



**AN ACT PROVIDING CONSUMER PROTECTION TO CLIENTS OF EXCHANGE FACILITATORS FOR TAX DEFERRED EXCHANGES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2013*) As used in this section  
2 and sections 2 to 7, inclusive, of this act:

3 (1) "Affiliated with" means that a person, directly or indirectly,  
4 through one or more intermediaries, controls, is controlled by or is  
5 under common control with another specified person;

6 (2) "Client" means a taxpayer with whom an exchange facilitator  
7 enters into an agreement, as described in subparagraph (B) of  
8 subdivision (3) of this section;

9 (3) "Exchange facilitator" means a person who: (A) Maintains an  
10 office in this state for the purpose of soliciting business facilitating the  
11 exchange of like-kind property, as described in subparagraph (B) of  
12 this subdivision; or (B) for a fee (i) facilitates an exchange of like-kind  
13 property by entering into an agreement with a client pursuant to  
14 which the exchange facilitator acquires from such client the contractual  
15 rights to sell such client's relinquished property located in this state  
16 and transfer a replacement property to such client as a qualified  
17 intermediary, within the meaning of 26 CFR 1.1031(k)-1(g)(4), (ii)  
18 enters into an agreement with a client to take title to a property in this  
19 state as an exchange accommodation titleholder, as defined in Revenue

20 Procedure 2000-37 issued by the Internal Revenue Service, or (iii)  
21 enters into an agreement with a client to act as a qualified trustee or  
22 qualified escrow holder, as such terms are defined in 26 CFR 1.1031(k)-  
23 1(g)(3); but shall not include:

24 (I) Any financial institution, as defined in subdivision (6) of this  
25 section, that is acting solely as a depository for exchange funds or  
26 solely as a qualified escrow holder or qualified trustee, as such terms  
27 are defined in 26 CFR 1.1031(k)-1(g)(3), and is not otherwise facilitating  
28 exchanges in accordance with this subparagraph;

29 (II) An individual or entity that is teaching seminars or classes or  
30 giving other presentations to attorneys, accountants, real estate  
31 professionals, tax professionals or other professionals where the  
32 primary purpose is to teach about tax deferred exchanges or to train  
33 such professionals to act as exchange facilitators, or any individual or  
34 entity advertising for such seminars, classes or other presentations; or

35 (III) An entity that is wholly owned by an exchange facilitator or by  
36 a person representing the exchange facilitator and used by such  
37 exchange facilitator or person to facilitate exchanges or take title to  
38 property in this state as an exchange accommodation titleholder;

39 (4) "Exchange funds" means the funds received by an exchange  
40 facilitator from or on behalf of a client for the purpose of facilitating an  
41 exchange of like-kind property;

42 (5) "Fee" means compensation of any nature, direct or indirect,  
43 monetary or in-kind, that is received by a person or related person, as  
44 defined in Section 267(b) or Section 707(b) of the Internal Revenue  
45 Code of 1986, or any subsequent corresponding internal revenue code  
46 of the United States, as amended from time to time, for any services  
47 relating or incidental to the exchange of like-kind property under  
48 Section 1031 of said Internal Revenue Code;

49 (6) "Financial institution" means any bank, federal credit union,  
50 Connecticut credit union, savings and loan holding company, savings

51 and loan association, savings bank, trust company or trust bank, as  
52 such terms are defined in section 36a-2 of the general statutes,  
53 chartered under the laws of this state or the United States whose  
54 accounts are insured by the full faith and credit of the United States of  
55 America, the Federal Deposit Insurance Corporation, the National  
56 Credit Union Share Insurance Fund or other similar or successor  
57 programs;

58 (7) "Person" means a natural person, cooperative association, limited  
59 liability company, firm, partnership, corporation or other legal entity,  
60 and includes any agent or employee of any such person;

61 (8) "Pool" means to (A) aggregate exchange funds of multiple  
62 taxpayers for investment purposes to achieve common investment  
63 goals and efficiencies, and (B) ensure that such exchange funds are  
64 readily identifiable as to each taxpayer for whom they are held,  
65 through an accounting or subaccounting system;

66 (9) "Prudent investor standard" means the prudent investor rule, as  
67 set forth by the Connecticut Uniform Prudent Investor Act, or as  
68 otherwise defined by part VII of chapter 802c of the general statutes;  
69 and

70 (10) "Publicly traded company" means a corporation whose  
71 securities are publicly traded on the New York Stock Exchange, the  
72 American Stock Exchange, or the national market system of the  
73 National Association of Securities Dealers Automated Quotation  
74 System established pursuant to the Securities Exchange Act of 1934,  
75 and the subsidiaries of any such corporation.

76 Sec. 2. (NEW) (*Effective October 1, 2013*) An exchange facilitator shall  
77 notify each client whose relinquished property, as defined in 26 CFR  
78 1.1031(k)-1(a), is located in this state or whose replacement property,  
79 as defined in 26 CFR 1.1031(k)-1(a), held under a qualified exchange  
80 accommodation agreement is located in this state, of any change in  
81 control of the exchange facilitator. The exchange facilitator shall notify

82 each such client not later than ten business days after the effective date  
83 of such change in control by facsimile, electronic mail transmission or  
84 first class mail and by posting such notice of change of control on the  
85 exchange facilitator's Internet web site for a period ending not earlier  
86 than ninety days after the change in control. Such notification shall set  
87 forth the name, address and other contact information of the persons  
88 to whom control was transferred. Notwithstanding the provisions of  
89 this section, if the exchange facilitator is a publicly traded company  
90 and remains a publicly traded company after a change in control, the  
91 publicly traded company shall not be required to notify its existing  
92 clients of such change in control. For purposes of this section, "change  
93 in control" means any transfer or transfers within a twelve-month  
94 period of more than fifty per cent of the assets or ownership interests,  
95 directly or indirectly, of the exchange facilitator.

96 Sec. 3. (NEW) (*Effective October 1, 2013*) An exchange facilitator at all  
97 times shall:

98 (1) Maintain a fidelity bond in an amount of not less than one  
99 million dollars executed by an insurer authorized to do business in this  
100 state;

101 (2) Deposit all exchange funds in a separately identified account, as  
102 defined in 26 CFR 1.468B-6(c)(2)(ii)(A), and provide that any  
103 withdrawals from such separately identified account require the  
104 written authorizations of both the client and the exchange facilitator.  
105 Deliver authorization for withdrawals by any commercially reasonable  
106 means, including (A) the client's delivery to the exchange facilitator of  
107 the client's authorization to disburse exchange funds and the exchange  
108 facilitator's delivery to the depository institution of the exchange  
109 facilitator's sole authorization to disburse exchange funds, or (B)  
110 delivery to the depository institution of both the client's and the  
111 exchange facilitator's authorizations to disburse exchange funds; or

112 (3) Deposit all exchange funds in a qualified escrow or qualified  
113 trust, as such terms are defined in 26 CFR 1.1031(k)-1(g)(3), with a

114 financial institution and provide that any withdrawals from such  
115 qualified escrow or qualified trust require the taxpayer's and the  
116 exchange facilitator's written authorization.

117       Sec. 4. (NEW) (*Effective October 1, 2013*) An exchange facilitator at all  
118 times shall: (1) Maintain an errors and omissions policy of insurance in  
119 an amount not less than two hundred fifty thousand dollars executed  
120 by an insurer authorized to do business in this state; (2) deposit an  
121 amount of cash or securities; or (3) provide irrevocable letters of credit  
122 in an amount not less than two hundred fifty thousand dollars.

123       Sec. 5. (NEW) (*Effective October 1, 2013*) The Banking Commissioner  
124 may adopt regulations, in accordance with the provisions of chapter 54  
125 of the general statutes, to implement the provisions of sections 1 to 8,  
126 inclusive, of this act. Any person claiming to have suffered damage by  
127 reason of the failure of an exchange facilitator to comply with the  
128 provisions of sections 2 to 7, inclusive, of this act may file a claim with  
129 the commissioner against the exchange facilitator to recover such  
130 damage from (1) the fidelity bond maintained in accordance with  
131 subdivision (1) of section 3 of this act, (2) cash or securities deposited  
132 in accordance with subdivision (2) of section 4 of this act, (3) letters of  
133 credit provided in accordance with subdivision (3) of section 4 of this  
134 act, or (4) the errors and omissions policy maintained in accordance  
135 with subdivision (1) of section 4 of this act.

136       Sec. 6. (NEW) (*Effective October 1, 2013*) (a) An exchange facilitator  
137 shall hold all exchange funds, including money, property, other  
138 consideration or instruments received by the exchange facilitator from  
139 or on behalf of the client, but not including funds received as the  
140 exchange facilitator's compensation, in a manner that provides  
141 liquidity and preserves principal. An exchange facilitator shall provide  
142 the client with written notification of the manner in which the  
143 exchange funds will be invested or deposited and shall deposit or  
144 invest exchange funds in investments which meet the prudent investor  
145 standard and which satisfy investment goals of liquidity and  
146 preservation of principal. Exchange funds may be pooled. For

147 purposes of this section, an exchange facilitator violates the prudent  
148 investor standard if:

149 (1) Exchange funds are knowingly commingled by the exchange  
150 facilitator with the operating accounts of the exchange facilitator; or

151 (2) Exchange funds are loaned or otherwise transferred to any  
152 person or entity affiliated with or related to the exchange facilitator  
153 except that this subdivision shall not apply to a transfer made  
154 pursuant to the exchange contract (A) for payment of an exchange  
155 expense or completion of the acquisition of the replacement property,  
156 (B) for depositing exchange funds with a financial institution, or (C) to  
157 an exchange accommodation titleholder, a trustee of a qualified trust  
158 or a qualified escrow agent.

159 (b) Exchange funds are not subject to execution or attachment on  
160 any claim against the exchange facilitator. An exchange facilitator shall  
161 not knowingly keep or cause to be kept any money in any financial  
162 institution under any name designating the money as belonging to a  
163 client of the exchange facilitator unless the money equitably belongs to  
164 the client and was actually entrusted to the exchange facilitator by the  
165 client.

166 Sec. 7. (NEW) (*Effective October 1, 2013*) No exchange facilitator or, in  
167 the case of an exchange facilitator that is an entity, no owner, officer,  
168 director or employee of such exchange facilitator, shall knowingly:

169 (1) Make any material misrepresentations concerning any exchange  
170 facilitator transaction that are intended to mislead;

171 (2) Pursue a continued or flagrant course of misrepresentation or  
172 making false statements through advertising or by any other means;

173 (3) Fail, within a reasonable time, to account for any money or  
174 property belonging to another person that may be in the possession or  
175 under the control of the exchange facilitator;

176 (4) Engage in any conduct constituting fraudulent or dishonest  
 177 dealings;

178 (5) Commit any crime related to the exchange facilitation business  
 179 involving fraud, misrepresentation, deceit, embezzlement,  
 180 misappropriation of funds, robbery or other theft of property, except  
 181 that commission of such crime by an officer, director or employee shall  
 182 not be considered a violation of this section, provided (A) the  
 183 employment or appointment of such officer, director or employee has  
 184 been terminated, and (B) no clients of the exchange facilitator were  
 185 harmed or full restitution has been made to all harmed clients;

186 (6) Materially fail to fulfill the exchange facilitator's contractual  
 187 duties to the client to deliver property or funds to the client unless  
 188 such failure is due to circumstances beyond the control of the exchange  
 189 facilitator; and

190 (7) Materially violate any provision of sections 2 to 6, inclusive, of  
 191 this act or the regulations adopted by the Banking Commissioner in  
 192 accordance with section 5 of this act.

193 Sec. 8. (NEW) (*Effective October 1, 2013*) (a) A person who violates  
 194 any provision of sections 2 to 7, inclusive, of this act is subject to civil  
 195 suit in a court of competent jurisdiction.

196 (b) Any person who commences a civil action pursuant to  
 197 subsection (a) of this section shall notify the Department of Banking  
 198 upon filing such action.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	New section
Sec. 2	<i>October 1, 2013</i>	New section
Sec. 3	<i>October 1, 2013</i>	New section
Sec. 4	<i>October 1, 2013</i>	New section
Sec. 5	<i>October 1, 2013</i>	New section
Sec. 6	<i>October 1, 2013</i>	New section

Sec. 7	<i>October 1, 2013</i>	New section
Sec. 8	<i>October 1, 2013</i>	New section

**BA**      *Joint Favorable Subst. -LCO*

**APP**     *Joint Favorable*