

Dear Senators PATRICK, Martin, Schmidt, and
Representatives BARBIERI, Clow, Smith:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of
the Department of Finance:

IDAPA 12.01.08 - Rules Pursuant to the Uniform Securities Act (2004) - (Fee Rule) Proposed Rule
(Docket No. 12-0108-1601).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 09/01/2016. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 09/30/2016.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Commerce & Human Resources Committee and the House Business Committee

FROM: Division Manager - Mike Nugent

DATE: August 15, 2016

SUBJECT: Department of Finance

IDAPA 12.01.08 - Rules Pursuant to the Uniform Securities Act (2004) - (Fee Rule) Proposed Rule (Docket No. 12-0108-1601)

The Department of Finance is proposing to amend its rules relating to the uniform securities act of 2004. The proposed rules are in seven categories.

The first category is amendments associated with federal regulatory naming conventions and related references. The Department's rules reference various rules of federal regulatory bodies with whom the Department shares regulatory authority.

The second category relates to federal preemption of state authority. The Department indicates during 2015 and as a result of the federal Dodd-Frank legislation, the U.S. Securities and Exchange Commission (SEC) passed new rules governing federal Regulation A securities offerings. In part, these new rules preempted state authority to oversee and comment on the disclosures presented in certain securities offerings but partially retained state authority to require filings and collect fees. The proposed rule states the effect of this federal preemption and allows the Department to know who will be offering Regulation A securities to Idaho residents and to reduce its fee schedule accordingly.

The third category relates to multi-state uniform guidelines. The Department of Finance collaborates with fifty other state securities regulators, as well as Canadian and Mexican securities regulators through the North American Securities Administrators Association (NASAA). Many of these efforts are directed at providing a uniform regulatory framework for securities issuers across jurisdictions. The Department seeks to amend its existing incorporation of NASAA Statements of Policy to reflect changes in these uniform guidelines during the last ten years.

The fourth category relates to multi-state securities issuer filings. These proposed rules are intended to provide some regulatory relief for certain securities issuers that wish to sell securities in multiple jurisdictions. The Department piloted and allows the use of a national electronic filing depository (EFD) for the filing of certain documents. Acknowledgment of this optional issuer filing format will be provided for in these proposed rules.

Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

April Renfro, Manager
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Glenn Harris, Manager
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The fifth category relates to state/federal investment adviser books and records requirements. The Department indicates that there are two tiers of regulated investment advisers in the United States. Investment advisers with assets under management in excess of \$100 million are required to register only with the U.S. Securities and Exchange Commission, while those managing funds under \$100 million are required to register only with their state of domicile. Since advisers may, over time, experience variances in their “book of business”, they may migrate back and forth between federal and state oversight. In this proposed rule change the Department seeks to minimize the changes required of state registered advisers as they move between the two regulatory systems.

The sixth category relates to investment adviser and investment adviser representative registration platforms. The Department indicates that investment advisers and their representatives are required to use national registration platforms to license in the jurisdictions where they will conduct business. Presently, advisers use the “IAR” while their representatives use a corollary system known as the “CRD.” The proposed rules pertaining to these adviser and adviser representative registrations are being amended to provide which registration platform should be used based upon the registrant’s status as either an adviser or an adviser representative.

The seventh category relates to suitability standards where investment adviser are involved. Rule 104.04 proposes that investment advisers have a duty to provide suitable recommendations in connection with their advisory activities when advising clients to purchase or sell securities.

The eighth category relates to investment adviser financial statements. The Department indicates that as a condition of registration and ongoing compliance, investment advisers must demonstrate solvency by providing a balance sheet to the Department. Proposed Rule 89.01(e) is being amended to identify that balance sheets provided to the Department are prepared substantially in accordance with Generally Accepted Accounting Principles (GAAP).

It appears that the proposed rules have been promulgated within the statutory authority granted to the Department of Finance.

cc: Department of Finance
Michael Larsen

IDAPA 12 - DEPARTMENT OF FINANCE

12.01.08 - RULES PURSUANT TO THE UNIFORM SECURITIES ACT (2004)

DOCKET NO. 12-0108-1601 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 30-14-605 and 30-14-608, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than **August 17, 2016**.

The hearing site (s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

I. Amendments Associated with Federal Regulatory Naming Conventions and Related References

The Department's rules reference various rules of federal regulatory bodies with whom the Department shares regulatory authority.

II. Amendments Resulting from Federal Preemption of State Authority

During 2015 and as a result of the federal Dode Frank legislation, the U.S. Securities and Exchange Commission (SEC) passed new rules governing federal Regulation A securities offerings. In part, these new rules preempted state authority to oversee and comment on the disclosures presented in certain securities offerings but partially retained state authority to require filings and collect fees. Rule XX clarifies the effect of this federal preemption and allows the Department to know who will be offering Regulation A securities to Idaho residents and to reduce its fee schedule accordingly.

Recently the former National Association of Securities Dealers (NASD) was renamed as the Financial Industry Regulatory Authority (FINRA). Various rules changes are associated with eliminating and replacing NASD references to FINRA references. Where applicable, some references to CFR¹ citations have been amended to reference the appropriate CFR rules citation.

III. Amendments Associated with Multi-State Uniform Guidelines

The Department collaborates with 50 other state securities regulators, as well as Canadian and Mexican securities regulators through the North American Securities Regulators Association (NASAA) <http://www.nasaa.org/about-us/our-role/>. Many of these efforts are directed at providing a uniform regulatory framework for securities issuers across jurisdictions.

The Department seeks to amend its existing incorporation of NASAA Statements of Policy to reflect changes in these uniform guidelines during the last ten years.

IV. Rules Intended To Streamline Multi-State Securities Issuer Filings

To provide some regulatory relief for certain securities issuers that wish to sell securities in multiple jurisdictions, the Department piloted and allows the use of a national electronic depository (EFD) for the filing of certain documents. Acknowledgment of this optional issuer filing format will be provided for in these rules.

V. Rule Amendment to Clarify State/Federal Investment Adviser Books and Records Requirements

There are two tiers of regulated investment advisers in the United States. Investment advisers with assets under management in excess of \$100 million are required to register only with the U.S. Securities and Exchange Commission, while those managing funds under \$100 million are required to register only with their state of domicile. Since Advisers may, over time, experience variances in their "book of business", they may migrate back and forth between federal and state oversight.

The Department seeks to minimize the changes required of state registered advisers as they move between the two regulatory systems.

VI. Clarification Regarding Investment Adviser and Investment Adviser Representative Registration Platforms
Investment Advisers and their representatives are required to use national registration platforms to license in the jurisdictions where they will conduct business. Presently, advisers use the “IAR”² while their representatives use a corollary system known as the “CRD.”³

The rules pertaining to these adviser and adviser representative registrations are being amended to clarify which registration platform should be used based upon the registrant’s status as either an adviser or an adviser representative.

VII. Update to Better Identify Suitability Standards Where Investment Advisers are Involved
Rule 104.04 proposes to add language that clarifies that investment advisers have a duty to provide suitable recommendations in connection with their advisory activities when advising clients to purchase or sell securities.

VIII. Clarification Regarding Investment Adviser Financial Statement
As a condition of registration and ongoing compliance, investment advisers must demonstrate solvency by providing a balance sheet to the Department. To avoid confusion on the format and content of Adviser balance sheets, it is proposed that Rule 89.01(e) be amended to identify that balance sheets provided to the Department are prepared substantially in accordance with Generally Accepted Accounting Principles (GAAP)

¹ Investment Adviser Registration Depository
² Investment Adviser Registration Depository
³ Central Registration Depository

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

There are no proposed additional fees associated with the proposed rules changes. There is one fee reduction associated with the implementation federal preemption of state authority in association with certain securities registrations. The prospective fee reduction and resulting loss of revenue does not materially affect projected agency revenues.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 4, 2016 Idaho Administrative Bulletin, **Vol. 16-5, pages 46-47.**

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The regulation of securities issuers, as well as financial professionals, firms and agents is a shared burden between states and federal authorities. Rather than develop separate state standards, the Department seeks to provide a level playing field for all affected financial professionals by incorporating various rules of pertinent Self Regulator Organizations (SROs) such as the Financial Institutions Regulatory Authority (FINRA). The Department has previously adopted various policy statement of the North American Securities Administrators Association (NASAA) in order to promote uniformity among state regulators. This approach provides industry participants with a uniform approach to regulation (more certainty) while reducing compliance costs with the application of broadly accepted standards of conduct.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Burns at (208) 332-8080, jburns@finance.idaho.gov, or securitiesrules@finance.idaho.gov. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2016.

DATED this 5th Day of July, 2016.

James A. Burns
Securities Bureau Chief
Department of Finance
800 Park Blvd.
PO Box 83720 Boise, ID 83720-0031
Office: (208) 332-8080
FAX: (208) 332-8099

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 12-0108-1601 (FEE RULE)
(Only Those Sections With Amendments Are Shown.)

005. INCORPORATION BY REFERENCE (RULE 5).

01. Incorporated Documents. IDAPA 12.01.08, “Rules Pursuant to the Uniform Securities Act (2004),” adopts and incorporates by reference the full text of the following Statements of Policy and guidelines adopted by the North American Securities Administrators Association (NASAA): (3-24-05)

- a. “Loans and Other Material Affiliated Transactions,” as adopted with amendments through ~~November 18, 1997~~ March 31, 2008; (3-24-05)()
- b. “Options and Warrants,” as adopted with amendments through ~~September 28, 1999~~ March 31, 2008; (3-24-05)()
- c. “Corporate Securities Definitions,” as adopted with amendments through ~~September 28, 1999~~ March 31, 2008; (3-24-05)()
- d. “Impoundment of Proceeds,” as adopted with amendments through ~~September 28, 1999~~ March 31, 2008; (3-24-05)()
- e. “Preferred Stock,” as adopted with amendments through ~~April 27, 1997~~ March 31, 2008; (3-24-05)()
- f. “Promotional Shares,” as adopted with amendments through ~~September 28, 1999~~ March 31, 2008; (3-24-05)()
- g. “Promoters’ Equity Investment,” as adopted with amendments through ~~April 27, 1997~~ March 31, 2008; (3-24-05)()
- h. “Specificity in Use of Proceeds,” as adopted with amendments through ~~September 28, 1999~~ March 31, 2008; (3-24-05)()
- i. “Underwriting Expenses, Underwriter’s Warrants, Selling Expenses, and Selling Securities Holders,” as adopted with amendments through ~~September 28, 1999~~ March 31, 2008; (3-24-05)()
- j. “Unsound Financial Condition,” as adopted with amendments through ~~September 28, 1999~~ March 31, 2008; ~~and~~ (3-24-05)()
- k. “Unequal Voting Rights,” as adopted ~~October 24, 1991~~ March 31, 2008; (3-24-05)()

- l.** “Debt Securities,” as adopted April 25, 1993; (3-24-05)
- m.** “NASAA Guidelines Regarding Viatical Investments,” as adopted October 1, 2002; (3-24-05)
- n.** “NASAA Statement of Policy Regarding Small Company Offering Registrations (SCOR),” as adopted April 28, 1996. (3-24-05)

02. Availability of Referenced Documents. Copies of the “NASAA Statements of Policy” are available at the following locations: (3-24-05)

- a.** NASAA, 750 First Street, N.E., Suite 1140, Washington, D.C. 20002. (3-24-05)
- ~~**b.** State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051. (3-24-05)~~
- eb.** Department of Finance, ~~700 W. State Street, P.O. Box 83720, Boise, ID 83720-0031~~ 800 Park Blvd., Suite 200, Boise, ID 83712. (3-24-05)()
- dc.** NASAA Web site at <http://www.nasaa.org/regulatory-activity/statements-of-policy/>. (3-24-05)

006. OFFICE MAILING ADDRESS AND STREET ADDRESS (RULE 6).

The mailing address of the department is Idaho Department of Finance, P.O. Box 83720, Boise, Idaho 83720-0031. The street address of the department is Idaho Department of Finance, ~~Joe R. Williams Building, 700 West State Street, 2nd floor, Boise, Idaho 83702~~ 800 Park Blvd., Suite 200, Boise, ID 83712. The telephone numbers of the department include (208) 332-8000, Administration; and (208) 332-8004, Securities Bureau. The telephone number of the facsimile machine is (208) 332-8099. All filings with the department in connection with rulemaking or contested cases shall be made with the Administrator of the Idaho Department of Finance, and shall include an original and one (1) copy. (3-24-05)()

007. PUBLIC RECORDS ACT COMPLIANCE (RULE 7).

All rules contained in this chapter are public records. (3-24-05)

008. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

- 01. Act.** The Uniform Securities Act (2004) set forth in Chapter 14, Title 30, Idaho Code. (3-24-05)
- 02. Administrator.** The Director of the Department of Finance. (3-24-05)
- 03. Agent of Issuer.** The term “agent of issuer” is used interchangeably with the term “issuer agent” through these rules. (3-24-05)
- 04. CRD.** Central Registration Depository. (3-24-05)
- 05. Department.** The Idaho Department of Finance. (3-24-05)
- ~~**06. EFD.** Electronic Filing Depository. ()~~
- ~~**07. FINRA.** Financial Industry Regulatory Authority. ()~~
- ~~**068.** Form ADV.~~ The Uniform Application for Investment Adviser Registration. (3-24-05)
- ~~**079.** Form ADV-H.~~ The Uniform Application for a Temporary or Continuing Hardship Exemption. (3-24-05)
- ~~**0810.** Form ADV-W.~~ The Uniform Request for Withdrawal of Investment Adviser Registration. (3-24-05)

- ~~09~~**11.** **Form BD.** The Uniform Application for Broker-Dealer Registration. (3-24-05)
- ~~10~~**2.** **Form BDW.** The Uniform Request for Withdrawal from Registration as a Broker-Dealer. (3-24-05)
- ~~12~~**3.** **Form BR. The Uniform Application for Broker-Dealer Branch Registration.** ()
- ~~14~~**4.** **Form D.** The federal form entitled “Notice of Sale of Securities Pursuant to Regulation D, Section 4(6) and or Uniform Limited Offering Exemption.” (3-24-05)
- ~~12~~**5.** **Form NF.** The Uniform Notice Filing Form. (3-24-05)
- ~~13~~**6.** **Form 1-A.** A federal securities registration form of that number. (3-24-05)
- ~~14~~**7.** **Form S-18.** A federal securities registration form of that number. (3-24-05)
- ~~15~~**8.** **Form U-1.** The Uniform Application to Register Securities. (3-24-05)
- ~~16~~**9.** **Form U-2.** The Uniform Consent to Service of Process. (3-24-05)
- ~~17~~**20.** **Form U-4.** The Uniform Application for Securities Industry Registration or Transfer. (3-24-05)
- ~~18~~**21.** **Form U-5.** The Uniform Request for Withdrawal of Securities Industry Registration or Transfer. (3-24-05)
- ~~19~~**22.** **Form U-7.** The Uniform Small Company Offering Registration Form. (3-24-05)
- ~~20~~**3.** **IARD.** Investment Adviser Registration Depository. (3-24-05)
- ~~21~~**4.** **NASAA.** The North American Securities Administrators Association, Inc. (3-24-05)
- ~~22~~**5.** **NASD.** The National Association of Securities Dealers, Inc. (3-24-05)
- ~~23~~**6.** **NASDAQ.** The National Association of Securities Dealers Automated Quotations. (3-24-05)
- ~~24.~~ ~~*NMS. The National Market System operated by the NASD.*~~ (~~3-24-05~~)
- ~~25~~**7.** **SEC.** The U.S. Securities and Exchange Commission. (3-24-05)
- ~~26~~**8.** **Transact Business.** For purposes of the Act, to “transact business” shall mean to buy or to sell or contract to buy or to sell or dispose of a security or interest in a security for value. It shall also mean any offer to buy or offer to sell or dispose of, and every solicitation of clients or of any offer to buy or to sell, a security or interest in a security for value. With respect to investment advisers and investment adviser representatives, “transact business” shall include preparation of financial plans involving securities, recommendations to buy or sell securities or interests in a security for value, and solicitation of investment advisory clients. (3-24-05)
- ~~27.~~ ~~*UCSLE. The Uniform Combined State Law Examination.*~~ (~~3-24-05~~)
- ~~28.~~ ~~*UIALE. The Uniform Investment Adviser Law Examination.*~~ (~~3-24-05~~)
- ~~29~~**29.** **USA.** The Uniform Securities Act (2004). (3-24-05)
- ~~30.~~ ~~*USASLE. The Uniform Securities Agent State Law Examination.*~~ (~~3-24-05~~)
- ~~31~~**0.** **Unsolicited Order or Offer.** (3-24-05)

- a. As used in these rules, an order or offer to buy is considered “unsolicited” if: (3-24-05)
- i. The broker-dealer has not made a direct or indirect solicitation or recommendation that the customer purchase the security; and (3-24-05)
 - ii. The broker-dealer has not recommended the purchase of the security to the customer, either directly or in a manner that would bring its recommendation to the customer; and (3-24-05)
 - iii. The broker-dealer has not volunteered information on the issuer to the customer; and (3-24-05)
 - iv. The customer has previously, and independent of any information furnished by the broker-dealer, decided to buy the security. (3-24-05)
- b. Any offer or order to buy from a customer whose first knowledge of the specific security or issuer was volunteered to him by the broker-dealer shall be regarded as a solicited order. (3-24-05)
- c. Any claim of exemption pursuant to Section 30-14-202(6), Idaho Code, shall be supported by the broker-dealer’s certificate that the transaction in question was, in fact, unsolicited. (3-24-05)

(BREAK IN CONTINUITY OF SECTIONS)

047. ADVERTISING (RULE 47).

01. Definitions. The following words and terms, when used in Section 047, of these rules, shall have the following meaning, unless the context clearly indicates otherwise: (3-24-05)

a. “Sales literature” means material published, or designed for use, in a newspaper, magazine or other periodicals, radio, television, telephone solicitation or tape recording, videotaped display, signs, billboards, motion pictures, telephone directories (other than routine listings), other public media and any other written communication distributed or made generally available to customers or the public including, but not limited to, prospectuses, pamphlets, circulars, form letters, seminar texts, research reports, surveys, performance reports or summaries and reprints or excerpts of other sales literature or advertising to include publications in electronic format. (3-24-05)

b. “Sales literature package” means all submissions of sales literature to the Department under one (1) posting or delivery relating to a specific issue of securities. (3-24-05)

02. Filing Requirement. Pursuant to Section 30-14-504, Idaho Code, this rule requires ~~the~~ filing of all sales literature for review and response by the Administrator before use or distribution in Idaho. A complete filing shall consist of the sales literature package and a representation by the applicant, issuer or broker-dealer, that reads substantially as follows: “I ----- hereby attest and affirm that the enclosed sales literature or advertising package contains no false or misleading statements or misrepresentations of material facts, and that all information set forth therein is in conformity with the Company’s most recently amended registration statement as filed with the Department on or about -----.” (3-24-05)()

03. Exemption From Filing. The following types of sales literature are excluded from the filing requirements set forth herein: (3-24-05)

a. Sales literature which does nothing more than identify a broker-dealer or investment adviser, and/or offer a specific security at a stated price; (3-24-05)()

b. Internal communications that are not distributed to the public; (3-24-05)

c. Prospectuses, preliminary prospectuses, prospectus supplements and offering circulars which have been filed with the Department as part of a registration statement, including a final printed copy if clearly identified as such; (3-24-05)

d. Sales literature solely related to changes in a name, personnel, location, ownership, offices, business structure, officers or partners, telephone or teletype numbers; ~~and~~ (3-24-05)()

e. Sales literature filed with and approved by ~~the NASD~~, FINRA, the SEC, or other regulatory agency with substantially similar requirements; (3-24-05)()

f. Sales literature relating to certain federal covered securities as set forth in Section 30-14-504(~~6b~~), Idaho Code. (3-24-05)()

04. Piecemeal Filings. The Department will not approve any sales literature package until a complete filing is received. Piecemeal filings will not be accepted and will result in the disapproval of any materials submitted therewith. (3-24-05)

05. Application of Antifraud Provisions. Sales literature used in any manner in connection with the offer ~~and~~ or sale of securities is subject to the provisions of Section 30-14-501, Idaho Code, whether or not such sales literature is required to be filed pursuant to Section 30-14-504, Idaho Code, or Section 047 of these rules. Further, sales literature filed with the Department is subject to the provisions of Sections 30-14-501 and 30-14-505, Idaho Code. Sales literature should be prepared accordingly and should not contain any ambiguity, exaggeration or other misstatement or omission of material fact, which might confuse or mislead an investor. (3-24-05)()

06. Prohibited Disclosures. Unless stating that the Administrator or Department has not approved the merits of the securities offering or the sales literature, no sales literature shall contain a reference to the Administrator or Department unless such reference is specifically requested by the Administrator. (3-24-05)

(BREAK IN CONTINUITY OF SECTIONS)

052. INVESTMENT ISSUER AGENT REGISTRATION (RULE 52).

Any individual not exempted pursuant to Sections 30-14-402(b)(3), (4) or (5), Idaho Code, must be registered as an issuer agent or comply with the registration requirement of Section 30-14-402(a), Idaho Code, if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities. (4-11-06)()

053. FEDERAL COVERED SECURITIES (RULE 53).

01. Investment Company Notices. (3-24-05)

a. Notice Requirement. Pursuant to Section 30-14-302, Idaho Code, prior to the offer in this state of a series or portfolio of securities of an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940, that is not otherwise exempt under Sections 30-14-201 through 30-14-203, Idaho Code, the issuer must file a notice with the Administrator relating to such series or portfolio of securities. (3-24-05)

b. Content of Notice. Each required notice shall include the following: (3-24-05)

i. A properly completed Form NF; (3-24-05)

ii. A consent to service of process (Form U-2); (3-24-05)

iii. A filing fee of three hundred dollars (\$300) for mutual funds and one hundred dollars (\$100) for unit investment trusts; and (3-24-05)()

iv. Notification of SEC effectiveness. (3-24-05)

c. Renewal of Notice. The effectiveness of a notice required pursuant to Subsection 053.01.a. of this

rule may be renewed each year for an additional one (1) year period of effectiveness by filing on or before the expiration of the effectiveness of such notice: (3-24-05)

- i. A properly completed Form NF clearly indicating the state file number of the Notice to be renewed; (3-24-05)
- ii. A consent to service of process (Form U-2) in accordance with Section 30-14-611, Idaho Code; and (3-24-05)
- iii. A renewal fee of three hundred dollars (\$300) for mutual funds and one hundred dollars (\$100) for unit investment trusts. (3-24-05)
- d.** Amendments. Amendment filings are required for the following: (3-24-05)
 - i. Issuer name change; (3-24-05)
 - ii. Address change for contact person; and (3-24-05)
 - iii. Notification of termination or completion. (3-24-05)
- e.** Other Documents. Documents other than those required in Subsections 053.01.b., 053.01.c., and 053.01.d. of this rule, unless specifically requested by the Department, should not be filed with the Department. Documents that should be filed with the Department only if specifically requested include, but are not limited to, registration statements, prospectuses, amendments, statements of additional information, quarterly reports, annual reports, and sales literature. ~~Documents that should be filed with the Department only if specifically requested include, but are not limited to, registration statements, prospectuses, amendments, statements of additional information, quarterly reports, annual reports, and sales literature.~~ (3-24-05)()

02. Regulation D Rule 506 Notice Filing. (3-24-05)

a. Notice Requirement. Issuers offering a security in this state in reliance upon Section 30-14-301, Idaho Code, by reason of compliance with Regulation D, Rule 506, adopted by the United States Securities and Exchange Commission, shall be required to file a notice with the Department **or with EFD** pursuant to the authority of Section 30-14-302(c), Idaho Code, if a sale of a security in this state occurs as a result of such offering. (3-24-05)()

b. Terms of Notice Filing. The issuer shall file with the Department **or with EFD** no later than fifteen (15) days after the first sale of a security in this state for which a notice is required under Subsection 053.02.a. of this rule: (3-24-05)()

- i. One (1) copy of the **SEC-filed** Form D ~~currently updated, and the Appendix thereto;~~ **and** (3-24-05)()
- ~~ii. A consent to service of process (Form U-2); and~~ (3-24-05)
- ~~iii. The notice filing fee of fifty dollars (\$50).~~ (3-24-05)
- i+ii.** A cover letter should be included in the notice filing which states the date in which the first sale of securities occurred in Idaho. (3-24-05)

c. Terms of Late Notice Filing. An issuer failing to file with the Administrator as required by Subsection 053.02.b. of this rule may submit its notice filing as required in Subsection 053.02.b. of this rule with an additional fifty dollars (\$50) late filing payment within thirty (30) days after the first sale of a security in this state. Failure to file a notice on or before the thirtieth day after the first sale of a securities in Idaho will result in the inability of the issuer to rely on Section 30-14-302(c), Idaho Code, for qualification of the offering in Idaho. (3-24-05)

d. Issuer Agent Registration. Pursuant to Section 30-14-402(b)(5), Idaho Code, an individual who represents an issuer who effects transactions in a federal covered security under Section 18(b)(4)(~~d~~) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)(D)) is not exempt from the registration requirements of Section 30-14-402(a), Idaho Code, if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities. In addition, if such person is registered as a broker-dealer or agent in another state or with ~~the NASD~~ FINRA, or affiliated with a broker-dealer registered in another state, with the SEC or ~~NASD~~ FINRA, then such person must also be similarly registered in Idaho. ~~(4-11-06)~~()

(BREAK IN CONTINUITY OF SECTIONS)

056. MANUAL EXEMPTION (RULE 56).

For the purpose of the manual exemption (Section 30-14-202(2), Idaho Code), the following securities manuals or portions of the manuals are recognized. (3-24-05)

- a. Best's Insurance Reports- Life-Health. (3-24-05)
- b. Mergent's Industrial Manual. (3-24-05)
- c. Mergent's International Manual. (3-24-05)
- ~~d. Standard & Poor's Corporation Records. (3-24-05)~~
- ~~ed. Walkers Manual of Western Corporations. (3-24-05)~~

057. MINING, OIL OR GAS EXPLORATION EXEMPTION REQUIREMENTS (RULE 57).

01. **Legal Opinion for Extractive Industries.** If the Department deems it necessary or advisable in the public interest or for the protection of investors, ~~he~~ it may require an issuer engaged in mining, gas, or oil exploration or extraction to submit an opinion of counsel on the nature of the title held to the property noting any defects or liens or both, and the principal terms of any lease or option with respect to the property. If continued possession of the property by the issuer depends upon the satisfaction of certain working conditions, describe these conditions and state the extent to which they have been met. The Department may require other issuers to submit a status of title to any real estate which is material to the business of the issuer. ~~(3-24-05)~~()

02. **Quarterly Reports.** The issuer shall file quarterly reports, on the "Quarterly Report Form for Small Mining Issues." during the time the securities remain registered. Such reports are due within thirty (30) days following the end of the issuer's quarter. Failure to comply with this rule could be grounds for suspension or revocation of a permit. (3-24-05)

03. **Advertising.** The only advertising of exempt mining securities, whether on radio, television, print media, or other medium, shall be restricted to announcing the securities offering and stating the name and address of the issuer, the type of security, the underwriter, and where additional information may be obtained. (3-24-05)

04. **Offering Circulars.** All offers of the security must be accompanied by a complete, current offering circular previously reviewed by the Administrator adequate to satisfy the antifraud provisions of the Act. (3-24-05)

058. STOCK EXCHANGE LISTED SECURITIES (RULE 58).

Stock exchanges specified by or approved under Section 30-14-201(6), Idaho Code, are as follows: (3-24-05)

- 01. The New York Stock Exchange; (3-24-05)
- 02. The American Stock Exchange; (3-24-05)
- 03. The NASDAQ ~~NMS~~ Global Market and Global Select Market; ~~(3-24-05)~~()

- 04. The Chicago Stock Exchange; (3-24-05)
- 05. The Chicago Board Options Exchange; (3-24-05)
- 06. Tier I of the Pacific Stock Exchange; and (3-24-05)
- 07. Tier I of the Philadelphia Stock Exchange, Inc. (3-24-05)

059. NOTICE FILINGS FOR TRANSACTIONS UNDER REGULATION D, RULE 505 (RULE 59).

01. Exempt Securities. Pursuant to Section 30-14-203(1), Idaho Code, transactions that are exempt securities under 17 CFR 230.505 are exempt from Section 30-14-301, Idaho Code. As a condition of this exemption, the issuer shall comply with the requirements in Subsection 059.02 of this rule. (3-24-05)

02. Disqualification. Unless upon a showing of good cause and without prejudice to any other action by the Administrator, the Administrator determines that it is not necessary under the circumstances that the exemption provided by Subsection 059.01 be denied, the exemption shall not be available for the offer or sale of securities if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent (10%) or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter: (4-11-06)

a. Is subject to any of the disqualifications ~~in~~ under 17 ~~C.F.R. Section~~ CFR 230.262, as in effect on August 24, 2005; (4-11-06)(____)

b. Is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this chapter or the predecessor act, a state, the securities and exchange commission, or the United States from engaging in or continuing an act, practice, or course of business involved ~~in~~ an aspect of a business involving securities, commodities, investments, franchises, insurance, banking or finance; (4-11-06)(____)

c. Is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five (5) years, finding fraud or deceit in connection with the purchase or sale of any security; or (3-24-05)

d. Is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five (5) years, temporarily, preliminary or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security. (3-24-05)

03. Exceptions. Subsection 059.02 of this rule shall not apply if: (3-24-05)

a. The party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against such party; (3-24-05)

b. Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or (3-24-05)

c. The issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under Subsection 059.02 of this rule. (3-24-05)(____)

04. Notice Filings for Rule 505. The notice filing required for transactions in Idaho under 17 CFR 230.505, shall consist of the following: (3-24-05)

a. One (1) ~~manually signed~~ copy of the SEC filed electronic Form D ~~(including the Appendix);~~ (3-24-05)(____)

- ~~b.~~ ~~Consent to service of process (Form U-2);~~ ~~(3-24-05)()~~
- ~~eb.~~ Copy of the private placement memorandum, ~~and.~~ ~~(3-24-05)()~~
- ~~dc.~~ Each notice shall be filed with the Department no later than ten (10) business days prior to effecting a sale in Idaho. (3-24-05)
- 05. Amendments.** During the period of the offering, the issuer shall take steps necessary to insure that all material information contained in the notice filing remains current and accurate. (3-24-05)
- 06. Nonaccredited Investors.** In all sales to nonaccredited investors in this state, one (1) of the following conditions must be satisfied or the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry, shall believe that one (1) of the following conditions is satisfied: (3-24-05)
- a.** The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed ten percent (10%) of the investor's net worth, it is suitable. (3-24-05)
- b.** The purchaser either alone or with her purchaser representative(s) has such knowledge and experience in financial and business matters that she is or they are capable of evaluating the merits and risks of the prospective investment. (3-24-05)
- 07. Due Diligence.** Nothing in this rule is intended to relieve registered securities broker-dealers or agents from the due diligence, suitability, or know your customer standards or any other requirements of law otherwise applicable to such registered person. (3-24-05)
- 08. Disclosure.** Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of the Act. (3-24-05)
- 09. Denial, Suspension, Revocation, Condition or Limitation of Exemption.** Any issuer relying on the exemption under Regulation D, Rule 505 may be subject to the enforcement remedies provided in Section 30-14-204, Idaho Code, if it fails to satisfactorily address issues raised by the Department in comment letters or otherwise. (3-24-05)
- 10. Issuer Agent Registration.** Pursuant to Section 30-14-402(b)(9), Idaho Code, an individual who represents an issuer who effects transactions that are exempt securities under 17 CFR 230.505 and exempt from Section 30-14-301, Idaho Code, is not exempt from the registration requirements of Section 30-14-402(a), Idaho Code, if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities. In addition, if such person is registered as a broker-dealer or agent in another state or with ~~the NASD~~ FINRA, or affiliated with a broker-dealer registered in another state, with the SEC or ~~NASD~~ FINRA, then such person must also be similarly registered in Idaho. ~~(4-11-06)()~~

(BREAK IN CONTINUITY OF SECTIONS)

062. DESIGNATED MATCHING SERVICES (RULE 62).

- 01. In General.** Sections 30-14-301 through 30-14-305, Idaho Code, shall not apply to any offer or sale of a security by an issuer in a transaction that meets the requirements of this rule. A designated matching service shall not be deemed a broker-dealer subject to registration within the meaning of the Act or the rules thereunder. (3-24-05)

02. Definitions. The following words and terms, when used in this rule, shall have the following meanings, unless the context clearly indicates otherwise. (3-24-05)

a. Designated Matching Service. Means a matching service designated by the Administrator under Section 062 of these rules. (3-24-05)

b. Designated Matching Service Facility. Means a computer system operated, or a seminar or meeting conducted, by a designated matching service. (3-24-05)

c. Individual Accredited Investor. Means any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his or her purchase, exceeds one million dollars (\$1,000,000) or any natural person who had an individual income in excess of two hundred thousand dollars (\$200,000) in each of the two (2) most recent years or joint income with that person's spouse in excess of three hundred thousand dollars (\$300,000) in each of those years and has a reasonable expectation of reaching the same income level in the current year. In addition each purchaser must evidence such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment. The term "individual accredited investor" shall also include any self-directed employee benefit plan with investment decisions made solely by persons that are "individual accredited investors" as defined in Subsection 062.02.c. of this rule, and the individual retirement account of any such individual accredited investor. (3-24-05)

d. Investor Member. Means an investor who has been properly qualified by and uses a designated matching service. Either of the following investors may be properly qualified: any institutional investor as described in Section 30-14-~~22(13)~~102(11), Idaho Code, or an individual accredited investor as defined in this rule. (3-24-05)()

e. Issuer Member. Means an issuer who uses a designated matching service facility. (3-24-05)

f. Summary Business Plan. Means a brief statement specifically describing the issuer, its management, its products or services, and the market for those products or services. Other information, including, specifically, financial projections, must not be included in a summary business plan. (3-24-05)

03. Application. A person may apply to the Administrator to be a designated matching service by filing such forms as required by the Administrator. No designation will be made unless the applicant demonstrates that it: (3-24-05)

a. Owns, operates, sponsors, or conducts a matching service facility limited to providing investor members with the summary business plans and identities of issuer members; (3-24-05)

b. Will not be involved in any manner in the sale, offer for sale, solicitation of a sale or offer to buy, a security other than as set forth in Subsection 062.03.a. of this rule; (3-24-05)

c. Will make a reasonable factual inquiry to determine whether an investor member is properly qualified; (3-24-05)

d. Is a governmental entity, quasi-governmental entity, an institution of higher education or an Idaho nonprofit corporation that is associated with a governmental or quasi-governmental entity or an institution of higher education; (3-24-05)

e. Does not employ any person required to be registered under the Act as a broker-dealer, investment adviser, agent, or investment adviser representative; (3-24-05)

f. Does not have, and does not employ any person who has a business relationship with any investor member or issuer member other than to provide such member access to the matching service facility; (3-24-05)

g. Charges fees only in an amount necessary to cover its reasonable operating costs and that are unrelated to the amount of money being raised by any issuer member or the amount of securities sold by any issuer

member; (3-24-05)

h. Agrees to not use any advertisement of its matching service facility that advertises any particular issuer or any particular securities or the quality of any securities or that is false or misleading or otherwise likely to deceive a reader thereof; and (3-24-05)

i. Meets such other conditions as the Administrator considers appropriate for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act, and the rules thereunder. (3-24-05)

04. Designation Consistent with Act. Designation under this rule is not available to any matching service formed in a manner that constitutes part of a scheme to violate or evade the provisions of the Act or rules thereunder. (3-24-05)

05. Withdrawal of Designation. The Administrator, upon ten (10) days notice and hearing before the Administrator or a hearing officer, may withdraw a person's designation as a matching service if the person does not meet the standards for designation provided in this rule. (3-24-05)

06. Disqualifications. (3-24-05)

a. No exemption under this rule shall be available for the securities of any issuer if the issuer: (3-24-05)

i. Within the last five (5) years, has filed a registration statement which is the subject of a currently effective registration stop order entered by the United States Securities and Exchange Commission or any state securities administrator; (3-24-05)

ii. Within the last five (5) years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit or a misdemeanor involving financial fraud; (3-24-05)

iii. Is the subject of any state or federal administrative enforcement order, entered within the last five (5) years, finding fraud or deceit in connection with the purchase or sale of any security; or (3-24-05)

iv. Is the subject of any order, judgment or decree of any court of competent jurisdiction, entered within the last five (5) years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security. (3-24-05)

b. For purposes of this rule, the term "issuer" includes: (3-24-05)

i. Any of the issuer's predecessors or any affiliated issuer; (3-24-05)

ii. Any of the issuer's directors, officers, general partners, or beneficial owners of ten percent (10%) or more of any class of its equity securities (beneficial ownership meaning the power to vote or direct the vote or the power to dispose or direct the disposition of such securities); (3-24-05)

iii. Any of the issuer's promoters presently connected with the issuer in any capacity, including: (3-24-05)

(1) Any person who, acting alone or in conjunction with one (1) or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of an issuer; or (3-24-05)

(2) Any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, ten percent (10%) or more of any class of securities of the issuer or ten percent (10%) or more of the proceeds from the sale of any class of such securities; however, a person who receives such securities or proceeds either solely as

underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of Subsection 062.06.b.iii. of this rule, if such person does not otherwise take part in founding and organizing the enterprise. (3-24-05)

iv. Any underwriter of the issuer. (3-24-05)

c. The exemption under this rule is not available to an issuer that is in the development stage that either has no specific business plan or purpose or had indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person. (3-24-05)

07. Notice of Transaction. The issuer shall file with the Administrator a notice of transaction, consent to service of process (Form U-2), and a copy of its summary business plan within fifteen (15) days after the first sale in this state. (3-24-05)

(BREAK IN CONTINUITY OF SECTIONS)

078. IMPLEMENTATION OF CRD (RULE 78).

01. Designation and Use of CRD System. Pursuant to Section 30-14-406, Idaho Code, the Administrator designates the web-based Central Registration Depository (CRD) operated by ~~the National Association of Securities Dealers~~ **FINRA** to receive and store filings and collect related fees from broker-dealers, agents and investment adviser representatives on behalf of the Administrator. Forms U-4, U-5, BD, **BR**, and BDW shall be used to register or terminate agents, investment adviser representatives or broker-dealers, respectively, in the state of Idaho through the CRD system. The CRD system will be utilized to effect ~~NASD~~ **FINRA** registration as well as registration, termination, and renewal in the state. (3-24-05)()

02. Registrations Not Automatic. A filing of Form U-4, ~~or~~ BD, or BR with the CRD system does not constitute an automatic registration in Idaho. Broker-dealers and investment advisers should not consider agents or investment adviser representatives registered until such approval from the state of Idaho has been received by them through CRD. (3-24-05)()

03. Electronic Signature. When a signature or signatures are required by the particular instructions of any filing to be made through CRD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to CRD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing. (3-24-05)

079. IMPLEMENTATION OF IARD (RULE 79).

01. Designation. Pursuant to Section 30-14-406, Idaho Code, the Administrator designates the web-based Investment Adviser Registration Depository (IARD) operated by ~~the National Association of Securities Dealers~~ **FINRA** to receive and store filings and collect related fees from investment advisers on behalf of the Administrator. (3-24-05)()

02. Use of IARD. Unless otherwise provided, all investment adviser applications, amendments, reports, notices, related filings and fees required to be filed with the Administrator pursuant to the rules promulgated under the Act, shall be filed electronically with and transmitted to IARD. The following additional conditions relate to such electronic filings: (3-24-05)

a. Electronic Signature. When a signature or signatures are required by the particular instructions of any filing to be made through IARD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing. (3-24-05)

b. When Filed. Solely for purposes of a filing made through IARD, a document is considered filed with the Administrator when all fees are received and the filing is accepted by IARD on behalf of the state. (3-24-05)

03. Electronic Filing. The electronic filing of any particular document and the collection of related processing fees shall not be required until such time as IARD provides for receipt of such filings and fees and thirty (30) days notice is provided by the Administrator. Any documents or fees required to be filed with the Administrator that are not permitted to be filed with or cannot be accepted by IARD shall be filed directly with the Administrator. (3-24-05)

04. Hardship Exemptions. Subsection 079.04 of this rule provides two (2) "hardship exemptions" from the requirements to make electronic filings as required by the rules. (3-24-05)

a. Temporary Hardship Exemption. (3-24-05)

i. Investment advisers registered or required to be registered under the Act who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD may request a temporary hardship exemption from the requirements to file electronically. (3-24-05)

ii. To request a temporary hardship exemption, the investment adviser must file Form ADV-H which can be found at 17 CFR 279.3 in paper format with the Administrator where the investment adviser's principal place of business is located, no later than one (1) business day after the filing (that is the subject of the Form ADV-H) was due; and submit the filing that is the subject of the Form ADV-H in electronic format to IARD no later than seven (7) business days after the filing was due. (3-24-05)

iii. Effective Date - Upon Filing. The temporary hardship exemption will be deemed effective upon receipt by the Administrator of the complete Form ADV-H. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the Administrator. (3-24-05)

b. Continuing Hardship Exemption. (3-24-05)

i. Criteria for Exemption. A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this rule are prohibitively burdensome. (3-24-05)

ii. To apply for a continuing hardship exemption, the investment adviser must file Form ADV-H which can be found at 17- CFR 279.3 in paper format with the Administrator at least twenty (20) business days before a filing is due; and, if a filing is due to more than one (1) securities regulator, the Form ADV-H must be filed with the Administrator where the investment adviser's principal place of business is located. The Administrator who receives the application will grant or deny the application within ten (10) business days after the filing of Form ADV-H. (3-24-05)

iii. Effective Date - Upon Approval. The exemption is effective upon approval by the Administrator. The time period of the exemption may be no longer than one (1) year after the date on which the Form ADV-H is filed. If the Administrator approves the application, the investment adviser must, no later than five (5) business days after the exemption approval date, submit filings to IARD in paper format (along with the appropriate processing fees) for the period of time for which the exemption is granted. (3-24-05)

080. BROKER-DEALER REGISTRATION -- APPLICATION/RENEWAL (RULE 80).

01. Initial Application -- ~~NASD~~ FINRA Member Firms. Broker-dealers applying for initial registration pursuant to Section 30-14-406, Idaho Code, and who are contemporaneously applying for ~~NASD~~ FINRA membership or who are ~~an~~ ~~NASD~~ FINRA member, shall file: (3-24-05)()

a. With CRD, a completed Form BD, including Schedules A-~~ED~~; (3-24-05)()

b. With CRD, a filing fee as specified in Section 30-14-410, Idaho Code; (3-24-05)

- c.** With CRD, the Form BR. ()
- 02. Initial Application -- Non-NASD FINRA Member Firms.** Broker-dealers applying for initial registration pursuant to Section 30-14-406, Idaho Code, and who are not contemporaneously applying for NASD FINRA membership or are not a NASD FINRA member, shall file with the Department: (3-24-05)()
- a.** A completed Form BD, including Schedules A-E; (3-24-05)
- b.** The filing fee specified in Section 30-14-410, Idaho Code; (3-24-05)
- c.** Audited financial statements; (3-24-05)
- d.** Documentation of compliance with the minimum capital requirements of Section 087 of these rules; (3-24-05)
- e.** Designation and qualification of a principal officer; (3-24-05)
- f.** A list of the addresses, telephone numbers and resident agents of all office locations within the state of Idaho, to be provided within sixty (60) days of becoming registered; (3-24-05)
- g.** A copy of the written supervisory procedures of the broker-dealer; (3-24-05)
- h.** Any additional documentation, supplemental forms and information as the Administrator may deem necessary. (3-24-05)
- 03. Incomplete Applications.** After a period of six (6) months from date of receipt, an incomplete application will automatically be considered abandoned and withdrawn if the requirements have not been fulfilled. (3-24-05)
- 04. Annual Renewal.** (3-24-05)
- a.** A non-NASD FINRA member shall renew its registration by submitting the renewal fee specified in Section 30-14-410, Idaho Code, to the CRD according to their policies and procedures. A non-NASD FINRA member shall renew its registration by submitting to the Department current information required for initial registration, and the renewal fee specified in Section 30-14-410, Idaho Code. (3-24-05)()
- b.** It is required that an application for the renewal of the registration of a broker-dealer must be filed with the Department before the registration expires, which is the thirty-first day of December next following such registration, per the provisions of Section 30-14-406(d), Idaho Code. Any registration that is not renewed within that time limit will be deemed to have lapsed, thus requiring the broker-dealer to reapply for registration with the Department in accordance with the requirements of the Act. (3-24-05)
- 05. Updates and Amendments.** (3-24-05)
- a.** A broker-dealer must file with CRD, in accordance with the instructions in Form BD, any amendments to the broker-dealer's Form BD. All broker-dealers must assure that current and accurate information is on file with the Department at all times. If information in an application for registration becomes inaccurate or incomplete, additional information must be submitted through updates on the Form BD or by direct notice to the Department. (3-24-05)
- b.** An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment: ~~and~~. (3-24-05)()
- c.** Litigation Notice. Any broker-dealer shall notify the Administrator in writing or through the CRD of any civil, administrative, or criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement shall not include minor traffic violations or minor civil actions unrelated to the registrant's business as a

broker-dealer. (3-24-05)

d. Notice of Address. Every broker-dealer shall provide the Department, with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. (3-24-05)

e. Change of Name. If a registered broker-dealer desires to change its name, notice of such an intent must be submitted to the CRD or this Department for non-~~NASD~~FINRA members, either before or within a reasonable time after the effective date of the change. The name change will not be effective in this state until the notice is received. (~~3-24-05~~)()

06. Completion of Filing. An application for initial or renewal registration is not considered filed for purposes of Section 30-14-406, Idaho Code, until the required fee and all required submissions have been received by the Administrator. (3-24-05)

07. Deferral of Effectiveness. The Administrator may defer the effective date of any registration until noon on the forty-fifth day after the filing of any amendment completing the application. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

083. BROKER-DEALER AGENT/ISSUER AGENT REGISTRATION (RULE 83).

01. Broker-Dealer Agents. Agents of broker-dealers applying for initial registration in the state of Idaho pursuant to Section 30-14-406, Idaho Code, shall file the following: (3-24-05)

a. With CRD, a completed Form U-4; (3-24-05)

b. With CRD, the filing fee specified in Section 30-14-410, Idaho Code; (3-24-05)

c. With CRD, proof of successful completion of the applicable examinations specified in Section 103 of these rules; (3-24-05)

d. With the Department, any additional documentation, supplemental forms and information as the Administrator may deem necessary; (3-24-05)

e. With the Department, Subsections 083.01.a. through 083.01.d. of this rule, for any agent of a non-~~NASD~~FINRA member. (~~3-24-05~~)()

02. Agents of Issuer. (3-24-05)

a. Agents of issuers applying for initial registration in the state of Idaho pursuant to Section 30-14-406, Idaho Code, shall file the following with the Department: (3-24-05)

i. A completed Form U-4; (3-24-05)

ii. The fee specified in Section 30-14-410, Idaho Code; (3-24-05)

iii. Proof of successful completion of the applicable examination(s) specified in Section 103 of these rules; (3-24-05)

iv. Proof of a bond of a surety company duly authorized to transact business in this state, said bond to be in the sum of ten thousand dollars (\$10,000) and conditioned upon faithful compliance with the provisions of the Act by the agent, such that upon failure to so comply by the agent, the surety company shall be liable to any and all persons who may suffer loss by reason thereof. Provided, however, that the obligation of the surety bond must be maintained at all times in the amount therein provided; and provided further, that a certificate of deposit issued by any bank in the state of Idaho and assigned to the Administrator in an amount equal to the bond which would otherwise be

required may be accepted by the administrator in lieu of a bond, if the certificate of deposit is maintained at all times in the amount and manner herein provided during the term for which the registration is effective and for three (3) years thereafter; (3-24-05)

v. Any additional documentation, supplemental forms and information as the Administrator may deem necessary. (3-24-05)

b. An individual who represents an issuer that effects transactions in a federal covered security under Section 18(b)(3) (transactions relating to “qualified purchasers” as that term may be defined by the SEC) or 18(b)(4)(D) (commonly known as Regulation D, Rule 506) of the Securities Act of 1933 is not exempt from the registration requirements of Section 30-14-402(a), Idaho Code, if the individual is compensated, directly or indirectly, for participation in the specified securities transactions. (3-24-05)

c. Exceptions for officers. If there are not more than two (2) officers of an issuer, such officers may be registered as agents for a particular original offering of the issuer’s securities without being required to pass such written examination or file an agent’s bond as required by Subsection 083.02.a.iii. and 083.02.a.iv. of this rule, unless such person has registered under this rule within the prior five (5) years. (3-24-05)

03. Incomplete Applications. After a period of six (6) months from date of receipt, an incomplete application will automatically be considered abandoned and withdrawn if the requirements have not been fulfilled. (3-24-05)

04. Annual Renewal. (3-24-05)

a. Broker-Dealer Agent. Agents of ~~NASD~~ **FINRA** members shall renew their registrations by submitting the renewal fee specified in Section 30-14-410, Idaho Code, to the CRD. Agents of non-~~NASD~~ **FINRA** members shall renew their registrations by submitting a completed renewal application and a renewal fee as specified in Section 30-14-410, Idaho Code. ~~(3-24-05)~~ ()

b. Issuer Agent. Issuer agents shall renew their registrations by submitting a completed renewal application and a renewal fee as specified in Section 30-14-410, Idaho Code. (3-24-05)

05. Updates and Amendments. (3-24-05)

a. A broker-dealer agent or agent of issuer must file with CRD, or with this Department, in accordance with the instructions in Form U-4, any amendments to the broker-dealer agent’s or issuer agent’s Form U-4. It is the responsibility of each broker-dealer agent or issuer agent to assure that current and accurate information is on file with the Department at all times. If information in an application for registration becomes inaccurate or incomplete, additional information must be submitted through updates on the Form U-4 or by direct notice to the Department. (3-24-05)

b. An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment: ~~and~~. ~~(3-24-05)~~ ()

c. Litigation Notice. Any broker-dealer agent or issuer agent shall notify the Administrator in writing or through the CRD of any civil, administrative, or criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement shall not include minor traffic violations or minor civil actions unrelated to the registrant’s business as a broker-dealer. (3-24-05)

d. Notice of Address. Every broker-dealer agent and issuer agent shall provide the Department with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. (3-24-05)

e. Change of Name. If a registered broker-dealer agent or issuer agent changes his or her name, notice of such must be submitted to the CRD or this Department within a reasonable time after the effective date of the change. The name change will not be effective in this state until the notice is received. (3-24-05)

06. Completion of Filing. An application for initial or renewal registration is not considered complete for purposes of Section 30-14-406(c), Idaho Code, until the required fee and all required amendments, including submissions requested by the Department, have been received by the Department. (3-24-05)

07. Deferral of Effectiveness. The Administrator may defer the effective date of any registration until noon on the forty-fifth day after the filing of any amendment completing the application. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

086. AGENT TERMINATION (RULE 86).

Termination notice pursuant to the requirements of Section 30-14-408, Idaho Code, shall be given by filing within thirty (30) calendar days of termination, a completed Form U-5. For agents terminating registration with a ~~NASD~~ FINRA member, such notice shall be filed with the CRD. For agents terminating registration with a non-~~NASD~~ FINRA member, such notice shall be filed with the Department. (3-24-05)()

(BREAK IN CONTINUITY OF SECTIONS)

089. INVESTMENT ADVISER REGISTRATION -- APPLICATION/RENEWAL (RULE 89).

01. Initial Application. The application for initial registration as an investment adviser, pursuant to Section 30-14-406, Idaho Code, shall be made by completing Form ADV which can be found at 17 CFR 279.1 in accordance with the form instructions and by filing the form with IARD. The application for initial registration shall also include the following: (3-24-05)

a. Proof of compliance by the investment adviser with the examination requirements of Section 103 of these rules; (3-24-05)

b. A bond of a surety company duly authorized to transact business in this state, said bond to be in the sum of twenty-five thousand (\$25,000) and conditioned upon faithful compliance with the provisions of the Act by the investment adviser such that upon failure to so comply by the investment adviser, the surety company shall be liable to any and all persons who may suffer loss by reason thereof. Except that an investment adviser that has its principal place of business in a state other than this state shall be excluded from these bonding requirements provided that such investment adviser is registered as an investment adviser in the state where it maintains its principal place of business and is in compliance with such state's bonding or minimum net worth requirements; (3-24-05)()

~~**c.** A hard copy of the completed Form ADV Part II, only until such time as this form can be electronically submitted via IARD;~~ (3-24-05)

d. A copy of the investment advisory contract to be executed by Idaho clients; (3-24-05)

e. A balance sheet, prepared substantially in accordance with Generally Accepted Accounting Principles, dated as of the investment adviser's prior fiscal year-end; however, if the investment adviser has not been in operation for an entire year, a balance sheet dated within ninety (90) days of filing shall be submitted; (3-24-05)()

f. The fee required by Section 30-14-410, Idaho Code; and; (3-24-05)

g. Any other information the Department may reasonably require. (3-24-05)

02. Incomplete Applications. After a period of six (6) months from the date of receipt by the Department, an incomplete application will automatically be considered abandoned and withdrawn if the requirements have not been fulfilled. (3-24-05)

03. Annual Renewal. The application for annual renewal registration as an investment adviser shall be filed with IARD according to their policies and procedures. The application for annual renewal registration shall include the fee required by Section 30-14-410, Idaho Code. (3-24-05)

04. Applications Prior to Expiration. An application for the renewal of the registration of an investment adviser must be filed with the Department before the registration expires, which is the thirty-first day of December next following such registration, per the provisions of Section 30-14-406(d), Idaho Code, unless an order is in effect under Section 30-14-412, Idaho Code. Any registration that is not renewed within that time limit will be deemed to have lapsed, thus requiring the investment adviser to reapply for registration with the Department in accordance with the requirements of the Act. (~~3-24-05~~)()

05. Updates and Amendments. (3-24-05)

a. An investment adviser must file with IARD, in accordance with the instructions in Form ADV, any amendments to the investment adviser's Form ADV. All investment advisers must assure that current and accurate information is on file with the Department at all times. If information in an application for registration becomes inaccurate or incomplete, additional information must be submitted through updates on the Form ADV or by direct notice to the Department. An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment. (3-24-05)

b. Within ninety (90) days of the end of the investment adviser's fiscal year, an investment adviser must file a copy of the investment adviser's balance sheet as of the prior fiscal year-end. (3-24-05)

c. **Litigation Notice.** Any investment adviser shall notify the Administrator in writing or through the IARD of any civil, administrative, or criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement shall not include minor traffic violations or minor civil actions unrelated to the registrant's business as an investment adviser. (3-24-05)

d. **Notice of Address.** Every investment adviser ~~representative~~ shall provide the Department, through IARD, with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. (~~3-24-05~~)()

06. Completion of Filing. An application for initial or renewal registration is not considered filed for purposes of Section 30-14-406, Idaho Code, until the required fee and all required submissions have been received by the Administrator and until the investment adviser is registered in the jurisdiction where it maintains its principal place of business. (~~3-24-05~~)()

07. Deferral of Effectiveness. The Administrator may defer the effective date of any registration until noon on the forty-fifth day after the filing of any amendment completing the application. (4-11-06)

090. INVESTMENT ADVISER REPRESENTATIVE REGISTRATION - APPLICATION/RENEWAL (RULE 90).

01. Initial Application. The application for initial registration as an investment adviser representative pursuant to Section 30-14-406, Idaho Code, shall be made by completing Form U-4 in accordance with the form instructions and by filing Form U-4 with CRD. The application for initial registration also shall include the following: (3-24-05)

a. Proof of compliance by the investment adviser representative with the examination requirements of Section 103 of these rules; and (3-24-05)

b. The fee required by Section 30-14-410, Idaho Code. (3-24-05)

02. Incomplete Applications. After a period of six (6) months from the date of receipt by the Department, an incomplete application will automatically be considered abandoned and withdrawn if the

requirements have not been fulfilled. (3-24-05)

03. Annual Renewal. The application for annual renewal registration as an investment adviser representative shall be filed with CRD. The application for annual renewal registration shall include the fee required by Section 30-14-410, Idaho Code. (3-24-05)

04. Updates and Amendments. (3-24-05)

a. The investment adviser representative is under a continuing obligation to update information required by Form U-4 as changes occur. All investment adviser representatives must assure that current and accurate information is on file with the Department, through CRD, at all times. If information in an application for registration becomes inaccurate or incomplete, additional information must be submitted through updates on the Form U-4. (3-24-05)()

b. An investment adviser representative and the investment adviser must file promptly with CRD any amendments to the representative's Form U-4. An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment. (3-24-05)

c. **Litigation Notice.** Any investment adviser representative shall notify the Administrator in writing, through CRD, of any civil, administrative, or criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement shall not include minor traffic violations or minor civil actions unrelated to the registrant's business as an investment adviser representative. (3-24-05)

d. **Change of Name.** If a registered investment adviser representative changes his or her name, notice of such must be submitted to the CRD or this Department either before or within a reasonable time after the effective date of the change. The name change will not be effective in this state until the notice is received. (3-24-05)

e. **Notice of Address.** Every investment adviser representative shall provide the Department, through CRD, with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. (3-24-05)()

05. Completion of Filing. An application for initial or renewal registration is not considered filed for purposes of Section 30-14-406, Idaho Code, until the required fee and all required submissions have been received by the Administrator. (3-24-05)

06. Dual Registration Exemption. A person may transact business in this state as an investment adviser representative if he is registered as an agent pursuant to Section 30-14-402, Idaho Code, and is employed by a broker-dealer registered pursuant to Section 30-14-401, Idaho Code, and (3-24-05)

a. The person's investment advisory activities are limited to recommending the investment advisory services of an investment adviser registered under Section 30-14-403, Idaho Code, or a federal covered adviser that has made a notice filing pursuant to Section 30-14-405, Idaho Code, and all such recommendations are made on behalf of the employing broker-dealer; (3-24-05)

b. The person is not compensated directly for making such recommendations; and (3-24-05)

c. The person provides written notice to the administrator that he is relying on this exemption from the requirement to be registered as an investment adviser representative. (3-24-05)

07. Deferral of Effectiveness. The Administrator may defer the effective date of any registration until noon on the forty-fifth day after the filing of any amendment completing the application. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

092. NOTICE FILING REQUIREMENTS FOR FEDERAL COVERED ADVISERS (RULE 92).

01. Notice Filing. The notice filing for a federal covered adviser pursuant to Section 30-14-405, Idaho Code, shall be filed with IARD on an executed Form ADV which can be found at 17 CFR 279.1. A notice filing of a federal covered adviser shall be deemed filed when the fee required by Section 30-14-410, Idaho Code, and the Form ADV are filed with and accepted by IARD on behalf of the state. (3-24-05)

02. ~~Portions of Form ADV Not Yet Accepted by IARD~~ When Deemed Filed. ~~Until IARD provides for the filing of Part H of Form ADV,~~ The Administrator will deem filed Part ~~H~~ 2 of Form ADV if a federal covered adviser provides, within five (5) days of a request, Part ~~H~~ 2 of Form ADV to the Administrator. Because the Administrator deems Part ~~H~~ 2 of the Form ADV to be filed, a federal covered adviser is not required to submit Part ~~H~~ 2 of Form ADV to the Administrator unless requested. (3-24-05)()

03. Renewal. The annual renewal of the notice filing for a federal covered adviser pursuant to Section 30-14-405, Idaho Code, shall be filed with IARD. The renewal of the notice filing for a federal covered adviser shall be deemed filed when the fee required by Section 30-14-410(e), Idaho Code, is filed with and accepted by IARD on behalf of the state. (3-24-05)

04. Updates and Amendments. A federal covered adviser must file with IARD, in accordance with the instructions in the Form ADV, any amendments to the federal covered adviser's Form ADV. (3-24-05)

093. RECORDS REQUIRED OF INVESTMENT ADVISERS (RULE 93).

Pursuant to provisions of the Act, every investment adviser registered or required to be registered under the Act shall make and keep true, accurate and current books and records ~~in compliance with~~ as listed in 17 CFR 275.204-2 under the Investment Advisers Act of 1940, as currently amended. (3-24-05)()

094. CLIENT CONTRACTS - INVESTMENT ADVISERS (RULE 94).

01. Contract. As used in this rule, "investment advisory contract" means any contract or agreement whereby a person agrees to act as investment adviser or to manage any investment or trading account for a person other than an investment company, as defined in the Investment Company Act of 1940, as amended. (3-24-05)

02. Contents of Client Contract. No investment adviser shall enter into, extend, or renew any investment advisory contract, or in any way perform any investment advisory contract entered into, extended, or renewed, after the effective date of this rule, unless such contract is in writing and contains the following: (3-24-05)

a. Provides that an investment adviser shall not receive compensation based on a share of capital gains upon or capital appreciation of funds or any portion of the funds of the client, ~~unless the investment adviser adheres to the provisions set forth~~ except as exempted in 17 CFR 275.205-3 under the Investment Adviser Act of 1940; (3-24-05)()

b. Provides that no assignment of the contract shall be made by the investment adviser without the written consent of the client; (3-24-05)

c. Provides that if the investment adviser is a partnership, the investment adviser shall notify the client of any change in the membership of such partnership within a reasonable time after such change; (3-24-05)

d. Provides the investment adviser's policy regarding termination of the contract, in compliance with 17 CFR 275.204-3(b). (3-24-05)

e. Detailed description of the services to be provided; (3-24-05)

f. Terms of the contract; (3-24-05)

g. Amount of the advisory fee, the formula for computing the fee, and the amount of any prepaid fee to be returned in the event of contract termination or non-performance; (3-24-05)

h. Discloses whether the contract grants discretionary power to the investment adviser; (3-24-05)

i. A contract may not contain any provision that limits or purports to limit the liability of the investment adviser for conduct or omission arising from the advisory relationship that does not conform to the Act, applicable federal statutes, or common law fiduciary standard of care; or the remedies available to the client at law or equity or the jurisdiction where any action shall be filed or heard. (3-24-05)

095. INVESTMENT ADVISER BROCHURE RULE (RULE 95).

An investment adviser registered or required to be registered under the Act shall, in accordance with 17 CFR 275.204-3 under the Investment Advisers Act of 1940, ~~furnish~~ deliver to each advisory client and prospective advisory client with a written disclosure statement that may be either a copy of Part # 2 of its Form ADV which complies with 17 CFR 275.201(b) of the Investment Advisers Act of 1940, or a written document containing at least the information then so required by Part #2 of Form ADV. (3-24-05)()

096. REQUIREMENTS FOR CUSTODY (RULE 96).

If an investment adviser registered or required to be registered under the Act maintains custody of client funds, it shall be done in accordance with ~~the requirements and standards set forth in~~ 17 CFR 275.206(4)-2 of the Investment Advisers Act of 1940. (3-24-05)()

097. INVESTMENT ADVISER AFFILIATION WITH BROKER-DEALERS/ISSUERS/AGENTS (RULE 97).

If an investment adviser becomes affiliated with a broker-dealer or issuer, he will be under a continuing obligation to make full disclosure of the affiliation to all parties to the affiliation, and must provide written notice to the Administrator of any material changes concerning any affiliation. Compliance with Part #2 of Uniform Form ADV and delivery of Part #2 of that form, or of a separate brochure or document containing substantially the same information that meets the requirements of the federal brochure rule, will be deemed to be in compliance with this rule. (3-24-05)()

(BREAK IN CONTINUITY OF SECTIONS)

101. NOTIFICATION OF OPENING, CLOSING OR RELOCATION OF BRANCH OFFICES (RULE 101).

Any broker-dealer or investment adviser, registered as such with the Department, shall notify the Administrator in writing or through CRD, no later than thirty (30) days after the opening, closing or relocation of any branch office. For purposes of this rule, "branch office" is defined ~~to include any location where any of the broker-dealer's or investment adviser's business is conducted on a regular basis outside the broker-dealer's or investment adviser's main office or principal place of business including, but not limited to, any financial institutions, residences, or seasonal offices used by the broker-dealer or investment adviser and its agents~~ by FINRA. (3-24-05)()

(BREAK IN CONTINUITY OF SECTIONS)

103. EXAMINATION REQUIREMENTS (RULE 103).

01. **Examination Required.** The following examinations are required for the following applicants: (3-24-05)

pass: a. Broker-dealer agent application. General agents of securities broker-dealers are required to take and (3-24-05)

i. The applicable ~~NASD~~ FINRA examination; and (3-24-05)()

ii. Either the Series 63 or the Series 66 examination. (3-24-05)

b. Investment adviser representative and investment adviser qualifying officer application. Applicants for registration as investment adviser representatives or as an investment adviser qualifying officer shall take and pass: (3-24-05)

- i. The Series 65; or (3-24-05)
- ii. The Series 66 and Series 7 examinations. (3-24-05)

c. Specialized agent of a broker-dealer, issuer agent and qualifying officer for non-~~NASD~~FINRA broker-dealer application. Specialized agents of broker-dealers, issuer agents and qualifying officers for non-~~NASD~~FINRA broker-dealers application are required to take and pass: (3-24-05)()

- i. The applicable ~~NASD~~ FINRA examination; and (3-24-05)()
- ii. Either the Series 63 or the Series 66 examination. (3-24-05)

d. Sales of Viaticals. Persons selling viatical investments are required to take and pass the Series 7 examination. (3-24-05)

02. Specialized Examination Authority. Any registration granted pursuant to a specialized examination will be restricted, and the registrant will be authorized to effect securities transactions only in securities of the type specified by the conditions of the license. (3-24-05)

03. Investment Adviser Representatives - Waiver. An applicant for investment adviser representative or investment adviser qualifying officer registration may qualify for a waiver of the examination requirement if the applicant currently holds one (1) of the following designations: (3-24-05)

- a.** Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.; (3-24-05)
- b.** Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania; (3-24-05)
- c.** Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts; (3-24-05)
- d.** Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants; (3-24-05)
- e.** Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or (3-24-05)
- f.** Such other professional designation as the Administrator may by rule or order recognize. (3-24-05)

04. Waiver. The Administrator, in his sole discretion, may waive any examination required by this rule upon a sufficient showing of good cause and upon any conditions he may impose. (3-24-05)

104. FRAUDULENT, DISHONEST AND UNETHICAL PRACTICES - BROKER-DEALER, BROKER-DEALER AGENTS, ISSUER AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES (RULE 104).

01. Fraudulent, Dishonest and Unethical Practices. Any broker-dealer, agent, issuer agent, investment adviser or investment adviser representative who engages in one (1) or more of the *following* practices identified in Subsections 104.02 through 104.47 of this rule shall be deemed to have engaged in one (1) or both of the following: (3-24-05)()

- a.** An “act, practice, or course of business that operates or would operate as a fraud or deceit” as used

in Section 30-14-501 and Section 30-14-502, Idaho Code; ~~(3-24-05)~~()

b. A dishonest and unethical practice as used in Section 30-14-412(d)(13), Idaho Code, and such conduct may constitute grounds for denial, suspension, or revocation of registration or such other action authorized by statute. (3-24-05)

c. This rule is not intended to be all-inclusive, and thus, acts or practices not enumerated herein may also be deemed fraudulent, or dishonest and unethical. (3-24-05)

02. Delivery Delays. Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers and/or in the payment upon request of free credit balances reflecting completed transactions of any of its customers. (3-24-05)

03. Churning. Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account. (3-24-05)

04. Unsuitable Recommendations. ()

a. Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer, agent, or issuer agent. ~~Subsection 104.04 of this rule may be referred to hereinafter as the suitability rule.~~ (3-24-05)()

b. Recommending to a customer, to whom investment advice is provided, the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by the investment adviser or investment adviser representative. ()

05. Unauthorized Transactions. Executing a transaction on behalf of a customer without authorization to do so. (3-24-05)

06. Discretionary Authority. Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the executing of orders. (3-24-05)

07. Margin Accounts. Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement before or promptly after the initial transaction in the account. (3-24-05)

08. Segregation of Client Securities. Failing to segregate customers' free securities or securities held in safekeeping. (3-24-05)

09. Hypothecating Customer Securities. Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent before or promptly after the initial transaction, except as permitted by rules of the Securities and Exchange Commission. (3-24-05)

10. Unreasonable Price, Commission. Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit. (3-24-05)

11. Failure to Supervise. Failure by a broker-dealer or investment adviser to exercise diligent supervision over the securities activities of all its broker-dealer agents, investment adviser representatives and employees as set forth in Section 105 of these rules. (3-24-05)

12. Unreasonable Fees. Charging unreasonable and inequitable fees for services performed, including

miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business. (3-24-05)

13. Sales at the Market. Representing that a security is being offered to a customer “at the market” or a price relevant to the market price unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by such broker-dealer, or by any such person for whom the broker-dealer is acting or with whom the broker-dealer is associated in such distribution, or any person controlled by, controlling, or under common control with such broker-dealer. (3-24-05)

14. Manipulative, Deceptive or Fraudulent Practices. Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive, or fraudulent device, practice, plan, program, design, or contrivance, which may include: (3-24-05)

a. Effecting any transaction in a security which involves no change in the beneficial ownerships thereof; (3-24-05)

b. Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security. However, nothing in Subsection 104.14, of this rule, prohibits a broker-dealer from entering bona fide agency cross transactions for customers; or (3-24-05)

c. Effecting, alone or with one (1) or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others. (3-24-05)

15. Loss Guarantees. Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer. (3-24-05)

16. Bona Fide Price Reports. Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security. (3-24-05)

17. Deceptive or Misleading Advertising. Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. (3-24-05)

18. Disclosure of Control. Failing to disclose that the broker-dealer or investment adviser is controlled by, controlling, affiliated with, or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of such security, the existence of such control to such customer, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction. (3-24-05)

19. Bona Fide Distribution. Failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member by, among other things, transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees or parking or withholding securities. (3-24-05)

20. Customer Communication. Failure or refusal to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint. (3-24-05)

21. Loans from Customers. Borrowing money or securities from a customer, unless the customer is a broker-dealer, an affiliate, or a financial institution engaged in the business of loaning funds or securities, or immediate family. For purposes of this rule, the term "immediate family" means parents, mother-in-law, father-in-law, husband, wife, brother, sister, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and children. (3-24-05)

~~**22. Loans to Customers.** Loaning money to a customer, unless the broker-dealer or investment adviser is a financial institution engaged in the business of loaning funds or the customer is an affiliate of the broker-dealer or investment adviser. ()~~

~~**223. Unrecorded Transactions.** Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction. (3-24-05)~~

~~**234. Fictitious Accounts.** Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited. (3-24-05)~~

~~**245. Profit/Loss Sharing.** Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents. (3-24-05)~~

~~**256. Splitting Commissions.** Dividing or otherwise splitting the agent's commissions, profits, or other compensation from the purchase or sale of securities with any person not also registered in Idaho as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control. (3-24-05)~~

~~**267. Unsolicited Transactions.** Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited. (3-24-05)~~

~~**278. FINRA and NASD Rules Compliance.** Failing to comply with any applicable provision of the NASD Conduct Rules and any other FINRA Rules *of Fair Practice of the National Association of Securities Dealers* or any applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission. (3-24-05)()~~

~~**289. Contradicting Prospectus Information.** Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead. (3-24-05)~~

~~**2930. Inside Information.** In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer, agent, investment adviser or investment adviser representative is in possession of material, non-public information which would impact the value of the security, or communicating to customers or other persons bona fide information not generally available to the public that may be used in the person's decision to buy, sell, or hold a security. (3-24-05)()~~

~~**301. Contradictory Recommendations.** In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstance of each investor. (3-24-05)~~

~~**312. Prospectus Delivery.** Failure to comply with any prospectus delivery requirement promulgated under federal law. (3-24-05)~~

~~**323. Penny Stock Sales.** Effect any transaction in, or to induce or attempt to induce the purchase or sale of, any penny stock by any customer except in accordance with the requirements as set forth in the 1934 Securities Exchange Act, Section 15(g~~h~~) and the rules and regulations prescribed thereunder. (3-24-05)()~~

~~**33. Unsuitable Recommendations.** *Recommending to a client to whom investment management or consulting services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other*~~

information known by the investment adviser.

(3-24-05)

~~34. **Loans to Clients.** Lending money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.~~ *(3-24-05)*

354. Misrepresentations Concerning Advisory Services. To misrepresent to any advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative or any employee of the investment adviser, or to misrepresent the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they are made, not misleading. (3-24-05)

365. Unreasonable Advisory Fees. Charging a client an unreasonable advisory fee. (3-24-05)

376. Conflicts of Interest. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including: (3-24-05)

a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and (3-24-05)

b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees. (3-24-05)

387. Guaranteeing Specific Results. Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered. (3-24-05)

~~398. **Advertising.** Publishing, circulating, or distributing any advertisement that does not comply with Rule 206(4)-1 17 CFR 275.206(4)-1 under the Investment Advisers Act of 1940.~~ *(3-24-05)()*

~~4039. **Disclosure of Private Information.** Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client.~~ (3-24-05)

~~410. **Advisory Contract Disclosures.** Entering into, extending, or renewing any investment advisory contract unless such contract is in writing and discloses, in substance the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.~~ (3-24-05)

~~421. **Protection of Non-Public Information.** Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information, or that are contrary to the provisions of Section 204A, and rules associated with it, of the Investment Advisers Act of 1940.~~ *(3-24-05)()*

~~432. **Advisory Contract to Comply with Federal Law.** To indicate, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of the Act or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of Section 215, and rules associated with it, of the Investment Advisers Act of 1940.~~ *(3-24-05)()*

~~443. **Waiver of State or Federal Law Prohibited.** Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contrary to the provisions and associated rules of Section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under Section 203 of the Investment Advisers Act of 1940.~~ *(3-24-05)()*

~~454. **Fraudulent, Deceptive or Manipulative Acts.** Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contrary to the provisions and associated rules of Section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or~~

required to be registered under Section 203 of the Investment Advisers Act of 1940.

(3-24-05)()

465. Outside Business Activities - Selling Away. Any agent or investment adviser representative associated with a broker-dealer or investment adviser registered under the Act shall not engage in business activities, for which he receives compensation either directly or indirectly, outside the scope of his regular employment unless he has provided prior written notice to his employer firm. (3-24-05)

476. Third Party Conduct. Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Act or any rules thereunder, or engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices shall be deemed an unethical business practice. The federal statutory and regulatory provisions referenced herein shall apply to investment advisers and federal covered advisers, to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). (3-24-05)

487. Misleading Filings. For purposes of Section 30-14-505, Idaho Code, the term “proceeding” includes, but is not limited to, any investigation, examination or other inquiry initiated by the Department. (3-24-05)

105. SUPERVISION OF AGENTS, INVESTMENT ADVISER REPRESENTATIVES AND EMPLOYEES (RULE 105).

01. Supervision Required. Every broker-dealer, investment adviser, and designated supervisor shall exercise diligent supervision over the securities activities of all of his agents, investment adviser representatives and employees. (3-24-05)

02. Broker-Dealer Procedures. Every agent and employee of the broker-dealer shall be subject to the supervision of a supervisor designated by such broker-dealer. The supervisor may be the broker-dealer in the case of a sole proprietor, or a partner, officer, office manager, or any other qualified person. (3-24-05)

03. Written Compliance Procedure. Every broker-dealer shall establish, maintain and enforce written procedures, a copy of which shall be kept in each business office, which shall set forth the procedures adopted by the broker-dealer to comply with the following duties imposed by this rule, and shall state at which business office or offices the broker-dealer keeps and maintains the records required by Section 30-14-411, Idaho Code: (3-24-05)

a. The review and written approval by the designated supervisor of the opening of each new customer account; (3-24-05)

b. The frequent examination of all customer accounts to detect and prevent irregularities or abuses, including a review for churning and switching of securities in customers’ accounts, as well as unsuitable recommendations and sales of unregistered securities; (3-24-05)

c. The prompt review and written approval by the designated supervisor of all securities transactions and all correspondence pertaining to the solicitation or execution of all securities transactions; (3-24-05)

d. The review of back office operations, i.e., all systems and procedures, including the currency and accuracy of books and records, the status and causes of “Fails to Receive” and “Fails to Deliver.” net capital, credit extensions and financial reports; (3-24-05)

e. The review of form, content and filing of all correspondence related in any way to the purchase or sale or solicitation for the purchase or sale of securities; (3-24-05)

f. The review and written approval by the designated supervisor of the delegation by any customer of discretionary authority with respect to his account to a stated agent or associate of the broker-dealer and the prompt written approval of each discretionary order entered on behalf of that account; and (3-24-05)

g. The prompt review and written approval of the handling of all customer complaints. As used in these rules, “complaint” is considered to be any written statement by a customer or by any person acting for a customer which complains about the activities of the broker-dealer, agent or associate in connection with the

solicitation or execution of a transaction or the disposition of funds of that customer. (3-24-05)

04. Investment Adviser Procedures. Every investment adviser shall establish, maintain and enforce written procedures, a copy of which shall be kept in each business office, which shall set forth ~~the~~ procedures ~~adopted~~ ~~to~~ ~~reasonably designed to prevent violation of the Idaho Uniform Securities Act and Rules and~~ comply with the following duties as applicable to the business of the investment adviser: (3-24-05)()

a. The review and written approval by the designated supervisor of the opening of each new customer account; (3-24-05)

b. The frequent examination of all customer accounts to detect and prevent irregularities or abuses, including a review for unsuitable recommendations and recommendations of unregistered securities; (3-24-05)

c. The prompt review and written approval by the designated supervisor of all securities recommendations and all correspondence pertaining to the solicitation or execution of all securities recommendations; (3-24-05)

d. The review of form, content and filing of all correspondence related in any way to the recommendation of the purchase of any securities; (3-24-05)

e. The prompt review and written approval of the handling of all customer complaints. As used in these rules, a "complaint" is considered to be any written statement by a customer, or by any person acting for a customer, questioning the activities of the investment adviser or representative in connection with recommendations concerning, or disposition of, funds in the account. (3-24-05)

PROPOSED RULE COST/BENEFIT ANALYSIS

Section 67-5223(3), Idaho Code, requires the preparation of an economic impact statement for all proposed rules imposing or increasing fees or charges. This cost/benefit analysis, which must be filed with the proposed rule, must include the reasonably estimated costs to the agency to implement the rule and the reasonably estimated costs to be borne by citizens, or the private sector, or both.

Department or Agency: Idaho Department of Finance/Securities Bureau

Agency Contact: James A. Burns **Phone:** 208-332-8080

Date: July 5, 2016

IDAPA, Chapter and Title Number and Chapter Name:

IDAPA 12 – DEPARTMENT OF FINANCE - 12.01.08 - RULES PURSUANT TO THE UNIFORM
SECURITIES ACT

Fee Rule Status: **Proposed** **Temporary**

Rulemaking Docket Number: 12-0108-1601

STATEMENT OF ECONOMIC IMPACT:

The proposed rules changes DO NOT impose any additional reporting requirements or fees upon industry.

INCORPORATION BY REFERENCE SYNOPSIS

In compliance with Section 67-5223(4), Idaho Code, the following is a synopsis of the differences between the materials previously incorporated by reference in this rule that are currently in full force and effect and newly revised or amended versions of these same materials that are being proposed for incorporation by reference under this rulemaking.

The following agency of the state of Idaho has prepared this synopsis as part of the proposed rulemaking for the chapter cited here under the docket number specified:

IDAPA 12 – DEPARTMENT OF FINANCE

12.01.08 - RULES PURSUANT TO THE UNIFORM SECURITIES ACT

DOCKET NO. 12-0108-1601

Securities issuers that wish to publicly offer securities generally must file their registration materials with the U.S. Securities & Exchange Commission (SEC) AND with each state in which they intend to offer securities. Securities Issuers must address deficiencies in their registration application and offering materials noted by the SEC and by each state jurisdictions where the offering was filed.

In order to speed the multi-state registration review process, the North American Securities Regulators Association (NASAA)^[1], through its state and provincial members, developed a set of uniform standards for registered securities offerings known as NASAA Statements of Policy. These uniform standards assist issuers by providing a uniform approach to various elements of the securities disclosure document. The Department of Finance has incorporated several NASAA Statements of Policy (SOP) in prior rulemakings. The proposed rules changes reflect the adoption of NASAA Policy Statements and guidelines updated since the Rules Pursuant to the Idaho Uniform Securities Act were last updated.

01. Incorporated Documents. IDAPA 12.01.08, “Rules Pursuant to the Uniform Securities Act (2004),” adopts and incorporates by reference the full text of the following Statements of Policy and guidelines adopted by the North American Securities Administrators Association (NASAA): (3-24-05)

a. “Loans and Other Material Affiliated Transactions,” as adopted with amendments through ~~November 18, 1997~~ March 31, 2008;

Synopsis of Changes:

^[1] Organized in 1919, the North American Securities Administrators Association is the oldest international organization devoted to investor protection. NASAA is a voluntary association whose membership consists of 67 state, provincial, and territorial securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico.

Adopted April 27, 1997; Amended March 31, 2008

- 1. The SOP has non-material edits to correct grammar and sentence structure, for example, the editor changed “passive voice” sentence structure to “active voice.” Also the phrase “the offering of securities may be disallowed by the administrator” was changed to “the administrator may deny the offer or sale” to better align with the language of the Uniform Securities Act.*
- 2. The introduction was amended to remove language reminding the state administrator that nothing prevented the state from applying different standards from the SOP.*
- 3. A reference to the specific terms used in this SOP that are defined in the SOP for Corporate Securities Definitions was added. The earlier version merely referenced the SOP for Corporate Securities Definitions.*

The organization of the SOP’s outline structure was edited to provide better readability, but there were no material content changes from the earlier version.

b. “Options and Warrants,” as adopted with amendments through ~~September 28, 1999~~ March 31, 2008;

Synopsis of Changes:

Amended November 17, 1997; September 28, 1999 & March 31, 2008

- 1. The SOP has non-material edits to correct grammar and sentence structure, for example, the editor changed “passive voice” sentence structure to “active voice.”*
- 2. The introduction was amended to remove language reminding the state administrator that nothing prevented the state from applying different standards from the SOP. Language clarifying that the policy applies to all applications to register by coordination or by qualification has been added.*
- 3. Several definitions contained in the NASAA Statement of Policy Regarding Corporate Securities Definitions are incorporated by reference including: Administrator, Disclosure Document, Lock-In Agreement, Person, Promoter, Unaffiliated Institutional Investor, Underwriter.*
- 4. The SOP was reorganized with new headings to more logically structure the policies, for example headings were added to highlight permissible grants of options/warrants, general prohibitions, and disclosure requirements. The SOP has non-material edits relating to permissible grants to unaffiliated institutional investors and persons.*
- 5. The prohibition relating to a limitation on exercise price was revised to require the issuer to demonstrate the underlying shares’ fair market value to the Administrator’s satisfaction. Pursuant to the revision, the Administrator may require the issuer to provide a concurrent appraisal of the shares’ fair market value from a qualified independent appraiser. The previous SOP only required the issuer to consider the advisability of obtaining an appraisal.*

The prior SOP prohibited certain options/warrants from being exercisable more than five (5) years from the date of the public offering; this prohibition has been eliminated.

c. “Corporate Securities Definitions,” as adopted with amendments through ~~September 28, 1999~~ March 31, 2008;

Synopsis of Changes:

Adopted April 27, 1997; Amended September 28, 1999 & March 31, 2008

- 1. The SOP has non-material edits to correct grammar and sentence structure, for example, the editor changed “passive voice” sentence structure to “active voice.”*
- 2. The introduction was amended to remove language reminding the state administrator that nothing prevented the state from applying different standards from the SOP.*
- 3. Several SOPs have moved definitions to this central SOP and have incorporated these definitions by reference. Definitions moved include: “Administrator”, “Selling Expenses”, and “Underwriting Expenses.” The definition of “Underwriting Expenses” was modified by deleting the formula for valuing the underwriter’s warrants.*
- 4. Definitions added include: “Disclosure Document” and “A Person is Insolvent if.” A disclosure document means a prospectus, information statement, offering circular or other offering document. “A Person is Insolvent if” means it 1) has an accumulated deficit; 2) has negative shareholder equity; 3) is unable to satisfy current obligations as they come due; 4) has negative cash flow; or 5) has financial statements that include a footnote or explanatory paragraph in the auditor’s report regarding the issuer’s ability to continue as a going concern.*
- 5. The definition of “escrow agent” was revised to permit Canadian financial institutions to act as an “escrow agent.” The definition has previously been limited to U.S. based financial institutions. Both institutions cannot be affiliated with the issuer, its promoters or associates.*
- 6. The definition of an “impoundment agent” was revised to include a Canadian based entity provided it is a depository institution as defined in Section 102(5) of the Uniform Securities Act of 2002. The definition has previously been limited to U.S. based entities. The requirement for the depository’s deposits to be insured by the FDIC was eliminated.*
- 7. The definition of an “independent director” was revised to include the requirement that an independent director cannot currently (or within the last two years) receive, other than in his/her capacity as a member of the board of directors/committee, any consulting, advisory or other compensatory fee from the issuer, its subsidiaries, or their affiliates or associates.*
- 8. The definition of a “lock-in agreement” was revised and simplified to state that a person would not dispose of or otherwise transfer equity securities that the person had received/been granted from the issuer. Duplicative language relating to disposal methods such as to sell, pledge, hypothecate, assign... was eliminated.*
- 9. The definition of a “person” was amended to have the same meaning as the definition in the Uniform Securities Act of 2002.*

10. *The definition of a “promotional or development stage company” was amended to include language which covers an issuer not authorized or listed on various exchanges (i.e. New York, American, Nasdaq Global Market). The definition was revised to include a securities exchange that the Securities and Exchange Commission determines under Section 18(b)(1) of the Securities Act of 1933 has substantially similar listing standards.*
11. *The definition of “promotional shares” was revised to mean equity securities that a promotional or development stage company has issued within five (5) years before the filing of the registration statement or will issue to its Promoters for cash or other consideration (i.e. services, copyrights, other intangibles.) The previous version did not have the 5 year time frame.*

The definition of an “unaffiliated institutional investor” was amended to mean: an institutional investor as defined in Section 102(11) of the Uniform Securities Act of 2002; and a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940. This change is mainly a consolidation of terms as many of the eliminated terms are contained within the amended definition. The unaffiliated Qualified Purchaser term as defined by NSMIA has been eliminated, as the Act’s definition contains a higher asset threshold of \$10 million vs. the previous \$5 million requirement.

d. “Impoundment of Proceeds,” as adopted with amendments through ~~September 29, 1999~~ March 31, 2008;

Synopsis of Changes:

Amended April 27, 1997, September 28, 1999, and March 31, 2008

1. *The SOP has non-material edits to correct grammar and sentence structure, for example, the editor changed “passive voice” sentence structure to “active voice.”*
2. *The SOP was reorganized with new headings to more logically structure the policies, for example, the execution requirement associated with the impoundment agreement was broken out into its own section.*
3. *The introduction was amended to remove language reminding the state administrator that nothing prevented the state from applying different standards from the SOP. Language clarifying that the policy applies to all applications to register by coordination or by qualification has been added.*
4. *The use of definitions set forth in the NASAA Statement of Policy Regarding Corporate Securities Definitions has been applied to this SOP.*
5. *Language permitting the administrator to deny the registration has been added in the event the issuer fails to impound the proceeds associated with a non-firmly underwritten offering. If denied, the recipient of the offering proceeds is required to deposit the proceeds in an interest bearing escrow/trust account with an impoundment agent.*
6. *Eligibility restrictions relating to who may act in the capacity of an impoundment agent have been added to include any affiliate of the following: the issuer, its officers/directors, the underwriter, or promoter.*

7. *The requirements of an impoundment agreement have been amended to incorporate the duties of an impoundment agent previously specified in Section IV, including:*
 - a. *To require that the administrator be notified in writing when the agent releases the proceeds.*

To specify that the impoundment agent return the proceeds (including pro-rata interest earned) directly to the investors, in the event that the minimum requirements are not met within the time set out in the agreement. The impounded agent is not permitted to deduct any expenses from funds returned to investors, including fees of the impoundment agent.

e. “Preferred Stock,” as adopted with amendments through ~~April 27, 1999~~ March 31, 2008;

Synopsis of Changes:

Adopted April 27, 1997; Amended March 31, 2008

1. *The SOP has non-material edits to correct grammar and sentence structure, for example, the editor changed “passive voice” sentence structure to “active voice.” Also the phrase “the offering of securities may be disallowed by the administrator” was changed to “the administrator may deny the offer or sale” to better align with the language of the Uniform Securities Act.*
2. *The introduction was amended to remove language reminding the state administrator that nothing prevented the state from applying different standards from the SOP.*
3. *A reference to the specific terms used in this SOP that are defined in the SOP for Corporate Securities Definitions was added. The earlier version merely referenced the SOP for Corporate Securities Definitions.*

The organization of the SOP’s outline structure was edited to provide better readability, but there were no material content changes from the earlier version.

f. “Promotional Shares” as adopted with amendments through ~~September 28, 1999~~ March 31, 2008;

Synopsis of Changes:

Amended November 17, 1997, September 28, 1999, and March 31, 2008

1. *The SOP has non-material edits to correct grammar and sentence structure, for example, the editor changed “passive voice” sentence structure to “active voice.”*
2. *The introduction was amended to remove language reminding the state administrator that nothing prevented the state from applying different standards from the SOP.*
3. *A reference to the specific terms used in this SOP that are defined in the SOP for Corporate Securities Definitions was added. The earlier version merely referenced the SOP for Corporate Securities Definitions.*
4. *Certain definitional information was removed that duplicated information in the SOP for Corporate Securities Definitions. For example, information about acceptable “selling*

expenses” was removed as “selling expenses” are defined in the SOP for Corporate Securities Definitions.

5. *A more detailed formula illustration was added to show how to calculate the number of promotional shares required to be deposited in escrow.*
6. *A more detailed formula illustration was added to show how to calculate the number of promotional shares that could be periodically released from escrow after registration of the offering.*
7. *A requirement was added requiring the release of all promotional shares held in escrow if the securities become “covered securities” as defined in federal law.*
8. *The restrictions on the transfers of promotional shares was amended to indicate that the restrictions were non-exclusive to the SOP and were condensed to state that no interest in promotional shares held in escrow could be transferred by the depositor except for gift to a family member. Information about the transfer of escrowed shares by operation of law was eliminated.*

Specific requirements for the terms of the escrow agreement were eliminated.

g. “Promoters’ Equity Investment,” as adopted with amendments through ~~April 27, 1997~~ March 31, 2008;

Synopsis of changes:

Amended April 27, 1997 and March 31, 2008

1. *The SOP has non-material edits to correct grammar and sentence structure, for example, the editor changed “passive voice” sentence structure to “active voice.” Also the phrase “the offering of securities may be disallowed by the administrator” was changed to “the administrator may deny the offer or sale” to better align with the language of the Uniform Securities Act.*
2. *The introduction was amended to remove language reminding the state administrator that nothing prevented the state from applying different standards from the SOP.*

A reference to the SOP for Corporate Securities Definitions was added for specific words used in the SOP.

h. “Specificity in Use of Proceeds,” as adopted with amendments through ~~September 28, 1999~~ March 31, 2008;

Synopsis of changes:

Amended April 27, 1997, September 28, 1999, and March 31, 2008

1. *The SOP has non-material edits to correct grammar and sentence structure, for example, the editor changed “passive voice” sentence structure to “active voice.”*
2. *The introduction was amended to remove language reminding the state administrator that nothing prevented the state from applying different standards from the SOP.*

Language clarifying that the policy applies to all applications to register by coordination or by qualification has been added.

3. *Definitions contained in the NASAA Statement of Policy Regarding Corporate Securities Definitions are incorporated by reference including: Disclosure Document and Promoter.*
4. *The SOP was revised to clarify that the issuer must disclose the “estimated” amount of proceeds to be used for each purpose.*
5. *The SOP was revised to require the disclosure document to identify potential other sources of funds to be raised to achieve the issuer’s purpose. If these sources are contingent, an explanation of the contingency is required.*
6. *The SOP was revised to require the disclosure document to include information on potential property acquisitions and/or a not yet identified business. The revision also requires disclosure relating to the type of property/business to be acquired and potential impact to issuer’s core business to be included in the disclosure document.*
7. *Revisions relating to disclosure involving debt repayment were made. The revisions set forth the disclosure that is required if the issuer plans to use any material part of the proceeds to discharge indebtedness. The nature (i.e. whether indebtedness includes unpaid salaries) and terms of indebtedness are required to be disclosed as well as how the issuer used the proceeds of any indebtedness incurred during the current or previous fiscal year.*
8. *The flexibility in use of proceeds was amended to indicate that the issuer must not reserve more than 15% of the proceeds for working capital or general corporate purposes/other unspecified use).*

The impound requirement for the minimum proceeds of a non-firmly underwritten offering has been modified and moved to the SOP Regarding the Impoundment of Proceeds.

i. “Underwriting Expenses, Underwriter’s Warrants, Selling Expenses, and Selling Securities Holders,” as adopted with amendments through ~~September 28, 1999~~ March 31, 2008;

Synopsis of changes:

Adopted on April 27, 1997; Amended on September 28, 1999 and March 31, 2008

1. *The SOP has extensive, non-material edits to correct grammar and sentence structure, for example, the editor changed “passive voice” sentence structure to “active voice.” Also the phrase “the offering of securities may be disallowed by the administrator” was changed to “the administrator may deny the offer or sale” to better align with the language of the Uniform Securities Act.*
2. *The introduction was amended to remove language reminding the state administrator that nothing prevented the state from applying different standards from the SOP.*

3. *A reference to the SOP for Corporate Securities Definitions was added for specific words used in the SOP.*
4. *The SOP was reorganized with new headings to more logically structure the policies, for example, a heading was added to highlight conditions for which an administrator can deny an application for registration.*
5. *Certain definitional information was removed that duplicated information in the SOP for Corporate Securities Definitions. For example, information about acceptable “selling expenses” was removed as “selling expenses” are defined in the SOP for Corporate Securities Definitions.*
6. *The previous version of the SOP outlined specific selling and underwriting expenses that were acceptable, in addition to identifying circumstances under which the administrator could disallow an offering. The updated SOP structure now simply identifies situations that permit the administrator to deny a registration, but does not attempt to list acceptable selling and underwriting expenses.*

A detailed illustration was added to show an example of how to calculate the value of a warrant.

j. “Unsound Financial Condition,” as adopted with amendments through September 28, 1999 March 31, 2008;

Synopsis of changes:

Adopted on April 27, 1997; Amended September 28, 1999 and March 31, 2008

1. *The SOP has non-material edits to correct grammar and sentence structure, for example, the editor changed “passive voice” sentence structure to “active voice.”*
2. *The introduction was amended to remove language reminding the state administrator that nothing prevented the state from applying different standards from the SOP.*
3. *A reference to the SOP for Corporate Securities Definitions was added for specific words used in the SOP.*
4. *The amended version of this SOP eliminated the description of when a company may be deemed to be in unsound financial condition. The amended SOP permits the administrator to deny the registration if the issuer is insolvent.*
5. *The amended version of this SOP clarifies that the administrator may register the offering of an insolvent issuer demonstrates that the offering proceeds and long-term business plan will improve the issuer’s financial condition.*

In the amended version of this SOP, the editor increased the suitability standards for investors. Investor must either have (A) a minimum gross income of \$70,000 and net worth of \$70,000 (previously \$65,000 each) or (b) a net worth of \$250,000 (previously \$150,000).

k. “Unequal Voting Rights,” as adopted with amendments through September 28, 1999 March 31, 2008;

Synopsis of changes:

Adopted October 24, 1991; Amended March 31, 2008

1. *The SOP has non-material edits to correct grammar and sentence structure, for example, the editor changed “passive voice” sentence structure to “active voice.”*
2. *The introduction was amended to remove language reminding the state administrator that nothing prevented the state from applying different standards from the SOP.*
3. *A reference to the SOP for Corporate Securities Definitions was added for specific words used in the SOP.*

The amended version of this SOP clarifies an offering of securities with less than equal voting rights for the same class of securities of the issuer that are currently authorized or outstanding is inconsistent with the public interest. The previous version indicated that the administrator could “deem” such an offering to not be in the public interest.

DATED this 11th day of August, 2016.

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