. While not all criteria are applicable to all sunset reviews, the various sections of a sunset report generally call attention to the relevant criteria. For example,

- In order to address the first criterion and determine whether the program under review is necessary to protect the public, it is necessary to understand the details of the profession or industry at issue. The Profile section of a sunset report typically describes the profession or industry at issue and addresses the current environment, which may include economic data, to aid in this analysis.
- To address the second sunset criterion--whether conditions that led to the initial creation of the program have changed--the History of Regulation section of a sunset report explores any relevant changes that have occurred over time in the regulatory environment. The remainder of the Legal Framework section addresses the fifth sunset criterion by summarizing the organic statute and rules of the program, as well as relevant federal, state and local laws to aid in the exploration of whether the program's operations are impeded or enhanced by existing statutes or rules.
- The Program Description section of a sunset report addresses several of the sunset criteria, including those inquiring whether the agency operates in the public interest and whether its operations are impeded or enhanced by existing statutes, rules, procedures and practices; whether the agency or the agency's board performs efficiently and effectively and whether the board, if applicable, represents the public interest.
- The Analysis and Recommendations section of a sunset report, while generally applying multiple criteria, is specifically designed in response to the fourteenth criterion, which asks whether administrative or statutory changes are necessary to improve agency operations to enhance the public interest.

[1] Criteria may be found at § 24-34-104, C.R.S.

These are but a few examples of how the various sections of a sunset report provide the information and, where appropriate, analysis required by the sunset criteria. Just as not all criteria are applicable to every sunset review, not all criteria are specifically highlighted as they are applied throughout a sunset review. While not necessarily exhaustive, the table below indicates where these criteria are applied in this sunset report.

Table 1
Application of Sunset Criteria

Sunset Criteria	Where Applied
(I) Whether regulation or program administration by the agency is necessary to protect the public health, safety, and welfare.	• Profile of the Industry • History of Regulation • Recommendations 1 and 2
(II) Whether the conditions that led to the initial creation of the program have changed and whether other conditions have arisen that would warrant more, less, or the same degree of governmental oversight.	• History of Regulation
(III) If the program is necessary, whether the existing statutes and regulations establish the least restrictive form of governmental oversight consistent with the public interest, considering other available regulatory mechanisms.	• Legal Summary • Recommendation 1
(IV) If the program is necessary, whether agency rules enhance the public interest and are within the scope of legislative intent.	• Legal Summary • Recommendation 3
(V) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters.	• Legal Summary • Program Description and Administration • Recommendations 3, 4 and 5
(VI) Whether an analysis of agency operations indicates that the agency or the agency's board or commission performs its statutory duties efficiently and effectively.	• Program Description and Administration • Recommendations 4 and 6
(VII) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates.	• Legal Summary • Program Description and Administration
(VIII) Whether regulatory oversight can be achieved through a director model.	• Complaints & Disciplinary Activity • Recommendation 2

Sunset Criteria	Where Applied
(IX) The economic impact of the program and, if national economic information is not available, whether the agency stimulates or restricts competition.	• Profile of the Industry • Securities Registrations • Local Government Investment Pool Trust Funds • Recommendation 1
(X) If reviewing a regulatory program, whether complaint, investigation, and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession or regulated entity.	• Examinations • Complaint & • Disciplinary Activity
(XI) If reviewing a regulatory program, whether the scope of practice of the regulated occupation contributes to the optimum use of personnel.	• Licensing • Qualification Examinations
(XII) Whether entry requirements encourage equity, diversity, and inclusivity.	• Licensing • Qualification Examinations
(XIII) If reviewing a regulatory program, whether the agency, through its licensing, certification, or registration process, imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subsection (5)(a) of this section must include data on the number of licenses, certifications, or registrations that the agency denied based on the applicant's criminal history, the number of conditional licenses, certifications, or registrations issued based upon the applicant's criminal history, and the number of licenses, certifications, or registrations revoked or suspended based on an individual's criminal conduct. For each set of data, the analysis must include the criminal offenses that led to the sanction or disqualification.	• Collateral Consequences
(XIV) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.	• Recommendations 1 through 7

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR's website at coprrr.colorado.gov.

The functions of the Securities Commissioner (Commissioner), the Division of Securities

(Division) and the Securities Board (Board), as enumerated in Article 51 of Title 11, Colorado Revised Statutes (C.R.S.), shall terminate on September 1, 2026, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the Commissioner, the Division and the Board pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation should be continued and to evaluate the performance of the Commissioner, the Division and the Board. During this review, the Commissioner must demonstrate that the program serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, COPRRR staff interviewed Division staff, members of the regulated community, officials with state and national professional and industry associations and regulators in other states; attended Board meetings and reviewed complaint files, Colorado statutes and rules, and the Uniform Securities Act.

The major contacts made during this review include, but are not limited to:

- AARP ElderWatch
- Colorado Bar Association
- Colorado Department of Regulatory Agencies
- Colorado Division of Securities
- Colorado Investment Services Coalition
- Colorado Office of the Attorney General
- Colorado Older Adults Financial Justice Coalition
- Colorado Securities Board members
- Financial Industry Regulatory Authority
- Michigan Department of Licensing and Regulatory Affairs
- National Association of Insurance and Financial Advisers, Colorado Chapter
- National Society of Compliance Professionals
- North American Securities Administrators Association
- Securities and Insurance Licensing Association
- Securities Industry and Financial Markets Association
- U.S. Securities and Exchange Commission

Profile of the Industry

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), C.R.S. The first criterion asks whether regulation or program administration by the agency is necessary to protect the public health, safety, and welfare.

To understand the need for regulation, it is first necessary to understand what securities are, how they are regulated and the roles various firms and professionals play.

The Colorado Securities Act (Act), among other things, creates the Division and the Board and it provides for the registration of securities and the regulation of broker-dealers, investment advisers and their respective representatives.

The Act defines a "security," in pertinent part, as:

> any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate of subscription; transferable share; investment contract; viatical settlement investment; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security" . . .[2]

If an investment does not fall within one of these enumerated categories, the investment can be evaluated under a principled test to see if it might be an investment contract. Many of the investments currently offered to retail investors can be categorized as investment contracts.

In 1946, the U.S. Supreme Court developed a four-part test, which is known as the "Howey Test," to determine if an investment is an investment contract, and thus a security. The Howey Test requires a determination as to whether:

- There is an investment of money,
- The investment is made into a common enterprise,
- There is a reasonable expectation of profit, and
- Any expected profits are derived from the efforts of others.

This test was subsequently adopted by the courts in many states, including in Colorado.

Very generally, there are two types of securities: equities and debt. An equity security represents an ownership interest in an entity, such as a corporation, and typically

[2] § 11-51-201(17), C.R.S.

involves some pro rata control of the entity. Those who hold equities (often referred to as shareholders) typically do not receive regular monetary payments, although they may receive periodic dividends. For the most part, investors in equities realize their profit or loss when they sell the security.[3]

A debt security, by contrast, does not convey voting rights or any type of control over the issuing entity. However, debt securities do entitle the holder to regular payments of interest and repayment of the principal, regardless of the entity's performance.[4]

Securities are regulated at both the state and federal level. In general, all securities offered for sale in Colorado must be registered with the Commissioner, unless they fall into one of numerous exemptions. Registration requirements vary depending on the type and size of the offering, but they generally require extensive disclosures regarding the issuer's finances, corporate structure and lines of business.

Broker-dealers (firms) and their sales representatives (individuals), most commonly known as stockbrokers, execute trades, helping to sell or buy investments. They generally receive commissions based on each trade. They generally do not give consumers comprehensive advice, although they can provide information and recommendations on a specific product.

Broker-dealer sales representatives engage in securities transactions on behalf of and with the authority of the employing broker-dealer firm or an issuer of securities attempting to affect the sale of the issuer's own securities.[5]

Investment advisers, also known as asset managers, investment counselors, investment managers, portfolio managers, financial planners and wealth managers, generally provide investment advice to clients for a fee.[6]

The Division has exclusive regulatory jurisdiction over state-licensed investment advisers, which are investment advisers with less than $100 million in assets under management. The U.S. Securities and Exchange Commission, on the other hand, regulates firms with $100 million or more in assets under management, referred to as "federal covered advisers."[7]

[3] Investopedia. *What Are Financial Securities?* Retrieved July 1, 2025, from www.investopdia.com/terms/s/security.asp
[4] Investopedia. *What Are Financial Securities?* Retrieved July 1, 2025, from www.investopdia.com/terms/s/security.asp
[5] Colorado Division of Securities. *Broker-Dealers and Sales Representatives.* Retrieved July 1, 2025, from www.securities.colorado.gov/broker-dealer-and-sales-reprsentatives
[6] FINRA. *Investment Advisers.* Retrieved July 1, 2025, from www.finra.org/investors/investing/working-with-investment-professional/investment-advisers
[7] FINRA. *Investment Advisers.* Retrieved July 1, 2025, from www.finra.org/investors/investing/working-with-investment-professional/investment-advisers

Investment adviser representatives are individuals who work for investment advisers and provide investment advisory and financial planning services to consumers and businesses.[8]

To become a broker-dealer sales representative or an investment adviser representative, one must pass the appropriate qualification examination(s) administered by the Financial Industry Regulatory Authority.

The ninth sunset criterion questions the economic impact of the program and, if national economic information is not available, whether the agency stimulates or restricts competition. One way this may be accomplished is to review the projected salary and growth of the profession.

As of May 2024, the median annual wage for securities, commodities and financial services agents, such as broker-dealer sales representatives and investment advisers, was $78,140. The profession is expected to grow by seven percent between 2023 and 2033, which is faster than average compared to all other occupations.[9]

[8] Investopedia. *Investment Advisory Representative (IAR): Definition and Duties.* Retrieved July 1, 2025, from www. Investopedia.com/terms/i/iar.asp

[9] U.S. Bureau of Labor Statistics. *Occupational Outlook Handbook: Securities, Commodities, and Financial Services Sales Agents.* Retrieved July 1, 2025, from www.bls.gov/ooh/sales/securities-commodities-and-financial-services-agents.htm

Legal Framework

History of Regulation

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The first and second sunset criteria question:

> Whether regulation or program administration by the agency is necessary to protect the public health, safety, and welfare; and
>
> Whether the conditions that led to the initial creation of the program have changed and whether other conditions have arisen that would warrant more, less or the same degree of governmental oversight.

One way that COPRRR addresses this is by examining why the program was established and how it has evolved over time.

The securities industry has been regulated in the United States since 1911, with the passage of the first securities law in Kansas. By 1919, 32 states had passed their own securities laws. Today, all 50 states regulate at least some aspects of the securities industry.

The federal government, however, did not begin regulating securities until after the stock market crash of 1929. Acting under the presumption that the crash occurred because of the abandonment of fair, honest and prudent dealings in the securities markets in the decades following World War I and recognizing the need to fill the regulatory gaps created by the states' limited jurisdiction, Congress passed the Securities Act of 1933 and the Securities Exchange Act of 1934. These foundational pieces of legislation required securities to be registered, unless exempt, and codified a standard for securities fraud. They also created the U.S. Securities and Exchange Commission as the regulatory body to enforce not only the new administrative laws but to also have specific authority to investigate and prosecute securities fraud.

Since then, a multitude of securities-related laws have been enacted at the federal level.

In Colorado, the General Assembly passed the first securities statute in 1923 and has regulated the securities industry ever since. In an attempt to provide enhanced protection to consumers, the regulation of the securities industry has continually evolved. The Colorado Office of Policy, Research and Regulatory Reform conducted sunset reviews of the Colorado Securities Act (Act) in 1993, 2003 and 2014. Colorado has enacted a few notable laws since the 2014 sunset review.

In 2015, Senate Bill 102 continued the Securities Board (Board) and Senate Bill 104 continued the Division of Securities (Division), made some technical changes to the Act and updated some securities registration requirements.

Senate Bill 15-1246 authorized crowdfunding in Colorado when the issuer is a business entity organized under the laws of Colorado and the offering does not exceed $1 million in any 12-month period.

In 2017, House Bill 1253 created the Protection of Vulnerable Adults from Financial Exploitation Act and required, among other things, enumerated securities professionals to report suspected financial exploitation of vulnerable adults to the Securities Commissioner (Commissioner). If the exploitation does not involve securities, the Commissioner must then forward the report to local law enforcement and the appropriate county department of human or social services.

House Bill 18-1388 amended the Act to allow for notice filings for certain federal covered securities.

Colorado waded into the crypto world in 2019 with the enactment of the Colorado Digital Token Act by way of Senate Bill 023. This act was subsequently repealed in 2024 by way of Senate Bill 180.

In 2019, House Bill 1179 modified those provisions of the Act governing the legal investments of public funds, and in 2022, Senate Bill 142 repealed the Colorado Municipal Bond Supervision Advisory Board.

Legal Summary

The third, fourth, fifth and seventh sunset criteria question:

> Whether the existing statutes and regulations establish the least restrictive form of governmental oversight consistent with the public interest, considering other available regulatory mechanisms;
>
> Whether agency rules enhance the public interest and are within the scope of legislative intent;
>
> Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters; and
>
> Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates.

A summary of the current statutes and rules is necessary to understand whether regulation is set at the appropriate level and whether the current laws are impeding or enhancing the agency's ability to operate in the public interest.

Securities are regulated at both the federal and state levels. This section of the sunset report is intended to provide a high-level overview of pertinent federal laws as well as the Colorado Securities Act. While this is not an exhaustive analysis, a common theme among the federal and state laws is the idea that investors have access to accurate information when making investment decisions.

Federal Laws

Federal law regarding securities is vast, comprehensive and continually evolving. Some of the more prominent laws include:

- Securities Act of 1933,
- Securities Exchange Act of 1934,
- Investment Company Act of 1940,
- Investment Advisers Act of 1940,
- Foreign Corrupt Practices Act of 1977,
- Private Securities Litigation Reform Act of 1995,
- Sarbanes-Oxley Act of 2002,
- Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010,
- Stop Trading on Congressional Knowledge Act of 2012, and
- Jumpstart Our Business Startups Act of 2012.

Although some of these laws are nearly 100 years old, most, if not all, have been amended multiple times since their original enactment.

The Securities Act of 1933 governs how companies issue securities. Very generally, it prohibits the offering or sale of a security unless the offering is first registered with the U.S. Securities and Exchange Commission (SEC) or is otherwise exempt. The most common exemptions include private placements, certain small issues and offerings involving certain classes of securities. As compared to nonexempt offerings, exempt offerings often require filings with the state that are not as detailed or extensive. By contrast, for nonexempt offerings, the registration statement must include extensive disclosures. Even offerings that are exempt from registration, however, require extensive disclosures to purchasers.

The Securities Exchange Act of 1934, among other things, created the SEC and regulates national securities exchanges such as the New York Stock Exchange (NYSE) and the National Association of Securities Dealers Automated Quotations (NASDAQ); self-regulatory organizations such as the Financial Industry Regulatory Authority (FINRA) and securities broker-dealers. This act requires companies with large numbers of shareholders and those traded on national securities exchanges to register with the SEC

and comply with various reporting requirements. Importantly, it also prohibits issuers from making any material misstatements or omissions of material fact or engaging in fraudulent schemes related to the sales and solicitation of securities.

The Investment Company Act of 1940 regulates issuers of securities that themselves primarily invest and trade in securities, such as mutual funds and exchange-traded funds. Among other things, these companies must register with the SEC, make certain disclosures, refrain from certain transactions with affiliated persons and other investment companies, comply with certain limitations on the number of shares they can own in other investment companies and create shareholder-elected boards of directors to address conflicts of interest.[10]

The Investment Advisers Act of 1940 imposes a number of requirements on those in the business of advising others about the value of securities or whether to invest in securities. The statute applies to both firms and individuals, making them fiduciaries with respect to their clients. With certain exceptions, they must register with the SEC.[11]

The Foreign Corrupt Practices Act of 1977 has both anti-bribery and accounting provisions. The act generally prohibits making payments or giving anything of value to a foreign official to obtain or retain business. It also generally requires issuers to maintain accurate books and records with a reasonable level of detail and to maintain appropriate internal accounting controls.[12]

The Private Securities Litigation Reform Act of 1995 is intended to minimize frivolous securities regulation by, among other things, requiring plaintiffs to show that a defendant's false statements or omissions caused the loss at issue and it creates a safe harbor for certain forward-looking statements made by issuers.[13]

The Sarbanes-Oxley Act of 2002 primarily addresses the accounting practices and safeguards of publicly traded companies. These requirements include mandating that the chief executive and financial officers certify their annual and quarterly reports, prohibiting the exercise of improper influence over auditors, mandating the disclosure of certain off-balance sheet activities, mandating the creation of procedures for reporting abuses and complaints and protecting whistleblowers from retaliatory action.[14]

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 addresses the nation's financial industry in multiple ways. Among the impacts relevant to this sunset report were the creation of the Office of the Investor Advocate at the SEC, the establishment of a whistleblower award program for those reporting securities

[10] *Federal Securities Laws: An Overview*, Congressional Research Service (2020), p. 1.
[11] *Federal Securities Laws: An Overview*, Congressional Research Service (2020), p. 1.
[12] *Federal Securities Laws: An Overview*, Congressional Research Service (2020), pp. 1-2.
[13] *Federal Securities Laws: An Overview*, Congressional Research Service (2020), p. 2.
[14] *Federal Securities Laws: An Overview*, Congressional Research Service (2020), p. 2.

violations, increased regulation of credit rating agencies, provisions relating to risk allocation of asset-backed securities and provisions requiring additional disclosures regarding executive compensation at publicly traded companies.[15]

The Stop Trading on Congressional Knowledge Act 2012 clarifies that the nation's insider trading laws apply to members of Congress and their staff, as well as employees of the Executive and Judicial Branches. [16] Such individuals,

> owe a duty to the U.S. government and citizens not to trade on material, nonpublic information acquired through their positions or the performance of their official responsibilities.[17]

Finally, the Jumpstart Our Business Startups Act of 2012 permits certain smaller companies to operate under reduced disclosure requirements and provides certain exemptions from the Sarbanes Oxley Act for five years or until they achieve specific financial milestones. To facilitate crowdfunding, the act also creates an exemption for certain companies that rase up to $1 million through such mechanisms. The act also expanded some exemptions for small issues of securities and private placements.[18]

Colorado Securities Act

The Colorado Securities Act (Act) encompasses Colorado's efforts at regulating the securities industry by, among other things, regulating broker-dealers and their sales representatives as well as investment advisers and their representatives. This includes licensing and examinations of the firms. The Act also requires the registration of certain securities. In addition, it establishes standards for civil and criminal securities fraud and provides the Commissioner with the authority to enforce against violations. The Act also contains additional legislative acts:

- Colorado Crowdfunding Act,
- Local Government Investment Pool Trust Fund Administration and Enforcement Act, and
- Protect Vulnerable Adults from Financial Exploitation Act.

To administer and enforce these acts, as well as the Colorado Commodities Code and the Colorado Municipal Bond Supervision Act,[19] the Act creates the Division of Securities (Division) and the Securities Board (Board) in the Colorado Department of Regulatory Agencies (DORA).[20] The head of the Division is the Commissioner, who is appointed by DORA's Executive Director and the Board.[21]

[15] *Federal Securities Laws: An Overview,* Congressional Research Service (2020), p. 2.
[16] *Federal Securities Laws: An Overview,* Congressional Research Service (2020), p. 2.
[17] *Federal Securities Laws: An Overview,* Congressional Research Service (2020), p. 2.
[18] *Federal Securities Laws: An Overview,* Congressional Research Service (2020), p. 2.
[19] Although these two acts are administered and enforced by the Commissioner, they are not part of this sunset review.
[20] § 11-51-701, C.R.S.
[21] § 11-51-701, C.R.S.

The Commissioner is empowered to enforce and administer the Act,[22] including the promulgation of rules.[23] The Commissioner, Division employees and Board members are subject to prohibitions on using information submitted to the Division for personal gain and from improperly disclosing such information.[24] The Act also explicitly authorizes the Commissioner to work with other securities regulators in an effort to reduce the duplication of various filings.[25]

Any fees established by the Division must reflect the direct and indirect costs of administering and enforcing the various provisions of the Act.[26]

The Board is a type 1 entity,[27] comprising five members appointed by the Governor and approved by the Senate:[28]

- Two members who are Colorado-licensed attorneys with experience in securities law,
- One member who is a Colorado-licensed certified public accountant, and
- Two public members.

Board members may serve no more than two consecutive three-year terms, and at least one must come from west of the Continental Divide. They may be reimbursed for actual and necessary expenses, excluding out-of-state travel.[29]

Among the Board's duties are:

- Provide oversight to the Commissioner and be available to advise the Commissioner at the request of the Commissioner on issues affecting the Division and securities regulation in the state;[30]
- Aid and advise the Commissioner at the Commissioner's request in connection with the Commissioner's duties, including, but not limited to the promulgation of rules, issuance of orders, formulation of policies and the setting of fees;[31] and
- Hear matters and issue preliminary decisions pertaining to cease and desist orders, summary stop orders and summary suspensions.[32]

The Board must meet at least quarterly.[33]

[22] § 11-51-701(1), C.R.S.
[23] § 11-51-704, C.R.S.
[24] §§ 11-51-702.5(3) and -703(2), C.R.S.
[25] § 11-51-703(3), C.R.S.
[26] § 11-51-707(3)(a), C.R.S.
[27] § 11-51-702.5(2.5), C.R.S.
[28] § 11-51-702.5(1), C.R.S.
[29] §§ 11-51-702.5(2)(a), (b), (e) and (f), C.R.S.
[30] § 11-51-702.5(4), C.R.S.
[31] § 11-51-702.5(6)(a), C.R.S.
[32] § 11-51-702.5(6)(c), C.R.S.
[33] § 11-51-702.5(5), C.R.S.

LICENSING

The Commissioner licenses broker-dealers, broker-dealer sales representatives, investment advisers and investment adviser representatives. The licensing process involves multiple organizations, such as the SEC, FINRA, North American Securities Administrators Association (NASAA) and the Division.

Broker-dealers registered under the federal Securities Exchange Act of 1934 ('34 Act) and their associated sales representatives file licensing applications with and submit regulatory filings to the SEC, FINRA and the Division through the Central Registration Depository (CRD). State-licensed investment advisers and federal covered investment advisers file licensing applications with and submit regulatory filings with the SEC and the Division through the Investment Adviser Registration Depository (IARD).

A broker-dealer is generally a firm that is

> engaged in the business of effecting the purchases or sales of securities for the accounts of others or in the business of purchasing and selling securities for the person's own account.[34]

A broker-dealer sales representative is an individual who is not a broker-dealer and who is,

> authorized to act and [acts] for a broker-dealer in effecting or attempting to effect purchases or sales of securities or [is] authorized to act or [acts] for an issuer in effecting or attempting to effect the purchase or sales of the issuer's own securities.[35]

Broker-dealers may be entities that are registered under the '34 Act or firms restricted to conducting business within the boundaries of Colorado (state licensed broker-dealer firms). Broker-dealers registered under the '34 Act are approved by the SEC, are members of FINRA and are licensed in Colorado. State licensed broker-dealer firms are licensed in Colorado and restricted to conducting intrastate business unless licensed or exempt from licensing pursuant to the securities laws of other states.

To transact business in Colorado, broker-dealers and their sales representatives must be licensed by the Commissioner or be exempt.[36] Exempt broker-dealers include:[37]

- Those exempted by the Commissioner by rule;
- Online intermediaries;[38] and

[34] § 11-51-201(2), C.R.S.
[35] § 11-51-201(14), C.R.S.
[36] § 11-51-401(1), C.R.S.
[37] § 11-51-402(1), C.R.S.
[38] Pursuant to section 11-51-201(11.5), C.R.S., an online intermediary is one who "acts as an intermediary in a transaction involving an offer through a website of securities for the account of an issuer," subject to certain restrictions.

- Those who are registered under the ’34 Act and have no place of business in Colorado, so long as their business in Colorado is limited to:

    - Issuers in transactions involving their own securities,
    - Other broker-dealers,
    - Financial or institutional investors,
    - Individuals who are existing customers of the broker-dealer and who do not permanently live in Colorado, and
    - Not more than five clients in Colorado within any 12-month period.

Exempt broker-dealer sales representatives include those who are:[39]

- Employed or otherwise engaged by an exempt broker-dealer;
- Employed or otherwise engaged by an issuer in effecting transactions of exempt securities;
- Employed or otherwise engaged by an issuer in effecting transactions with the issuer’s employees, partners, officers, directors, parent companies or subsidiaries; or
- Exempted by the Commissioner by rule.

Broker-dealers that are registered with the SEC and are FINRA member firms must also obtain a license from the Commissioner. Similarly, broker-dealer sales representatives that are approved sales representatives with FINRA member firms must also obtain a license from the Commissioner.[40]

The Commissioner’s rules also provide for a specific type of state-licensed broker-dealer and associated sales representatives, referred to as mortgage broker-dealers and mortgage sales representatives, respectively. A mortgage broker-dealer is a broker-dealer that is not licensed by the SEC, is not a FINRA member firm and,

> whose business is limited exclusively to effecting transactions in notes, bonds or other evidences of indebtedness secured by mortgages or deeds of trust upon real estate.[41]

With certain enumerated exceptions, an investment adviser is generally a firm that

> for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. “Investment adviser” includes financial planners or other persons who, as an integral

[39] § 11-51-402(2), C.R.S.
[40] §§ 11-51-403(1) and (2), C.R.S.
[41] 3 CCR 704-1-51-2.1(N), Rules Under the Colorado Securities Act.

> component of other financially related services, provide investment advisory services to others for compensation and as part of a business or who hold themselves out as providing investment advisory services to others for compensation.[42]

An investment adviser representative is one who

> is an individual who has a place of business in this state; who is a partner, officer, or director of an investment adviser; who occupies status similar to or performs functions similar to those of a partner, officer, or director for an investment adviser; or who is employed or otherwise associated with an investment adviser who: makes recommendations or otherwise renders advice to clients regarding securities; manages securities portfolios for clients; determines which recommendation or advice regarding securities should be given to clients; or supervises employees of, or persons otherwise associated with, an investment adviser or a federal covered adviser[43] who perform any of the duties specified [above].[44]

Investment advisers and investment adviser representatives with a place of business in Colorado and who transact business in Colorado must either be licensed by the Commissioner or be exempt.[45] Investment advisers with no place of business in Colorado are exempt if:[46]

- They are exempt from registration with SEC;
- Their only clients in Colorado are other investment advisers, federal covered advisers, broker-dealers, depository institutions, insurance companies, employee benefit plans with assets of at least $1 million or other institutional investors that are not local government investment pool trust funds;
- During the preceding 12-month period, they had no more than five clients in Colorado; or
- They are exempted by the Commissioner by rule or order.

Investment adviser representatives are exempt if they are employed or otherwise associated with an exempt investment adviser.[47]

Investment advisers and investment adviser representatives may apply for a Colorado license through IARD.[48] Federal covered investment advisers with a place of business

[42] § 11-51-201(9.5)(a), C.R.S.
[43] A federal covered adviser is an investment adviser that is approved by FINRA under the Investment Advisers Act of 1940. *See* § 11-51-201(5.5)(a), C.R.S.
[44] § 11-51-201(9.6)(a), C.R.S.
[45] § 11-51-401(1.5), C.R.S.
[46] § 11-51-402(5), C.R.S.
[47] § 11-51-402(6), C.R.S.
[48] § 11-51-403(2.5), C.R.S.

in Colorado or who employ or otherwise engage investment adviser representatives with a place of business in Colorado must file a notice with the Commissioner through IARD.[49]

Each state licensed broker-dealer and investment adviser must employ an individual who has passed specified FINRA-administered qualification examinations to assume supervisory responsibility over that licensee.[50]

The Act authorizes the Commissioner to require, as a prerequisite to licensure, the passage of various FINRA-administered qualification examinations for sales representatives associated with broker-dealers that are not registered with the SEC, broker-dealer sales representatives and investment adviser representatives.[51]

The Act authorizes the Commissioner to promulgate various operational requirements for licensees. For example, the Commissioner may require state licensed broker-dealer firms to:[52]

- Satisfy financial responsibility requirements;
- Submit financial and other information;
- Maintain certain records for five years, or such other period as the Commissioner may specify;
- Establish written supervisory procedures to detect and prevent violations of the Act; and
- Post a fidelity bond in an amount sufficient to cover specified risks.

Similarly, the Commissioner may generally require state licensed investment advisers to:[53]

- Satisfy financial responsibility requirements,
- Maintain certain records for five years or such other period as the Commissioner may specify, and
- Establish written supervisory procedures to detect and prevent violations of the Act.

The Act authorizes the Commissioner to examine and make copies of the books and records of any licensee with or without notice, and regardless of where they are located.[54]

Investment advisers that take or maintain custody or possession of any funds or securities in which a client has a beneficial interest are generally prohibited from

[49] § 11-51-403(3), C.R.S.
[50] § 11-51-407(4), C.R.S.
[51] § 11-51-405, C.R.S.
[52] § 11-51-407(1)(a), C.R.S.
[53] § 11-51-407(1)(b), C.R.S.
[54] § 11-51-409, C.R.S.

commingling such assets and must maintain separate accounts and records for each client.[55]

Before providing services to any client, investment advisers and investment adviser representatives must provide certain disclosures that are consistent with those required under the Investment Advisers Act of 1940.[56]

The Commissioner may deny, suspend, revoke, censure or impose conditions upon a license, or bar a person from association with any licensee, if such applicant or licensee, among other things:[57]

- Has provided false or misleading information to the Commissioner on an application for licensure;
- Has willfully violated or willfully failed to comply with any provision of the Act or the rules promulgated thereunder;
- Has, within the preceding 10 years, entered a plea of guilty or *nolo contendere* to, or been convicted of, any crime involving a breach of fiduciary duty or fraud, or any misdemeanor involving the purchase or sale of securities;
- Is subject to a temporary or permanent injunction initiated by a securities regulator for engaging in fraudulent conduct;
- Has willfully violated the Commissioner's rules prohibiting unfair and dishonest dealings;
- Has failed to reasonably supervise another person who is subject to the licensee's supervision and who violates the Act;
- Has ceased to do business as a licensee;
- Has offered or sold to a public entity a financial instrument that the person knew or should have known does not qualify for sale to a public entity;
- Has, within the preceding five years, had a license or registration denied, suspended or revoked by another securities regulator;
- Is not qualified because of training, experience or knowledge of the securities business; or
- Has, within the preceding 10 years, been found to:
    - Have willfully violated another jurisdiction's laws pertaining to securities, commodities, investments, franchises, insurance, banking or finance;
    - Have had a securities license denied, suspended or revoked by another jurisdiction; or
    - Have been suspended or expelled from membership or participation in a securities exchange or association in another jurisdiction.

[55] § 11-51-407(5), C.R.S.
[56] § 11-51-409.5, C.R.S.
[57] § 11-51-410(1), C.R.S.

The Commissioner may take similar action against an investment adviser or investment adviser representative that has willfully failed to provide clients with required disclosures or that has provided dishonest or unethical investment advisory services.[58]

REGISTRATION OF SECURITIES

The Act defines a security as,

> [A]ny note; stock: treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate of subscription; transferable share; investment contract; viatical settlement investment; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security" or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.[59]

In general, securities must be registered, either with the SEC and/or with the Commissioner, unless they are exempt.[60] Securities may be registered by coordination or qualification. Registration by coordination is a simultaneous federal and state registration process where the state registration becomes effective when the SEC registration becomes effective. Registration by qualification, on the other hand, is a more complex state-level registration used for securities that are not eligible for federal registration or interstate exemptions and requires more extensive disclosures filed directly with the Commissioner.

In general, securities that are registered with the SEC qualify for registration by coordination in Colorado. This process requires the issuer to file a registration statement with the Commissioner as well as copies of, among other things:[61]

- The latest prospectus, offering circular or letter of notification;
- The issuer's articles of incorporation and bylaws;
- Any agreement with or among the underwriters of the security;
- A specimen, copy or description of the security; and
- Any other information the Commissioner may require.

Registration by qualification is a method of registering when the securities are subject to state regulation and may be sold within a single state. A security may be exclusively

[58] § 11-51-410(1)(l), C.R.S.
[59] § 11-51-201(17), C.R.S.
[60] § 11-51-301, C.R.S.
[61] § 11-51-303(1), C.R.S.

registered in Colorado by qualification or the security may be registered by qualification in specific states.

To register a security by qualification, the registration statement must contain a full and fair disclosure of all material facts regarding the investment being offered, including, but not limited to:[62]

- Information regarding the issuer, including its name, address, form of organization, jurisdiction of organization, the nature of its business and the general competitive conditions of that business and a description of its physical assets;
- Information regarding the officers and directors of the issuer, including their names and addresses, the amount of securities they intend to acquire and their remuneration;
- The issuer's capitalization and long-term debt;
- The kind and amount of securities to be offered, including the proposed offering price;
- The estimated cash proceeds the issuer expects to receive as a result of the offering;
- A copy of the prospectus;
- A specimen or copy of the security;
- A balance sheet; and
- Any other information required by the Commissioner.

The Commissioner has 28 days from the date of filing to either approve the registration or to request changes.[63]

Federal covered securities,[64] as defined in the Securities Act of 1933, may be offered in Colorado upon the filing of a notice with the Commissioner.[65]

The Commissioner may issue a stop order to deny the effectiveness of a registration statement if, among other things, the Commissioner finds that:[66]

- The registration statement contains any false or misleading information;
- Any provision of the Act, or any rule promulgated thereunder or any rule issued thereunder has been violated; or
- The security is the subject of a stop order in another jurisdiction.

[62] § 11-51-304(2), C.R.S.
[63] § 11-51-304(3), C.R.S.
[64] Under the Securities Act of 1933, federal covered securities are generally exempt from state registration requirements either because they are issued by certain types of investment companies or they are listed on a national stock exchange. *See* 15 U.S.C. § 77r(b).
[65] § 11-51-303, C.R.S.
[66] § 11-51-306(1), C.R.S.

Additionally, certain securities are exempt from the Act's registration requirements, including, but not limited to, those:[67]

- That are issued or guaranteed by the United States or any other governmental entity within the United States;
- That are issued or guaranteed by Canada or any other governmental entity within Canada;
- That are issued or guaranteed by and representing an interest in or a debt of any depository institution organized under the laws of any U.S. jurisdiction;
- That are issued or guaranteed by any credit union, industrial loan association or similar association organized under the laws of Colorado;
- That are issued or guaranteed by any railroad, other common carrier, public utility or holding company which is subject to certain enumerated requirements;
- That are listed on any national securities exchange registered with the SEC;
- That are issued by certain nonprofit organizations; and
- That are issued in connection with an employee stock purchase, savings, pension, profit-sharing or similar benefits plan.

The Commissioner may also exempt other securities if the Commissioner finds that requiring such securities to be registered is not necessary for the protection of investors.[68]

Additionally, the Act contains exemptions for certain types of securities that can be defined as crowdfunding.

CROWDFUNDING

Recognizing that start-up companies play a critical role in expanding economic opportunities, creating jobs and generating revenue and that the lack of access to capital can be an obstacle to starting or expanding small businesses, inhibiting job growth and negatively impacting the state's economy, the General Assembly enacted the Colorado Crowdfunding Act (Crowdfunding Act).[69]

In short, the Crowdfunding Act creates an exemption from the Securities Act's registration requirements if the issuer is a business entity organized under the laws of Colorado and, among other things:[70]

- The securities meet the requirements of certain federal exemptions for intrastate offerings;
- No more than $1 million will be raised by the offering in any 12-month period;

[67] § 11-51-307(1), C.R.S.
[68] § 11-51-309, C.R.S.
[69] §§ 11-51-308.5(1) and (2), C.R.S.
[70] § 11-51-308.5(3)(a)

- No more than $5,000 worth of the security will be sold to any purchaser in any 12-month period;
- The issuer makes certain filings with the Commissioner at least 10 days prior to the offering;
- The issuer makes certain disclosures to prospective investors;
- Purchasers of the security acknowledge the risks involved in the investment; and
- Each purchaser is a resident of Colorado, a business entity organized under the laws of Colorado and, if applicable, is an accredited investor.

The Crowdfunding Act also provides for the means by which such securities may be sold, such as through a broker-dealer or an online intermediary.[71]

Finally, the Commissioner is authorized to promulgate rules, and has done so,[72] to implement and enforce the Crowdfunding Act.[73]

FRAUD AND OTHER PROHIBITED CONDUCT

The Act contains several anti-fraud provisions that apply to a wide range of actors, including:

- Any person involved in the offer, sale or purchase of any security;[74]
- Custodians of local government investment pool trust funds; [75]
- Investment advisers of local government investment pool trust funds;[76]
- Broker-dealers or financial institutions advising local government investment pool trust funds;[77]
- Any person who receives any consideration from another for providing advice as to the value of securities;[78] and
- Investment advisers and investment adviser representatives acting as a principal for such person's own account or on behalf of a third party.[79]

In addition, it is unlawful to file any document with the Commissioner that the person knows or has reasonable grounds to believe is materially false or misleading.[80]

[71] §§ 11-51-308.5(3)(b) and (c), C.R.S.
[72] *See* 3 CCR 704-1-51.3.20, Rules Under the Colorado Securities Act.
[73] § 11-51-308.5(4), C.R.S.
[74] § 11-51-501(1), C.R.S.
[75] § 11-51-501(2), C.R.S.
[76] § 11-51-501(3), C.R.S.
[77] § 11-51-501(4), C.R.S.
[78] § 11-51-501(5), C.R.S.
[79] § 11-51-501(6), C.R.S.
[80] § 11-51-502, C.R.S.

Enforcement and Civil Liability

The Commissioner may conduct public or private investigations both within and outside of Colorado.[81] When conducting such investigations, the Commissioner may:[82]

- Administer oaths and affirmations;
- Subpoena witnesses and compel their attendance;
- Take evidence; and
- Require the production of any books, papers, correspondence, memoranda, agreements or other documents or records deemed relevant by the Commissioner.

Information obtained by the Commissioner during the course of a private investigation is confidential and may not be disclosed unless necessary in connection with a particular proceeding or investigation or for law enforcement purposes.[83]

When the Commissioner has grounds to believe that the Act is being violated or is about to be violated, the Commissioner has several options. First, the Commissioner may seek to temporarily or permanently enjoin such activity. Additionally, the Commissioner may seek damages, restitution, disgorgement or other equitable relief for violations of various provisions of the Act.[84]

Any person who willfully violates the Act's anti-fraud provisions commits a Class 3 felony[85] and any person who willfully violates any other provision of the Act commits a Class 6 felony.[86] The Commissioner may refer such cases to the Attorney General or the proper district attorney.[87]

The Act also provides for various types of civil liabilities which vary by the type of violation and who committed the violation.[88]

The Commissioner is authorized to take various types of administrative actions in a summary fashion by first holding a show cause hearing, including:

- Cease and desist orders,[89]
- Summary stop orders,[90] and
- Summary suspensions.[91]

[81] § 11-51-601(1), C.R.S.
[82] § 11-51-601(2), C.R.S.
[83] § 11-51-601(5)(a), C.R.S.
[84] § 11-51-602, C.R.S.
[85] § 11-51-603(1), C.R.S.
[86] § 11-51-603(2), C.R.S.
[87] § 11-51-603(3), C.R.S.
[88] § 11-51-604, C.R.S.
[89] § 11-51-606(1.5), C.R.S.
[90] § 11-51-606(3), C.R.S.
[91] § 11-51-606(4), C.R.S.

The Division can also participate in settlement negotiations that can result in a consent order issued by the Commissioner.[92]

Any final order of the Commissioner may be appealed to the Colorado Court of Appeals.[93]

LOCAL GOVERNMENT INVESTMENT POOL TRUST FUND ADMINISTRATION AND ENFORCEMENT ACT

A local government investment pool trust fund is a trust fund "that is comprised of moneys deposited by participating local governments . . . and held by a custodian."[94] An interest in such a fund is considered a security[95] and, as such, the Commissioner is empowered to administer and enforce the provisions of the Local Government Investment Pool Trust Fund Act.[96]

Such funds must register with the Commissioner[97] and report certain information to the Commissioner.[98]

PROTECT VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION ACT

The Protect Vulnerable Adults from Financial Exploitation Act (Exploitation Act) applies to "eligible adults" who are 70 years of age or older or who are[99]

> 18 years of age or older who is susceptible to mistreatment or self-neglect because the individual is unable to perform or obtain services necessary for his or her health, safety, or welfare, or lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person or affairs.

The Exploitation Act requires the individuals licensed under the Act to inform the Commissioner of instances in which they believe financial exploitation of an eligible adult may have occurred, may have been attempted or may be or is being attempted.[100]

Additionally, a broker-dealer or investment adviser may delay disbursement from an account of an eligible adult if, among other things, the licensee believes that the disbursement may result in the financial exploitation of the eligible adult.[101]

Finally, the Exploitation Act provides various good faith immunities for those required to act or report under its terms.[102]

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[92] § 11-51-606(2), C.R.S.
[93] § 11-51-607, C.R.S.
[94] § 24-75-701(9), C.R.S.
[95] § 11-51-903, C.R.S.
[96] § 11-51-902, C.R.S.
[97] § 11-51-905, C.R.S.
[98] § 11-51-906, C.R.S.
[99] § 11-51-1002(2), C.R.S.
[100] § 11-51-1003(1), C.R.S.
[101] § 11-51-1005(1), C.R.S.
[102] *See* §§ 11-51-1003(2), -1004, -1005(4) and -1006, C.R.S.

Program Description and Administration

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The fifth, sixth and seventh sunset criteria question:

> Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters;
>
> Whether an analysis of agency operations indicates that the agency or the agency's board or commission performs its statutory duties efficiently and effectively; and
>
> Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates.

In part, COPRRR utilizes this section of the report to evaluate the agency according to these criteria.

The Colorado Securities Act (Act) establishes a framework for the regulation of securities and securities firms and professionals in Colorado. It creates a registration system for securities and a licensing system for broker-dealers and their sales representatives and investment advisers and their investment adviser representatives. It also includes a number of other acts within it: Local Government Investment Pool Trust Fund Administration and Enforcement Act and the Protect Vulnerable Adults from Financial Exploitation Act.

Importantly, the Act also addresses a number of situations in which certain securities are exempt from having to be registered with the Commissioner, including those set out in the Colorado Crowd Funding Act.

The Act vests enforcement and administration of the Act, including its exemptions, in the Securities Commissioner (Commissioner) and the Division of Securities (Division). The Act also sets forth standards of civil and criminal securities fraud and authorizes the Commissioner to investigate and take enforcement action against anyone who perpetrates securities fraud. Finally, the Act authorizes the Commissioner to work with and refer matters to criminal prosecutors and to work with other securities regulators.

The Commissioner is also responsible for providing regulatory oversight for the regulation of the Colorado Commodity Code, the Colorado Municipal Bond Supervision Act and the Local Government Pooling of Investment Funds statutes. However, these three statutes are not subject to this sunset review.

The Act creates a five-member, Governor-appointed and Senate-approved, Securities Board (Board):

- Two members who are Colorado-licensed attorneys with experience in securities law,
- One member who is a Colorado-licensed certified public accountant, and
- Two public members.

Although the Board is a Type 1 entity, it mostly functions in an advisory capacity. However, it does have the statutory authority to act as a hearing panel for show cause hearings related to cease and desist orders, summary stop orders and summary suspensions.

The Board meets quarterly and all Board members attend most meetings. During the COVID-19 pandemic, meetings were held virtually, but they have been held on a hybrid basis since December 2022 with the in-person component taking place at the Division's offices in downtown Denver. Meetings largely consist of various reports from Division staff regarding enforcement and related activities. Members of the public occasionally attend.

The Commissioner is responsible for, among other things, issuing licenses and imposing discipline, registering securities, investigating and prosecuting securities fraud, rulemaking and policymaking.

Table 2 illustrates, for the fiscal years indicated, the Division's total expenditures and the number of full-time equivalent (FTE) employees appropriated to the Division.

Table 2
Total Program Expenditures and Staffing

Fiscal Year	Total Expenditures	FTE
19-20	$5,202,776	28
20-21	$5,184,222	28
21-22	$4,952,239	28
22-23	$5,227,344	28
23-24	$5,668,803	28

Variations in expenditures can generally be attributed to legal services expenditures and fluctuations in actual staffing levels.

The Division is currently staffed with 28 FTE, comprising:

- Securities Examiners (4.0 FTE Financial/Credit Examiner I, 4.0 FTE Financial/Credit Examiner II and 2.0 FTE Financial/Credit Examiner III);
- Lead Examiner (1.0 FTE Financial/Credit Examiner III);
- Chief Examiner (1.0 FTE Financial/Credit Examiner IV);
- Investigators (3.0 FTE Criminal Investigator III and 4.0 FTE Criminal Investigator IV);
- Chief Investigator (1.0 FTE Criminal Investigator V);
- Auditors (2.0 FTE Auditor III);
- Lead Auditor (1. FTE Auditor IV);
- Program Assistant (1.0 FTE Program Assistant I);
- Administrative Assistant (1.0 FTE Administrative Assistant II);
- Public Information Officer (1.0 FTE Marketing and Communications Specialist);
- Deputy Commissioner (1.0 FTE Program Management III); and
- Commissioner (1.0 FTE Program Management IV).

The Division is cash funded through the assessment of fees for its various activities. Table 3 illustrates, for the fiscal years indicated, the license fees assessed on broker-dealers and investment advisers (denoted as "firms") and their respective representatives (denoted as "individuals"). Notably, fees are the same for both initial licensing and license renewals.

Table 3
Licensing Fees

Fiscal Year	Firms	Individuals
19-20	$25	$6
20-21	$98	$24
21-22	$18	$5
22-23	$59	$16
23-24	$85	$20

As Table 3 illustrates, licensing fees fluctuated considerably over the course of the review period. This can mostly be attributed to the Division's attempts to address the Division's fund balances. Fees are expected to now stabilize at or about $65 for firms and $14 for individuals.

Further, Colorado's license fees are generally some of the lowest in the nation.

Additionally, the Division charges fees for its various other functions. Table 4 illustrates the fees in place as of this writing for some of the more common filings.

Table 4
Other Fees

Type of Fee	Fee
Registration by Coordination	$200
Registration by Qualification	$100
Regulation D Exemptions	$50
Crowdfunding Exemption - Issuer	$50
Regulation A Exemptions	$200
Local Government Trust - Initial	$5,000
Local Government Trust - Renewal	$2,000

Securities Registrations

The ninth sunset criterion questions the economic impact of the program and whether the program stimulates or restricts competition.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

The Division is responsible for, among other things, registering securities. Securities can be registered through coordination, qualification or limited offering. Registration by coordination can be completed if the securities are registered with the U. S. Securities and Exchange Commission (SEC). A registration statement and accompanying records must be filed with the Commissioner.[103]

When securities are registered by qualification, the securities are not registered with the SEC. Securities registered by qualification must include a registration statement containing full and fair disclosure of all material facts respecting the investment offered.[104]

A limited offering by qualification registration is available for smaller offerings made by Colorado firms to raise capital. This registration is authorized if the issuer has its principal office and the majority of its full-time employees in Colorado, at least 80 percent of the net proceeds from the offering will be used in connection with the operations of business in Colorado and those proceeds will not exceed $5 million in any 12-month period.[105]

[103] § 11-51-303(1), C.R.S.
[104] § 11-51-304(2), C.R.S.
[105] § 11-51-304(6), C.R.S.

Table 5 illustrates, for the fiscal years indicated, the total number of securities registrations filed with the Commissioner. Notably, the total offering amount in fiscal year 23-24 was over $53 billion.

Table 5
Securities Registrations

Registration Method	FY 19-20	FY 20-21	FY 21-22	FY 22-23	FY 23-24
Coordination	94	110	290	400	124
Qualification	7	7	4	10	11
Limited Offering	0	0	2	0	0

There were only two offerings registered via a limited offering registration during the review period. The low number might be attributable to the fact that exemptions offered under federal law tend to be more appealing since federal registration permits the issuer to offer the securities throughout the country.

The increase in offerings through coordination might be explained by larger companies seeking to raise capital following the COVID-19 pandemic.

Additionally, many securities fall within a variety of federal exemptions and are therefore not required to be registered with the Commissioner. More specifically, the passage of the federal National Securities Market Improvement Act of 1999 expanded the exemptions to the registration requirement for securities. These exemptions are commonly referred to as "Regulation D" and "Regulation A" offerings, which refer to the SEC regulations from which they arise.

Regulation D offerings describe a process by which issuers sell their securities through direct a private offering. Such an offering is a financial tool that enables a company to issue either debt or equity securities directly to investors and avoid many costs associated with "going public" through an initial public offering.[106]

Regulation D has resulted in various rules that describe the different types of offerings and set forth guidelines covering the amount of securities that can be sold and the number and type of investors allowed.[107]

[106] Investopedia. *SEC Regulation D (Reg D): Definition, Requirements, Advantages.* Retrieved July 15, 2025, from www.investopedia.com/terms/r/regulationd.asp
[107] Investopedia. *SEC Regulation D (Reg D): Definition, Requirements, Advantages.* Retrieved July 15, 2025, from www.investopedia.com/terms/r/regulationd.asp

Generally, the two most common rules utilized for private placement exemptions are 504 and 506. Among other things, Rule 504 limits such offerings to $10 million within any 12-month period, while Rule 506 permits unlimited offerings.[108]

Additionally, Regulation A is an exemption to the federal registration requirement for small public offerings of securities. Under Tier 1, the issuer is permitted to issue up to $20 million in any 12-month period. Under Tier 2, the issuer is permitted to issue up to $75 million in any 12-month period.[109]

Other common exemptions from the securities registration requirement are mutual funds and unit investment trusts. A mutual fund is an investment vehicle that is comprised of a pool of funds collected from many investors for the purpose of investing in securities such as stocks, bonds and money market instruments.[110]

A unit investment trust is an investment that offers a fixed portfolio, generally of stocks and bonds, as redeemable "units" to investors for a specific period of time.[111] It is designed to provide capital appreciation, dividend income or both.

Issuers of securities that fall under Regulation D must still provide a notice filing with the Commissioner stating that the securities are being offered in Colorado. Doing so ensures that the Division is aware of the exempt securities being offered to consumers in the state. Many other securities offerings or transactions are self-executing, meaning that the issuer does not need to file any type of notice with the Commissioner.

Table 6 illustrates for the fiscal years indicated the total number of exempt securities filings for which the Commissioner received notice.

[108] Investopedia. *SEC Regulation D (Reg D): Definition, Requirements, Advantages.* Retrieved July 15, 2025, from www.investopedia.com/terms/r/regulationd.asp
[109] Investopedia. *What is Regulation A? Definition, Update, Documentation, and Tiers.* Retrieved July 15, 2025, from www.investopedia.com/terms/r/regulationa.asp
[110] Investor.gov. *Mutual Funds.* Retrieved July 15, 2025, from www.investor.gov/introduction-investing/investing-basics/investment-products/mutual-funds-and-exchange-traded-funds-etfs/mutual-funds
[111] Investopedia.com. *Unit Investment Trust (UIT) Definition and How to Invest.* Retrieved July 15, 2025, from www.investopedia.com/terms/u/uit.asp

Table 6
Total Securities Filings Exempt from Registration

Types of Exemptions	FY 19-20	FY 20-21	FY 21-22	FY 22-23	FY 23-24
Regulation D – Rule 504	22	16	13	10	6
Regulation D – Rule 506	2,801	3,769	4,935	3,645	3,357
Regulation A	78	100	274	282	111
Mutual Funds Initial Offering	44	33	40	37	41
Mutual Funds Renewal	1,148	1,164	1,138	1,153	1,141
Unit Investment Trusts	1,315	1,424	1,447	1,408	1,392
Crowdfunding	3	1	0	2	3
Digital Tokens	2	3	2	0	0

The substantial increases in Rule 506 and Regulation A exemptions may be attributable to changes in the rule surrounding these exemptions in 2020, which, among other things, increased the offering limits for such offerings, thereby making them more accessible for more issuers.

The Colorado Digital Token Act was repealed in 2024, so no further exemptions will be available. Indicative of its limited utilization, the Division received only seven notices of exemption during the review period.

The exemption offered by the Colorado Crowdfunding Act has been utilized rarely but was used to raise over $4.7 million during the review period.

The Commissioner also has jurisdiction over municipal bond offerings issued under Title 32, Colorado Revised Statutes (Title 32 Offerings). All Title 32 Offerings, unless exempt from registration under the Act, must be registered with the Commissioner. During fiscal years 19-20 through 23-24, all municipal bond offerings have fallen within one of the available exemptions. Generally, the exemptions require the issuing districts (special or county improvement) to structure their offerings to provide market-appropriate ownership, usually by institutional investors.

Notwithstanding the registration exemption, the issuing districts are required to file a notice filing with the Division that the bonds are being offered.

Table 7 illustrates, for the fiscal years indicated, the total number of municipal bond exemption filings.

Table 7
Total Municipal Bond Exemption Filings

Fiscal Year	Number of Filings	Total Size of Filings
FY 19-20	210	$31,047,230,084.83
FY 20-21	285	$4,564,687,798.93
FY 21-22	267	$12,340,599,714.45
FY 22-23	114	$1,997,359,835.60
FY 23-24	128	$2,597,415,575.80

While no explanation is readily apparent for the dramatic fluctuations in the size of the filings over the review period, one explanation may simply be the monetary needs of the issuers during the COVID-19 pandemic and the periods immediately following.

Local Government Investment Pool Trust Funds

The ninth sunset criterion questions the economic impact of the program and whether the program stimulates or restricts competition.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

Local government investment pool trust funds are also required to register with the Commissioner. The purpose of these trust funds is to allow local governments to enjoy greater diversity of investments. The funds are limited to the kinds of investments that may be made, which are usually safe, highly rated investment products. Each pool is required to have an investment adviser managing the pool. The Commissioner is charged with overseeing the investment advisers' management of these pools.

Table 8 illustrates, for the fiscal years indicated, the total number of local government investment pool trust funds as well as the total assets under management.

Table 8
Local Government Investment Pool Trust Funds

Fiscal Year	Registered Local Government Investment Pool Trust Funds	Total Assets Under Management
19-20	3	$13,046,205,062
20-21	3	$15,730,268,796
21-22	3	$18,553,745,595
22-23	3	$19,336,738,403
23-24	3	$20,277,701,220

As Table 8 illustrates, the number of local government investment pool trust funds has remained constant over the course of the review period, although the assets under management increased by approximately 55.4 percent.

Licensing

The eleventh and twelfth sunset criteria question whether the scope of practice of the regulated occupation contributes to the optimum use of personnel and whether entry requirements encourage equity, diversity and inclusivity.

In part, COPRRR utilizes this section of the report to evaluate the program according to these criteria.

The Division is also responsible for, among other things, licensing broker-dealers, investment advisers and their respective representatives.

To obtain a license from the Division, broker-dealer firms must obtain an approved registration from the SEC and become an approved member of the Financial Industry Regulatory Authority (FINRA), and sales representatives must obtain a FINRA approval. Although these licensing processes are beyond the scope of this sunset review, it is worth noting that the SEC and FINRA registration and approval are lengthy and comprehensive. It can take as long as two to four years to complete, depending on the type of business the broker-dealer intends to conduct and the types of products it intends to sell.

Once the broker-dealer is approved by the relevant federal entities, the broker-dealer applicant will file the Uniform Application for Broker-Dealer Registration (Form BD), through the Central Registration Depository (CRD), in each state where the firm wants to conduct business by selecting the appropriate jurisdiction on the licensing application. In Colorado, the Form BD is reviewed by Division staff and the application is typically approved.

Similarly, the broker-dealer firm will file a licensing application on behalf of each sales representative that will transact business on its behalf in the state. The Uniform Application for Securities Industry Registration or Transfer (Form U4) will be submitted through CRD to the appropriate states. In Colorado, Division staff review the Form U4 and the license is approved or subjected to additional evaluation.

Since the SEC and FINRA have already reviewed the applications and approved the firms and individuals, the Division's review process typically takes a matter of days, unless there are issues meriting further investigation.

Table 9 illustrates, for the calendar years indicated, the number of broker-dealers and sales representatives licensed by the Division.

Table 9
Total Number of Broker-Dealers and Sales Representatives by Calendar Year

Calendar Year	New Broker-Dealer Applicants	Broker-Dealer Renewals	Total Number of Broker-Dealer Licenses	New Sales Representative Applicants	Sales Representative Renewals	Total Sales Representatives
2020	99	1,902	1,883	38,032	207,435	213,140
2021	98	1,866	1,908	47,781	214,392	224,564
2022	116	1,897	1,946	52,979	226,026	239,680
2023	102	1,926	1,906	49,423	242,350	247,544
2024	71	1,843	1,873	46,125	255,481	254,030

The number of new and renewal licenses do not add up to the totals indicated due to individuals withdrawing or terminating their licenses over the course of the year.

Broker-dealer firms and sales representatives are not always physically domiciled in Colorado. However, if they transact business in Colorado, they must possess a license here.

The fluctuations in licensing numbers can be partially explained by Colorado's relatively low licensing fees. In addition, the use of the CRD to obtain state licenses once approved at the federal level means that Colorado's licensing numbers are influenced by national trends.

For example, the number of broker-dealers approved by the SEC and FINRA has generally declined due to short- and long-term pressures firms are facing, including increasing operating and compliance costs. Additionally, these firms must contend with the growth in self-directed trading, a shift from broker-dealer models to more advisory models, the consolidation of broker-dealer firms, changing client demands and larger institutions capturing greater market share.

The increase in the number of sales representatives can be partially attributed to the expansion of broker-dealer firms into new markets, where they add new sales representatives to build a competitive advantage.

The Division also licenses mortgage broker-dealers and sales representatives. These are not licensed at the federal level and, as of July 2025, there were three mortgage broker-dealers and three mortgage sales representatives. No new mortgage broker-dealer licenses have been issued since fiscal year 12-13.

Additionally, the Division licenses investment advisers with a place of business in Colorado who have less than $100 million in assets under management and investment adviser representatives with places of business in Colorado.

Investment advisers with more than $100 million in assets under management, referred to as federal covered advisers, are licensed by the SEC only, but they must notify the Commissioner if they are conducting business in Colorado. Table 10 illustrates, for the calendar years indicated, the number of federal-covered investment advisers that filed such notice with the Commissioner.

Table 10
Federal-Covered Investment Advisers in Colorado

Calendar Year	Number of Federal-Covered Investment Advisers
2020	2,498
2021	2,751
2022	3,002
2023	3,124
2024	3,309

Table 11 illustrates for the calendar years indicated, the total number of state-licensed investment advisers and investment adviser representatives licensed by the Division.

Table 11
Total Number of State Investment Advisers and Investment Adviser Representatives by Calendar Year

Calendar Year	New Investment Adviser Applicants	Investment Adviser Renewals	Total Number of Investment Advisers Licensed by the Division	New Investment Adviser Representative Applicants	Investment Adviser Representative Renewals	Total Investment Adviser Representatives Licensed by the Division
2020	91	780	786	2,994	14,651	14,888
2021	108	755	786	3,317	15,118	15,135
2022	72	766	767	3,312	15,386	15,742
2023	95	780	802	3,333	15,975	15,906
2024	83	737	774	3,560	16,342	16,119

The number of new and renewal licenses do not add up to the totals indicated due to individuals withdrawing or terminating their licenses over the course of the year.

Investment adviser representatives are only licensed at the state level unless they qualify for a licensing exemption. Individuals must file a Form U4 with any state in which they wish to be licensed. Investment adviser representatives have to be licensed in any state in which they transact business, as do broker-dealer sales representatives. As a result, many apply in multiple states and Colorado's licensing numbers tend to follow national trends.

Many investment adviser representatives are affiliated with larger, SEC-registered investment adviser firms.

In general, the increase in the number of investment adviser firms can be attributed to a general growth in the industry. This increase may also be partly attributed to the introduction of more advisory products created and offered by investment advisers and a move away from commission-based products.

All firm and individual licenses must be renewed annually.

Investment adviser representatives, including those who work with state-licensed and SEC-registered investment adviser firms, must complete 12 hours of continuing education every 12 months. Courses must include six hours covering regulatory ethics and six hours covering products and practice.[112]

[112] 3 CCR §§ 704-1-51.4.4.1(IA)(A) and (J)(9), Rules Under the Colorado Securities Act.

If an investment adviser representative does not complete the required continuing education at the completion of the first reporting period, their license will renew as "CE Inactive." If they do not complete the required continuing education within the following year, they become ineligible to renew. An investment adviser representative's initial reporting period begins on the first day of the first full period the individual is licensed or required to be licensed in Colorado. Approximately 97 percent of investment adviser representatives complied with the continuing education requirement by the end of 2024, the first year of its existence.

To assist licensees in complying with the requirement, the Division engaged in extensive outreach efforts to educate the regulated community regarding the new requirement by holding multiple question and answer sessions and sending emails to both investment adviser representative and the investment advisers that employ them. Additionally, the Division itself was approved by the North American Securities Administrators Association (NASAA) to offer investment adviser representative continuing education and offered two free half-day courses in 2024 for credit and plans to continue to offer one to two courses each year as resources allow.

Finally, it is worth noting that federally registered firms may hold both broker-dealer licenses and investment adviser licenses simultaneously, depending on the services and products they offer. Additionally, sales representatives and investment adviser representatives may hold both types of licenses and may be affiliated with multiple firms.

Qualification Examinations

The eleventh and twelfth sunset criteria question whether the scope of practice of the regulated occupation contributes to the optimum use of personnel and whether entry requirements encourage equity, diversity and inclusivity.

In part, COPRRR utilizes this section of the report to evaluate the program according to these criteria.

Typically, individuals are required to take certain standardized qualification examinations to become a broker-dealer sales representative or an investment adviser representative. The qualification examinations are administered by FINRA and not the Division.

To become a broker-dealer sales representative, an individual must satisfy certain requirements and demonstrate a minimum level of understanding and expertise in securities subjects. An individual must be sponsored by a broker-dealer in order to sit for most qualification examinations. Some qualification examinations are required for all individuals, while others are taken because the subject matter pertains to the securities activities individual sales representatives will perform on behalf of firms or clients. For example, FINRA offers the Series 6 and Series 7 qualification examinations.

The Series 6 examination is an entry-level examination intended to assess the competency of the individual to perform the job of an investment company and variable contracts products representative.[113] It consists of 50 questions that must be answered within 1 hour and 30 minutes. The cost is $75.[114]

The Series 7 examination is an entry level examination intended to assess the candidate's competency in performing the job of a general securities representative.[115] It consists of 125 questions that must be completed in 3 hours and 45 minutes. The cost is $300.

These examination requirements assume the broker-dealer for whom the sales representative works is registered with the SEC. Additional qualification examinations are required for those, including mortgage sales representatives, who work for broker-dealers not covered by the SEC.

Investment adviser representatives are licensed at the state level only. There are three pathways to become licensed in Colorado:

- Pass the Series 65 examination;
- Pass the Series 7 and Series 66 examinations; or
- Hold one of the following professional designations:[116]
    - Chartered Financial Analyst,
    - Chartered Financial Consultant,
    - Certified Financial Planner, or
    - Personal Financial Specialist.

The Series 65 and Series 66 examinations are developed by NASAA and administered by FINRA.[117, 118] The Series 65 examination consists of 130 questions that must be completed in three hours and the cost is $147. The Series 66 examination consists of 100 questions that must be completed in 2 hours and 30 minutes and the cost is $177.[119]

[113] Financial Industry Regulatory Authority. *Series 6 – Investment Company and Variable Contracts Products Representative Exam.* Retrieved July 29, 2025, from finra.org/registration-exams-ce/qualification-exams/series6
[114] Financial Industry Regulatory Authority. *Qualification Exams.* Retrieved July 29, 2025, from finra.org/registration-exams-ce/qualification-exams
[115] Financial Industry Regulatory Authority. *Series 7 – General Securities Representative Exam.* Retrieved July 29, 2025, from finra.org/registration-exams-ce/qualification-exams/series7
[116] 3 CCR § 704-1-51-4.4(IA)(G), Rules Under the Colorado Securities Act.
[117] Financial Industry Regulatory Authority. *Series 65 – Uniform Investment Adviser Law Exam.* Retrieved July 29, 2025, from finra.org/registration-exams-ce/qualification-exams/series65
[118] Financial Industry Regulatory Authority. *Series 66 – Uniform Combined State Law Exam.* Retrieved July 29, 2025, from finra.org/registration-exams-ce/qualification
[119] Financial Industry Regulatory Authority. *Qualification Exams.* Retrieved July 29, 2025, from finra.org/registration-exams-ce/qualification-exams

The websites of the organizations involved in examination development and administration all declare commitment to the principals of equity, diversity and inclusion.[120]

Examinations

The tenth sunset criterion asks whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession or regulated entity.

The Division is responsible for conducting periodic audits, referred to as examinations, of licensees (e.g., broker-dealers, investment advisers and their respective representatives) and registered Local Government Investment Pool Trust Funds. The goal of the examinations is to ensure that licensees are complying with the Act in order to prevent dishonest and unethical sales practices. Investment advisers are held to a fiduciary standard under the Act, which is the highest standard of conduct in business. Examinations of investment advisers include a substantive review of their conduct to ensure they are acting at the level of a fiduciary.

Examinations typically entail a comprehensive review of the licensee to ensure compliance with the Act and applicable rules. During an examination, the examiner, among other things, reviews a range of documentation, including but not limited to any books and records that are required to be maintained, such as advisory contracts, disclosure documents, financial statements, client files, trading and fee data, communications, advertising and any other books and records deemed necessary.

Generally, examinations of new licensees are completed within the first two years of licensure and then every seven years. However, if there are increased risk factors, examiners may increase the frequency.

Table 12 illustrates, for the fiscal years indicated, the total number of examinations completed by the Division.

[120] *See* Prometric. *Prometric's Commitment to Diversity, Equity, and Inclusion.* Retrieved July 29, 2025, from prometric.com/dei-commitment; North American Securities Administrators Association. *Diversity, Equity, and Inclusion.* Retrieved July 29, 2025, from nasaa.org/policy/diversity-equity-and-inclusion/; and Financial Industry Regulatory Authority. *Regulatory Notice 21-17: FINRA Seeks Comment on Supporting Diversity and Inclusion in the Broker-Dealer Industry.* Retrieved July 29, 2025, from finra.org/rules-guidance/notices/21-17

Table 12
Examination Information

Fiscal Year	Number of Examinations
19-20	110
20-21	126
21-22	109
22-23	116
23-24	110

Since the Division has exclusive jurisdiction over state-licensed investment advisers with less than $100 million in assets under management, there is no federal regulator to examine them. As a result, these firms tend to be the focus of the Division's examination efforts.

The increase in the number of examinations in fiscal year 20-21 is attributable to the Division's audit team being fully staffed along with a pilot initiative for recently licensed firms using a modified and quicker examination process.

Most examinations (up to 95 percent according to some estimates) result in the issuance of a deficiency letter, which notifies the licensee of violations and provides an opportunity to cure those violations.

Complaints & Disciplinary Activity

The eighth and tenth sunset criteria require COPRRR to examine whether regulatory oversight can be achieved through a director model, and whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession or regulated entity.

In part, COPRRR utilizes this section of the report to evaluate the program according to these criteria.

The Act establishes prohibited business practices, which include fraud in connection with the offer, sale or purchase of any security.[121] Further, section 11-51-501(1), C.R.S., prohibits the employment of any device, scheme or artifice to defraud; the making of any untrue or material fact or omission of a material fact; and engaging in any act which operates or would operate as a fraud or deceit upon any person.

[121] § 11-51-501(1), C.R.S.

Any person who willfully violates Colorado's anti-fraud provisions is guilty of a Class 3 felony and any person who willfully violates any other provision of the Act commits a Class 6 felony. [122]

The Division receives complaints from a variety of sources, such as examinations; referrals from other state or federal agencies; referrals from other states and directly from investors. Public information from the news or online sources may also be the grounds for an internally generated complaint.

The bulk of the Division's enforcement work is investigating unlicensed activities and securities fraud perpetrated against Coloradans. When violations are substantiated, the Division takes appropriate legal action, which can include civil complaints in Denver District Court or assistance with criminal actions in the appropriate judicial districts. Those matters can result in restitution or recission for the victims as well as asset freezes, penalties and injunctions and in criminal cases, incarceration. Referrals from examinations tend to be fewer and usually result in administrative actions related to licensing.

Table 13 illustrates, for the fiscal years indicated, the number and nature of complaints received by the Division.

Table 13
Complaint Information

Nature of Complaints	FY 19-20	FY 20-21	FY 21-22	FY 22-23	FY 23-24
Fraud	53	42	29	20	25
Unlicensed Activity	25	17	17	19	24
Unregistered Securities	18	11	10	8	3
Investment Adviser/Representative Abuse	8	7	3	6	3
Commodities Violations	4	2	2	0	2
Broker-Dealer/Representative Abuse	3	2	1	2	3
Other (opened)	11	26	12	6	2
Senior Exploitation (not opened)	56	78	106	162	225
Other (not opened)	40	45	40	35	90
Total Issues Complained About	**218**	**230**	**220**	**258**	**377**
Total Number of Unique Complaints	**181**	**185**	**187**	**240**	**355**
Total Cases Opened	**85**	**62**	**41**	**43**	**40**

[122] §§ 11-51-603(1) and (2), C.R.S.

General fluctuations in the number of complaints can be attributed to the overall performance of the economy, social trends, global events and the complaints the public chooses to file with the Division. In good markets, there tend to be fewer complaints because inappropriate activity often will not result in negative outcomes. In bad markets, there tend to be more complaints as people detect fraudulent or questionable conduct as the markets trend down.

The increase in the number of "Senior Exploitation (not opened)" cases can be attributed to the passage of the Protect Vulnerable Adults from Financial Exploitation Act. This act requires the Division to receive complaints, review them and then forward them on to other agencies for action. As a result, the Division acts as a sort of clearinghouse and does not have the authority to open a case or investigate if the allegations are not related to securities.

The category "Other (opened)" include those that do not neatly fit into any other category and commonly include referrals from examinations, violations of previous orders or other investment adviser compliance matters.

The category "Other (not opened)" generally do not appear to involve securities matters and could include any type of scam, like a romance crypto scam, or a theft.

Once a complaint is received, Division staff begins a preliminary investigation to determine whether the allegations involve matters within the Division's jurisdiction and have enough evidence to warrant further inquiry. If the Division opens a case and conducts an investigation, the investigation may include subpoenaing documents, interviewing witnesses and garnering other pertinent information.

Division staff may contact and/or work with or refer cases as appropriate to federal authorities, such as the SEC or the U.S. Attorney, as well as regulators in other states. Federal authorities typically take cases with national implications, such as those involving corporate fraud or insider trading (which the Division does not have jurisdiction over), and the Division typically retains cases where a majority of the investors or investments are located in Colorado.

If a determination is made that a violation occurred and that legal action is warranted, administrative and civil enforcement proceedings are referred to the Colorado Attorney General's Office (AGO) and the Commissioner is the plaintiff in those cases. Criminal cases are referred to the appropriate district attorney, the AGO or the U.S. Attorney.

Table 14 illustrates, for the fiscal years indicated, the number of final agency actions taken by the Commissioner.

Table 14
Final Agency Actions

	FY 19-20	FY 20-21	FY 21-22	FY 22-23	FY 23-24
DORA In-House Actions					
Other Referrals	4	3	0	5	5
Cease and Desist/Consent Order	14	6	6	10	7
Warning Letter	9	1	5	2	1
Licensee Actions					
Investment Adviser / Representative License Revocation	1	2	2	2	3
Investment Adviser Sanction (non-revocation)	11	7	8	4	4
Broker-Dealer / Representative Revocation	0	1	1	0	0
Broker-Dealer / Representative Sanction (non-revocation)	0	1	0	0	3
Administrative/Civil Actions					
Administrative or Civil Referrals	17	19	10	11	15
Civil Complaint Filed	11	7	10	1	3
Civil Judgment	5	1	4	1	0
Civil Preliminary Injunction	0	2	1	0	1
Civil Permanent Injunction	9	3	4	6	2
Civil Receiver Appointed	4	1	1	0	0
Civil Temporary Restraining Order	1	1	1	0	0
Criminal Actions					
Criminal Referrals	8	10	12	3	4
Criminal Indictment	5	11	9	4	2
Criminal Conviction	3	9	8	5	8
Criminal Sentenced	4	6	8	3	7

Table 14 provides a wealth of information related to the Commissioner's enforcement activity.

The section entitled "In-House Actions" includes cases resolved by Division staff without referral to the AGO. "Other Referrals" indicates the number of cases referred to other state or local agencies. "Cease and Desist/Consent Order" indicates cases that resulted

in cease and desist orders or cases in which there was a stipulation that was given effect by a consent order. Finally, warning letters might be issued for violations not involving investment adviser regulations and often involve non-licensees. They typically involve cases where the Division has identified violations of the Act but they do not warrant the expenditure of resources for more drastic enforcement measures.

As the data indicate, the most frequent enforcement action in this category is the issuance of cease and desist or consent orders.

The section entitled "Licensee Action" involves, as the title suggests, licensees. Categories indicating a sanction but not a revocation could include violations of licensing conditions. Under such circumstances, the Commissioner typically requires the licensee to hire a compliance consultant and may require that consultant to conduct a surprise audit of the licensee to ascertain compliance. These typically involve issues that occur after the licensee has failed to comply with a deficiency letter.

As the data indicate, licensees are a relatively compliant group. Only 10 actions were taken in this category in fiscal year 23-24, out of a licensee population of over 272,000.

The section entitled "Administrative/Civil Actions" refers to cases referred by the Commissioner to the AGO for filing in the administrative process through the Office of Administrative Courts (OAC) or through the civil process in Denver District Court. Since the OAC cannot order the payment of damages, these cases are typically limited to those involving cease and desist orders and licensees. Importantly, in these cases, the Commissioner is the named complainant and is represented by the AGO.

As the data in this section indicate, the Commissioner's civil enforcement actions resulted in 11 civil judgments and 24 permanent injunctions over the five-year review period.

The section entitled "Criminal Actions" indicates cases referred by the Commissioner to the AGO or the appropriate district attorney for the filing of criminal charges. In such instances, the Division will assist with the investigations, but the Commissioner is not the complainant and does not direct the cases, ceding such authority to the relevant criminal prosecutor.

As the data in the last two sections indicate, the Commissioner's criminal referrals resulted in 33 criminal convictions over the five-year review period.

The Commissioner's enforcement efforts can also result in restitution orders. Table 15 illustrates, for the fiscal years indicated, the total value of restitution orders obtained by the Division through its enforcement efforts.

Table 15
Total Value of Restitution Orders

Fiscal Year	Value of Restitution Orders
19-20	$29,603,391.30
20-21	$19,939,005.73
21-22	$5,784,515.00
22-23	$8,810,171.71
23-24	$2,047,570.22

The value of restitution orders fluctuates from year to year based on a number of factors, including the number of cases involved, and the dollar values involved in them. In short, the fluctuation has more to do with the nature of the cases themselves, as opposed to the Division's performance.

Collateral Consequences – Criminal Convictions

The thirteenth sunset criterion requires COPRRR to examine whether the agency, through its licensing, certification or registration process, imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests.

COPRRR utilizes this section of the report to evaluate the program according to this criterion.

The Commissioner may deny, suspend, revoke, censure or impose conditions upon a license, or bar a person from association with any licensee, if such applicant or licensee, among other things has, within the preceding 10 years, entered a plea of guilty or *nolo contendere* to, or been convicted of, any crime involving a breach of fiduciary duty or fraud, or any misdemeanor involving the purchase or sale of securities.[123]

On only two occasions between fiscal years 19-20 and 23-24 has the criminal record of a licensee or applicant been an issue.

In fiscal year 19-20, a licensee was convicted of tax fraud and subsequently relinquished their license and agreed not to seek another securities license in Colorado.

In fiscal year 23-24, an applicant who was charged with criminal attempt to commit sexual abuse on a child, patronizing a prostituted child and soliciting for child prostitution waived the 90-day limitation on the Commissioner taking action, thereby allowing the Commissioner to take action on the license in the event the licensee failed to comply with the terms of their probation.

[123] § 11-51-410(1)(c), C.R.S.

Analysis and Recommendations

The final sunset criterion questions whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest. The recommendations that follow are offered in consideration of this criterion, in general, and any criteria specifically referenced in those recommendations.

Recommendation 1 — Continue the Colorado Securities Act for 11 years, until 2037.

The Colorado Securities Act (Act) creates the Division of Securities (Division), the Securities Board (Board), the Colorado Crowdfunding Act, the Local Government Investment Pool Trust Fund Administration and Enforcement Act and the Protect Vulnerable Adults from Financial Exploitation Act. Additionally, it creates the regulatory framework under which the Securities Commissioner (Commissioner) licenses broker-dealers, investment advisers and their representatives, and provides for the registration, and exemption from registration, of securities at the state level. It also codifies the state's securities fraud provisions and tasks the Division with the specific authority to understand, investigate and prosecute civil and criminal securities fraud matters and establishes penalties, restitution to make victims whole, and other recourse in law and equity.

In short, the Act provides the regulatory framework under which securities are sold in Colorado and by whom, and it creates a specialized agency with expertise in finance to combat securities fraud and hold violators accountable.

The first sunset criterion questions whether regulation is necessary to protect the public health, safety and welfare. The ninth sunset criterion, in part, inquires as to the economic impact of the program. It is, therefore, reasonable to explore whether licensing those in the securities industry, registering securities themselves and investigating and prosecuting securities fraud serve to protect the public.

Securities are issued for multiple reasons, but primarily to raise capital. Capital, in turn, can be used to invest in new equipment, finance the acquisition of or merger with another company, finance operations and many other things. Securities take two general forms: equity and debt. Equity securities offer investors an opportunity to own a small portion of the issuer. Debt securities offer a steady stream of income. Each serves its own purpose. Thus, the securities markets spur overall economic growth.

The fundamental goals of securities regulation are investor protection and establishing the "rules of the game" so as to maintain the integrity of the securities markets. A securities market with integrity will, theoretically, induce people to invest in the companies issuing the securities. When the rules are obeyed, the markets work; legitimate businesses raise capital to operate, hire employees and generate income; investors can save and make profits to support themselves and their families and

investment in the economy increases. When the rules are disobeyed and no one is held accountable, the markets lose credibility; funds are diverted from legitimate businesses to fraudulent enterprises; legitimate businesses struggle to raise capital; investors lose their savings to fraud and the economy becomes more inefficient and is harmed.

Securities regulation was born out of a desire to level the playing field so that legitimate businesses could efficiently raise capital, settlement of securities would be more certain, the markets would stabilize and investors would have more trust in market efficiencies. Through the registration of securities, along with specific exemptions and filing requirements, regulation mandates full and fair disclosure with the aim of providing all investors with the same information necessary to weigh the potential risks and rewards of investing in a given security. Issuers are held accountable for what they represent to investors and intermediaries who sell or advise on securities are held to a high professional standard.

Integrity in the marketplace also demands that those who induce others to invest through lies and half-truths are investigated, prosecuted, ordered to stop, made to make victims whole and, in some instances, incarcerated. This dissuades other bad actors, returns funds to victims and creates a sense of accountability, confidence and fairness in the markets.

Securities regulation does not attempt to evaluate whether a given security is a good or bad investment. Rather, it seeks to ensure that the investor has access to the information that will assist them in making their own determination as to whether a particular security is a good or bad investment for them. The issuers must tell the whole truth under the securities laws.

To assist them in making such an evaluation, an investor may retain the services of a broker-dealer, investment adviser or their respective representatives. While the nature and types of services offered by such firms and individuals vary by the license they hold and their individual practices, these licensed firms and individuals help investors navigate the vagaries of the securities markets, the myriad disclosures and financial statements that are available and general market trends. Securities regulation requires these professionals to sell and advise on investing in suitable securities over unsuitable securities.

The Act's anti-fraud provisions and the Commissioner's enforcement of them requires full and fair disclosure, leading to the investigation and prosecution of those who induce investments through lies and half-truths.

Thus, the combination of registering securities, licensing those who work in the securities industry and taking enforcement action against those who commit securities fraud serves to protect the public by way of individual investors, but also the general public by ensuring the integrity of the securities markets upon which millions of businesses rely to raise capital, thus benefiting the economy overall.

The fact that in fiscal year 23-24 alone the Commissioner took multiple enforcement actions, including the facilitation of eight criminal convictions and obtaining over $2 million in restitution, demonstrates the continued need for regulation.

The third sunset criterion asks whether existing statutes create the least restrictive form of oversight consistent with the public interest. The Act, Division and Commissioner do not operate in isolation. Rather, the U.S. Securities and Exchange Commission (SEC), as well as other national organizations such as the Financial Industry Regulatory Authority (FINRA), play complementary roles.

As the federal agency with primary regulatory authority over the securities industry, the SEC has, primarily, a national or interstate focus, whereas the Division's focus is squarely on Colorado. Additionally, only the Commissioner regulates investment advisers with less than $100 million in assets under management. The SEC has no jurisdiction over these firms.

Thus, the Division and the SEC have developed a collaborative, but not duplicative, relationship. Each fills the gaps that the other is unable to. It is, therefore, reasonable to conclude that the Act is not duplicative of federal law.

For all these reasons, the General Assembly should continue the Act for 11 years, until 2037. Some may question such a lengthy continuation period given the uncertainties at the federal level. However, those events are likely to evolve too quickly for a sunset review to address and may very well involve economic implications that fall well outside of the scope of a sunset review. Thus, 11 years is justified.

Recommendation 2 — Continue the Board for 11 years, until 2037.

The Board is a Type 1 entity consisting of five Governor-appointed members:[124]

- Two Colorado-licensed attorneys with expertise in securities law;
- One Colorado-licensed certified public accountant; and
- Two members of the general public.

One of the members must live west of the Continental Divide.[125]

The Board is tasked with providing advice and oversight to the Commissioner;[126] holding hearings on cease and desist orders, summary stop orders and summary suspensions;[127] and, in conjunction with the Executive Director of the Department of Regulatory Agencies (Executive Director and DORA, respectively) appointing the Commissioner.[128]

[124] §§ 11-51-702.5(1) and (2.5), C.R.S.
[125] § 11-51-702.5(2)(a), C.R.S.
[126] §§ 11-51-702.5(4) and (6)(a), C.R.S.
[127] § 11-51-702.5(6)(c), C.R.S.
[128] § 11-51-701, C.R.S.

The first sunset criterion questions whether regulation is necessary to protect the public health, safety and welfare, and the eighth sunset criterion asks whether regulatory oversight can be achieved through a director model.

The Board meets quarterly and its meetings are well attended by its members. The majority of meeting time consists of the Commissioner and Division staff reporting on their enforcement and examination activities for the previous quarter. These presentations frequently lead to larger discussions among Board members, the Commissioner and Division staff. Thus, the Board fulfills its statutory obligations to provide advice and oversight to the Commissioner.

Although two summary suspension hearings were referred to the Board between fiscal years 19-20 and 23-24, the period under review, both were settled prior to the hearing. However, the Board did hold one hearing in October 2024.

The current Commissioner was hired in 2020, so the Board exercised its joint authority to appoint the Commissioner during the five-year period under review, though none of the current Board members were involved.

Given the current uncertainty surrounding securities regulation at the federal level, along with advances in technology, such as artificial intelligence, and the proliferation of online securities trading platforms, the advice afforded by the Board's members of industry experts will likely be necessary well into the future. Such advice will aid the Commissioner in better protecting the public health, safety and welfare.

For all these reasons, the General Assembly should continue the Board for 11 years, until 2037. Doing so will once again align the next sunset review of the Board with that of the Act overall.

Recommendation 3 — Clarify that deficiency letters are not public documents.

As part of its compliance and enforcement efforts, the Division regularly examines licensees in an audit-like format. These examinations typically result—up to 95 percent of the time, according to some estimates—in what is commonly known as a deficiency letter. These letters often highlight violations and tips to ensure future compliance. Depending on the nature of the issues addressed in a particular letter, it may also contain confidential client information.

The purpose of deficiency letters is to encourage compliance rather than to punish. This requires collaboration on the part of the licensee both in terms of identifying issues to be addressed and in rectifying those identified. If the problems are not adequately addressed, actual enforcement action may follow.

Deficiency letters represent a type of warning and, as such, have historically been treated as investigatory in nature and non-public. This also means that they have not been disclosable, either to other regulators or to the public under the Colorado Open Records Act (CORA). This is standard practice in at least 15 other states and at the SEC itself.

Indeed, the Act provides that

> Information in the possession of, filed with, or obtained by the [Commissioner] in connection with a private investigation under this section shall be confidential. No such information may be disclosed by the [Commissioner] or any of the officers or employees of the [Division] unless necessary or appropriate in connection with a particular investigation or proceeding under this article or for any law enforcement purpose.[129]

However, the Act does not define "private investigation," and that term is used in no other provision of the Act.

Still, the Division has historically considered the examinations that result in deficiency letters to be private investigations and, therefore, concluded that the deficiency letters are confidential and not subject to disclosure.

This interpretation was recently called into question when the Division received a request pursuant to CORA to release a series of deficiency letters.

This has caused consternation among Division staff and the regulated community. Most deficiency letters are issued to state-licensed investment advisers, which tend to be small businesses that lack a full-time compliance department or employee. The examination process and deficiency letters offer an opportunity for the Division to work with these small businesses to bring them into compliance, resulting in better consumer protection. The opportunity to cure the deficiencies is a way to allow small businesses to work to address the matters without escalating them to a public discourse. The Division estimates that over 80 percent of investment adviser firms in Colorado are small businesses. If deficiency letters were to become public, these small businesses would have to divert their limited resources to defending themselves in the court of public opinion when the underlying matters do not amount to a level requiring court action.

In addition, the Division has seen firms request deficiency letters of their competitors. Allowing competitors to use deficiency letters to harm one another makes them weapons and undermines their purpose, which is to efficiently increase compliance, improve consumer protection and stabilize the market.

[129] § 11-51-601(5)(a), C.R.S.

If deficiency letters are disclosable, the current cordial and collaborative deficiency letter process between the Division and the licensees would become more adversarial as licensees would feel compelled to fight against deficiency letters to protect themselves from reputational harm. This would limit the ability of the Division to bring licensees back into compliance and would ultimately increase the risk of consumer harm.

The fourth sunset criterion asks whether agency rules enhance the public interest and are within the scope of legislative intent. The fifth sunset criterion asks, among other things, whether the agency's operations are impeded or enhanced by existing statutes, rules, procedures and practices.

Recommendation 1 of this sunset report concluded that regulation of the securities industry is necessary to protect the public. As examinations and the resulting deficiency letters advance the objectives of the Act, it is reasonable to conclude that they, too are necessary to protect the public. However, if their utility is undermined by a new interpretation of statute, that may not be the case much longer.

Additionally, the Act itself seems to anticipate and condone keeping certain information confidential. However, by not defining the term "private investigation," the Act is subject to interpretation.

For all these reasons, the General Assembly should clarify that deficiency letters are not public documents and are not subject to disclosure under CORA or to other regulators as indicators of violations.

Recommendation 4 — Revise the process by which the Commissioner issues cease and desist orders and summary suspensions of licenses.

The Act sets forth an extensive administrative process that must be followed before the Commissioner can issue a cease and desist order or a summary suspension.

The Commissioner may issue cease and desist orders with regard to:[130]

- The sale of a security that is subject to registration under the Act and the security is being offered or has been offered or sold in violation of the Act's registration requirements,
- Any person who has engaged in or is about to engage in the offer or sale of a security or any other act or practice in violation of the Act's licensing requirements,
- Any person who has engaged or is about to engage in the offer or sale of a security or any other act or practice in violation of the Act's anti-fraud provisions,

[130] § 11-51-606(1.5)(b), C.R.S.

- Any person who has engaged in or is about to engage in any act or practice in violation of any provision of the Colorado Commodity Code, or
- Any person who has violated or is about to violate any order previously issued by the Commissioner.

However, before the Commissioner can issue such an order, there must first be a show cause hearing at which the respondent must show why the Commissioner should not issue a final order to cease and desist. This hearing must take place between 10 and 21 days after the Commissioner issues the order to show cause.[131]

The Commissioner must receive the initial decision from the hearing officer within 10 days of the show cause hearing. The Commissioner then has an additional 10 days within which they must issue the final order.

In the end, a total of 41 days could pass between the initial order to show cause and the issuance of the final cease and desist order. During this time, the respondent may continue to engage in the unlawful conduct that gave rise to the initial show cause order.

Additionally, the Commissioner may summarily suspend the license of a broker-dealer, investment adviser or their representatives if it appears to the Commissioner, after investigation, that a licensee, among other things:[132]

- Has provided false or misleading information to the Commissioner on an application for licensure;
- Has willfully violated or willfully failed to comply with any provision of the Act or the rules promulgated thereunder;
- Has, within the preceding 10 years, entered a plea of guilty or *nolo contendere* to, or been convicted of, any crime involving a breach of fiduciary duty or fraud, or any misdemeanor involving the purchase or sale of securities;
- Is subject to a temporary or permanent injunction initiated by a securities regulator for engaging in fraudulent conduct;
- Has willfully violated the Commissioner's rules prohibiting unfair and dishonest dealings;
- Has failed to reasonably supervise another person who is subject to the licensee's supervision and who violates the Act;
- Has ceased to do business as a licensee;
- Has offered or sold to a public entity a financial instrument that the person knew or should have known does not qualify for sale to a public entity;
- Has, within the preceding five years, had a license or registration denied, suspended or revoked by another securities regulator;
- Is not qualified because of training, experience or knowledge of the securities business; or

[131] § 11-51-606(1.5)(d), C.R.S.
[132] §§ 11-51-606(4)(a) and -410(1), C.R.S.

- Has, within the preceding 10 years, been found to:
    - Have willfully violated another jurisdiction's laws pertaining to securities, commodities, investments, franchises, insurance, banking or finance;
    - Have had a securities license denied, suspended or revoked by another jurisdiction; or
    - Have been suspended or expelled from membership or participation in a securities exchange or association in another jurisdiction.

However, before the Commissioner can issue a summary suspension, there must first be a show hearing between 7 and 20 days after the Commissioner issues the order to show cause.[133] Since show cause hearings for summary suspensions must be heard by the Board, scheduling them on such short notice can be difficult.

As with cease and desist orders, the Commissioner must receive the initial decision from the hearing officer within 10 days of the show cause hearing. For summary suspensions, however, another 10 days must pass to allow the Division or respondent to file exceptions to the initial decision with the Commissioner. The Commissioner then has another 10 days within which to issue the final order.

In the end, a total of 50 days could pass between the initial order to show cause and the issuance of the final order of summary suspension. During this time, the respondent may continue to engage in the unlawful conduct that gave rise to the initial show cause order.

In the case of a summary suspension, additional administrative proceedings must then occur should the Commissioner seek to revoke the license.

Compounding matters, the show cause hearings for both cease and desist orders and summary suspensions must be held even when the respondent fails to appear. Division staff estimates that this has occurred once in each of the last five years, or in roughly one-third of the cases filed. It is also worth noting that it occurred more frequently in the early days of cryptocurrency, when, between 2018 and 2019, Division staff estimates that approximately 20 respondents failed to appear.

The Division is now seeing an increase in the growth of online investment scams impacting Colorado investors where those involved claim to be based in Colorado or they impersonate legitimate investment adviser firms. In these cases, the respondents have failed to appear. The Division, the AGO, the Board and the Office of Administrative Courts continue to dedicate extensive resources preparing for and attending hearings where no respondents have appeared. With the increase in online investment scams, it is reasonable to expect that more of these hearings will occur without respondents requiring the expenditure of still more state resources.

[133] §§ 11-51-606(4)(b) and (c)(I), C.R.S.

The possible explanations as to why a respondent may fail to appear are, of course, purely speculative, but they include respondents who are operating scams from other countries and consider themselves beyond the reach of the Commissioner, as well as respondents who realize, after the Division's investigation into their conduct, that they have indeed violated the Act and see no point in expending their own resources to mount a defense.

Regardless of the reason, the current process requires the Division to expend its resources to prepare for a hearing that may be purely perfunctory.

The fifth sunset criterion asks, among other things, whether agency operations are impeded by existing statutes. The sixth sunset criterion asks, among other things, whether the agency performs its statutory duties efficiently and effectively.

The current system by which the Commissioner issues cease and desist orders and summary suspensions impedes the Commissioner's ability to protect the public by creating a process that could take over a month to halt unlawful conduct. Further, that system is inefficient because it requires the expenditure of resources for a hearing that may be purely perfunctory.

Still, the current process ensures that the respondent receives due process before their conduct is impinged. Due process is a necessary safeguard against improper government action, and it must be preserved. Thus, any attempt to reform the process by which the Commissioner issues cease and desist orders and summary suspensions must also protect the respondent's due process rights.

To maintain respondents' due process rights and to create a more efficient and effective process by which cease and desist orders and summary suspensions are issued, the current show cause process should be replaced by a process in which the Commissioner first issues a preliminary cease and desist order or summary suspension, as the case may be. This will immediately halt the questionable acts, which demands rapid access to due process.

Therefore, the respondent should be permitted to request a hearing on the preliminary order, which should be required to take place no more than 30 days after the issuance of the preliminary order. Any request for a hearing should be filed within 15 days of the preliminary order.

If the respondent fails to appear, then the preliminary order should become final. If the respondent appears, then the hearing can proceed with the final disposition of the case being determined by the hearing.

This process is consistent with the process for summary actions and cease and desist orders as outlined in sections 406(f) and 604 of the Uniform Securities Act.

This process is more efficient in that it does not require the Division to prepare for a hearing that may be purely perfunctory. It is also more effective in that the Commissioner can halt unlawful conduct more quickly (which is the intent of these two types of actions) and it maintains the due process rights of the respondent.

Therefore, the General Assembly should revise the process by which the Commissioner issues cease and desist orders and summary suspensions to be consistent with the preliminary order process described above.

Recommendation 5 — Clarify that, unless exempt, an investment adviser doing business in Colorado must be licensed by the Commissioner.

The Act provides for the licensing of investment advisers and investment adviser representatives rather awkwardly:

> A person *with a place of business in this state* shall not transact business in this state as an investment adviser or investment adviser representative unless such person is licensed as such or exempt from licensing under section 11-51-402.[134] *{emphasis added}*

In short, if a person is located in Colorado and transacts business as an investment adviser or investment adviser representative, they must be licensed by the Commissioner unless otherwise exempt.

Strangely, the Act specifically provides an exemption for those located outside of Colorado in certain circumstances:

> The following investment advisers *with no place of business in this state* are exempt from the license requirements of section 11-51-401(1.5): (a) an investment adviser who: (I) Is exempt from registration as an investment adviser pursuant to section 203(b) of the federal 'Investment Advisers Act of 1940;' (II) has only clients in this state that are: Other investment advisers; federal covered advisers; broker-dealers; depository institutions; insurance companies; employee benefit plans with assets of not less than $1 million; or other institutional investors other than any local government investment pool trust fund under Article 75 of Title 24, C.R.S., as are designated by rule or order of the Securities Commissioner; or (III) During the preceding 12-month period, has had not more than five clients other than those specified in subparagraph (II) of this paragraph (a).[135] {emphasis added}

[134] § 11-51-401(1.5), C.R.S.
[135] § 11-51-402(5), C.R.S.

Thus, investment advisers meeting any of these conditions are exempt from the Act's licensing provisions.

When read together, the licensing provision and the exemption are nonsensical: if only those with a place of business in Colorado must be licensed in Colorado, any exemption for an investment adviser located outside of Colorado is moot. The exemption is not needed because the licensing provision, by its very terms, exempts such investment advisers.

Additionally, the Uniform Securities Act's provision on this topic does not require one to have a place of business in the state. The mere fact that one transacts business is sufficient to trigger the need to obtain a license, unless otherwise exempt.[136]

In practice, it is believed that most investment advisers that do not fall under the stated exemption are licensed by the Commissioner, as is standard industry practice. But without a clear mandate to do so, some may not be. This may be unfair to Colorado home-state investment advisers as those in Colorado must comply with state licensing laws and continuing education requirements while those that are out-of-state do not, even though they target Colorado clients.

The fifth sunset criterion asks, among other things, whether the agency's operations are impeded or enhanced by existing statutes. These provisions of the Act clearly threaten to impede the Commissioner's enforcement and administration of the Act.

Therefore, to give full effect to the Act, the General Assembly should clarify that investment advisers and investment adviser representatives transacting business in Colorado must be licensed by the Commissioner, unless exempt.

Recommendation 6 — Specify that the Executive Director of the Department of Regulatory Agencies must consult with the Board when appointing the Commissioner.

The state's constitution provides,

> The head of each principal department shall be the appointing authority for the employees of [their] office and for heads of divisions, within the personnel system, ranking next below the head of such department. . .[137]

In this instance, the principal department is DORA and its head is the Executive Director. Further, the head of the Division is the Commissioner. Thus, the Constitution anticipates that the Executive Director is the appointing authority for the Commissioner.

[136] *See* Uniform Securities Act (2002) § 403(a).
[137] Colo Const. Art. XII, § 13(7).

However, the Act complicates this in how it creates the Division, "the head of which is the [Commissioner], who shall be appointed by the [Executive Director], pursuant to [the Constitution], *and the [Board].*"[138] {emphasis added}

While the Act seemingly contradicts the Constitution, even while acknowledging the applicability of the Constitution, such is not necessarily the case. A division director, such as the Commissioner, may be, but is not required to be, part of the Senior Executive Service, which is exempt from the state personnel system. Thus, if the Commissioner is part of the Senior Executive Service, then they are not part of the state personnel system and the Constitutional provision is not applicable.

Regardless, it is unusual, awkward and relatively unique, for a board or commission, such as the Board, particularly one that is primarily advisory in nature, to serve as a sort of co-appointing authority for a division director.

Further, this shared authority has caused problems in the past, which was highlighted in the media.

The sixth sunset criterion asks whether the agency or the agency's board performs its statutory duties efficiently and effectively. Having two appointing authorities is inefficient and ineffective and runs contrary to the typical government hiring process.

All of this is not to say that the Board ought not to play a role in the hiring process. On the contrary, the Board has expertise in the securities industry and could provide valuable insight to the Executive Director as an advisory and consultative body, not as a co-appointing authority.

For all these reasons, the Geneal Assembly should specify that the Executive Director consult with the Board when appointing the Commissioner.

Recommendation 7 — Make a technical amendment to the Act.

The Act contains outdated language that should be revised to reflect current terminology and administrative practices. Therefore, the General Assembly should amend the Act to address the following technical issue:

- Amend the Act to make it gender neutral by replacing terms such as "him", "her", "himself", "herself", "he", and "she" with gender-neutral terms.

[138] § 11-51-701, C.R.S.