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State of Utah  
Department of Commerce  
Division of Securities

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September 2, 2008

Allison Nicholson  
Office of Legislative Research and General Counsel  
Utah State Capitol Complex  
House Building, Suite W210  
PO Box 145210  
Salt Lake City, UT 84114-5210

Re: Sunset Review of the Utah Uniform Securities Act

Ms. Nicholson:

Thank you for the opportunity to provide input on the sunset review of Title 61, Chapter 1, Utah Uniform Securities Act (Act). The Department of Commerce welcomes this review by the Business and Labor Interim Committee (Committee) and we look forward to providing input to the Committee on this sunset review at its September 17, 2008 meeting. This letter constitutes the Department's response required by Utah Code **Ann. §63I-1-103** to "identify for the interim committee the public purpose and interest for which [the Act] was originally created and clearly identify whether that public purpose and interest is still relevant."

The Department recommends that the Act be reauthorized and has identified several legislative changes that would be **helpful** in carrying out the Division of Securities mission to "**enhance** Utah's business climate by protecting Utah's investors through education, enforcement, and fair regulation of Utah's investment industry while creating opportunities for capital formation."

Per your request, the Department has prepared the following response to your questions that we hope will be of assistance to the committee in determining how to proceed with this sunset review:

**1. Please identify the extent to which the Act has operated in the public interest and any areas in which the Act needs to improve its ability to operate in the public interest.**

The extent to which the Act has operated in the public interest could be demonstrated by the Division statistics on criminals convicted of securities fraud and restitution amounts paid to victims. Indeed, these statistics are impressive. In the past five fiscal years, Division action has resulted in over 100 criminal convictions and approximately

450 administrative cases (orders to show cause, cease and desist orders, stipulated settlements). During this same five-year period, Division actions have resulted in orders for restitution to victims of securities fraud totaling over \$124 million. However, the best measure of the success of the Act in protecting the public cannot be quantified. The true success of the Act and the primary benefit to the public is the prevention of securities fraud. The Division is actively engaged in investor education efforts designed to help the public recognize and avoid securities fraud. The Act enables the Division to partner with groups like AARP, the Mountain West Capital Network, the Wayne Brown Institute, JumpStart and various educational entities in the state to help educate and enable the public to take charge of their investments and avoid potential scams and schemes.

**2. Please identify the extent to which existing statutes interfere with or assist the legitimate functions of the Act, and any other circumstances including budgetary, resource, and personnel matters that have a bearing on the capacity of the Act to serve in the public interest.**

The Department believes that existing statutes do not unnecessarily interfere with the legitimate functions of the Act. The current budget and personnel resources allocated to the Division are sufficient to carry out the general purposes of the Act and provide an adequate level of protection to the public. The Division is currently revenue positive (more money goes to the General Fund from Division licensing and registration fees than is returned to the Division in the form of operating budget).

**3. Please identify the extent to which the public has been encouraged to participate in the adoption of rules established in connection with the Act.**

All rules promulgated under the Act are subject to the public notice requirements of the Utah Administrative Procedures Act. In addition to these legal requirements, the Division solicits the input of the Securities Section of the Utah State Bar and securities industry organizations when adopting rules under the Act.

**4. Please identify the extent to which the Act's provisions are duplicative of those offered by other statutes.**

The Division is unique in that its jurisdiction is invoked when an offer or sale of a "security" occurs. The term "security" is defined broadly to allow the regulator to reach most transactions in which money or other value is solicited in an investment context. Although other state entities exist for the regulation of financial institutions, insurance contracts, or consumer transactions, no other agency has investigative and anti-fraud authority sufficiently broad to reach the full range of investment transactions.

While there are federal securities laws which are administered and enforced by the Securities and Exchange Commission (SEC), there are clearly defined spheres of responsibility between state and federal regulators of securities.

**5. Please identify the extent to which the objectives of the Act have been accomplished and their public benefit.**

While the Department believes that the Act is achieving its objectives of protecting individual investors and enhancing Utah's business climate as outlined in the response to question number 1, those objectives are ongoing and can only be achieved through continued enforcement of the Act.

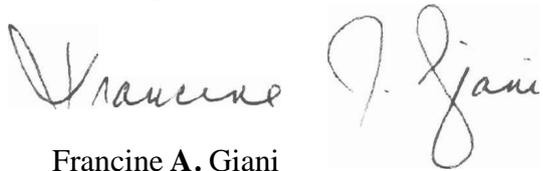
**6. Please identify the adverse effect on the public of termination of the Act.**

The repeal of the Act and the dissolution of the Utah Division of Securities would largely remove any deterrent effect standing in the way of those in the state of Utah who seek to operate investment schemes in violation of the law. Resources at the federal level directed toward securities enforcement are utilized largely in promoting the efficient and fair functioning of the broader national securities markets, not to the protection of main street investors. Local police and prosecutorial agencies also rely heavily on the Division to assist them in understanding and pursuing **difficult** fraud cases. Without the Act, most investment advisors in the state would be free to operate without oversight, accountability, established standards of fiduciary responsibility to clients, or minimum standards of competence and education. Most importantly, if the Act were repealed, the amount of money Utahans would lose to unscrupulous individuals peddling fraudulent investment schemes would almost certainly increase dramatically.

**7. Please identify any other matter relevant to the review.**

The Legislative Auditor General recently completed a performance audit of the Division of Securities. The auditors made several recommendations, including the adoption of clear policies and procedures for the Division in carrying out its statutorily defined functions and the consideration by the Legislature of changes to the Act to change the Securities Advisory Board to a commission with additional responsibilities and oversight. The Division has prepared a draft policies and procedures manual which is being provided to the Business and Labor Interim Committee separately and is also preparing a draft bill to carry out the legislative changes to the Act recommended in the audit. The Division plans to address these changes with the committee at its September 17 interim meeting.

Best Regards,

A handwritten signature in black ink, reading "Francine A. Gian". The signature is written in a cursive style with a large initial 'F' and a distinct 'A'.

Francine A. Gian  
Executive Director, Department of Commerce