

**STATE OF IDAHO**  
**UNIFORM SECURITIES ACT**  
**(2004)**



**DEPARTMENT OF FINANCE**

**Effective: July 1, 2012**



**UNIFORM SECURITIES ACT (2004)**  
**CHAPTER 14, TITLE 30, IDAHO CODE**

**PART 1.**  
**GENERAL PROVISIONS**

**30-14-101. SHORT TITLE.** This chapter shall be known and may be cited as the "Uniform Securities Act (2004)."

**30-14-102. DEFINITIONS.** In this chapter, unless the context otherwise requires:

(1) "Administrator" means the director of the Idaho department of finance or his designee.

(2) "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or who represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. A partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions, is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by a rule adopted or an order issued under this chapter.

(3) "Bank" means:

(a) A banking institution organized under the laws of the United States;

(b) A member bank of the federal reserve system;

(c) Any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the comptroller of the currency pursuant to section 1 of public law 87-722 (12 U.S.C. 92a), and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this chapter; and

(d) A receiver, conservator, or other liquidating agent of any institution or firm included in subparagraph (a), (b) or (c) of this subsection.

(4) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include:

(a) An agent;

(b) An issuer;

(c) A bank, a trust company organized or chartered under the laws of this state, or a savings institution if its activities as a broker-dealer are limited to those specified in subsections 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if limited to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the securities exchange act of 1934 (15 U.S.C. 78c(a)(4) and (5)) or a bank that satisfies the conditions described in subsection 3(a)(4)(E) of the securities exchange act of 1934 (15 U.S.C. 78c(a)(4));

(d) An international banking institution; or

- (e) A person excluded by a rule adopted or an order issued under this chapter.
- (5) "Depository institution" means:
  - (a) A bank; or
  - (b) A savings institution, trust company, credit union or similar institution that is organized or chartered under the laws of a state or of the United States that is authorized to receive deposits, and that is supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union share insurance fund, or a successor authorized by federal law. The term does not include:
    - (i) An insurance company or other organization primarily engaged in the business of insurance;
    - (ii) A morris plan bank; or
    - (iii) An industrial loan company.
- (6) "Federal covered investment adviser" means a person registered under the investment advisers act of 1940, as cited in section 30-14-103, Idaho Code.
- (7) "Federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under section 18(b) of the securities act of 1933 (15 U.S.C. 77r(b)) or rules or regulations adopted pursuant to that provision.
- (8) "Filing" means the receipt under this chapter of a record by the administrator or a designee of the administrator.
- (9) "Fraud," "deceit," and "defraud" are not limited to common law deceit.
- (10) "Guaranteed" means guaranteed as to payment of all principal and all interest.
- (11) "Institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:
  - (a) A depository institution, a trust company organized or chartered under the laws of this state, or an international banking institution;
  - (b) An insurance company;
  - (c) A separate account of an insurance company;
  - (d) An investment company as defined in the investment company act of 1940, as cited in section 30-14-103, Idaho Code;
  - (e) A broker-dealer registered under the securities exchange act of 1934, as cited in section 30-14-103, Idaho Code;
  - (f) An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of ten million dollars (\$10,000,000) or its investment decisions are made by a named fiduciary, as defined in the employee retirement income security act of 1974, that is a broker-dealer registered under the securities exchange act of 1934, an investment adviser registered or exempt from registration under the investment advisers act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company;
  - (g) A plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of ten million dollars (\$10,000,000) or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the employee retirement income security act of 1974, that is a

broker-dealer registered under the securities exchange act of 1934, an investment adviser registered or exempt from registration under the investment advisers act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company;

(h) A trust, if it has total assets in excess of ten million dollars (\$10,000,000), its trustee is a depository institution, and its participants are exclusively plans of the types identified in paragraph (f) or (g) of this subsection, regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;

(i) An organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)), a corporation, a Massachusetts trust or similar business trust, a limited liability company, or a partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of ten million dollars (\$10,000,000);

(j) A small business investment company licensed by the small business administration under section 301(c) of the small business investment act of 1958 (15 U.S.C. 681(c)) with total assets in excess of ten million dollars (\$10,000,000);

(k) A private business development company as defined in section 202(a)(22) of the investment advisers act of 1940 (15 U.S.C. 80b-2(a)(22)) with total assets in excess of ten million dollars (\$10,000,000);

(l) A federal covered investment adviser acting for its own account;

(m) A "qualified institutional buyer" as defined in rule 144A(a)(1), other than rule 144A(a)(1)(i)(H), adopted under the securities act of 1933 (17 CFR 230.144A);

(n) A "major U.S. institutional investor" as defined in rule 15a-6(b)(4)(i) adopted under the securities exchange act of 1934 (17 CFR 240.15a-6);

(o) Any other person, other than an individual, of institutional character with total assets in excess of ten million dollars (\$10,000,000) not organized for the specific purpose of evading this chapter; or

(p) Any other person specified by a rule adopted or an order issued under this chapter.

(12) "Insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state.

(13) "Insured" means insured as to payment of all principal and all interest.

(14) "International banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under the securities act of 1933.

(15) "Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include:

(a) An investment adviser representative;

- (b) A lawyer, accountant, engineer or teacher whose performance of investment advice is solely incidental to the practice of the person's profession;
- (c) A broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;
- (d) A publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;
- (e) A federal covered investment adviser;
- (f) A bank, a trust company organized or chartered under the laws of this state, or a savings institution;
- (g) Any other person that is excluded by the investment advisers act of 1940 from the definition of investment adviser;
- (h) Any person who offers accountancy services to the public and who holds a valid, unrevoked and unsuspended license under the provisions of chapter 2, title 54, Idaho Code, designating said person as a certified public accountant or a licensed public accountant; or
- (i) Any other person excluded by a rule adopted or an order issued under this chapter.

(16) "Investment adviser representative" means an individual employed by or associated with an investment adviser or federal covered investment adviser who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who:

- (a) Performs only clerical or ministerial acts;
- (b) Is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;
- (c) Is employed by or associated with a federal covered investment adviser, unless the individual has a "place of business" in this state as that term is defined by rule adopted under section 203A of the investment advisers act of 1940 (15 U.S.C. 80b-3a) and is:
  - (i) An "investment adviser representative" as that term is defined by rule adopted under section 203A of the investment advisers act of 1940 (15 U.S.C. 80b-3a); or
  - (ii) Not a "supervised person" as that term is defined in section 202(a)(25) of the investment advisers act of 1940 (15 U.S.C. 80b-2(a)(25)); or
- (d) Is excluded by a rule adopted or an order issued under this chapter.

(17) "Issuer" means a person that issues or proposes to issue a security, subject to the following:

- (a) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued.

(b) The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate.

(c) The issuer of a fractional undivided interest in an oil, gas or other mineral lease or in payments out of production under a lease, right or royalty is the owner of an interest in the lease or in payments out of production under a lease, right or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.

(18) "Nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer.

(19) "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to section 14(d) of the securities exchange act of 1934 (15 U.S.C. 78n(d)).

(20) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(21) "Place of business" of a broker-dealer, an investment adviser, or a federal covered investment adviser means:

(a) An office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients; or

(b) Any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

(22) "Predecessor act" means the act repealed by section 30-14-702, Idaho Code.

(23) "Price amendment" means the amendment to a registration statement filed under the securities act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the securities act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(24) "Principal place of business" of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners or managers of the broker-dealer or investment adviser direct, control and coordinate the activities of the broker-dealer or investment adviser.

(25) "Record," except in the phrases "of record," "official record," and "public record," means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) "Sale" includes every contract of sale, contract to sell, or disposition of, a security or interest in a security for value. "Offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. Both "sale" and "offer to sell" include:

(a) A security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value;

(b) A gift of assessable stock involving an offer and sale; and

(c) A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.

(27) "Securities and exchange commission" means the United States securities and exchange commission.

(28) "Security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas or other mineral rights; put, call, straddle, option or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security":

(a) Includes both a certificated and an uncertificated security;

(b) Does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or other specified period;

(c) Does not include an interest in a contributory or noncontributory pension or welfare plan subject to the employee retirement income security act of 1974;

(d) Includes as an "investment contract" an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor. "Common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors; and

(e) Includes as an "investment contract," among other contracts, an interest in a limited partnership and a limited liability company and an investment in a viatical settlement, life settlement or senior settlement or similar agreement.

(29) "Self-regulatory organization" means a national securities exchange registered under the securities exchange act of 1934, a national securities association of broker-dealers registered under the securities exchange act of 1934, a clearing agency registered under the securities exchange act of 1934, or the municipal securities rulemaking board established under the securities exchange act of 1934.

(30) "Sign" means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach or logically associate with the record an electronic symbol, sound or process.

(31) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.



**30-14-103. REFERENCES TO FEDERAL STATUTES.** "Securities act of 1933" (15 U.S.C. 77a et seq.), "securities exchange act of 1934" (15 U.S.C. 78a et seq.), "public utility holding company act of 1935" (15 U.S.C. 79 et seq.), "investment company act of 1940" (15 U.S.C. 80a-1 et seq.), "investment advisers act of 1940" (15 U.S.C. 80b-1 et seq.), "employee retirement income security act of 1974" (29 U.S.C. 1001 et seq.), "national housing act" (12 U.S.C. 1701 et seq.), "commodity exchange act" (7 U.S.C. 1 et seq.), "internal revenue code" (26 U.S.C. 1 et seq.), "securities investor protection act of 1970" (15 U.S.C. 78aaa et seq.), "securities litigation uniform standards act of 1998" (112 Stat. 3227), "small business investment act of 1958" (15 U.S.C. 661 et seq.), and "electronic signatures in global and national commerce act" (15 U.S.C. 7001 et seq.) mean those statutes and the rules and regulations adopted under those statutes, as in effect on the date of enactment of this chapter.

**30-14-104. REFERENCES TO FEDERAL AGENCIES.** A reference in this chapter to an agency or department of the United States is also a reference to a successor agency or department.

**30-14-105. ELECTRONIC RECORDS AND SIGNATURES.** This chapter modifies, limits and supersedes the federal electronic signatures in global and national commerce act, but does not modify, limit or supersede section 101(c) of that act (15 U.S.C. 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. 7003(b)). This chapter authorizes the filing of records and signatures, when specified by provisions of this chapter or by a rule adopted or an order issued under this chapter, in a manner consistent with section 104(a) of that act (15 U.S.C. 7004(a)).

## **PART 2.**

### **EXEMPTIONS FROM REGISTRATION OF SECURITIES**

**30-14-201. EXEMPT SECURITIES.** The following securities are exempt from the requirements of sections 30-14-301 through 30-14-306, Idaho Code, and section 30-14-504, Idaho Code:

(1) A security, including a revenue obligation or a separate security as defined in rule 131 (17 CFR 230.131) adopted under the securities act of 1933, issued, insured or guaranteed by the United States; by a state; by a political subdivision of a state; by a public authority, agency, or instrumentality of one (1) or more states; by a political subdivision of one (1) or more states; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by congress; or a certificate of deposit for any of the foregoing;

(2) A security issued, insured or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer or guarantor;

(3) A security issued by and representing, or that will represent, an interest in or a direct obligation of, or be guaranteed by:

(a) An international banking institution;

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- (b) A banking institution organized under the laws of the United States; a member bank of the federal reserve system; or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union share insurance fund, or a successor authorized by federal law, or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the comptroller of currency pursuant to section 1 of public law 87-722 (12 U.S.C. 92a); or
- (c) Any other depository institution, or any trust company organized or chartered under the laws of this state, unless by rule or order the administrator proceeds under section 30-14-204, Idaho Code;
- (4) A security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to do business in this state;
- (5) A security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is:
  - (a) Regulated in respect to its rates and charges by the United States or a state;
  - (b) Regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada, or a Canadian province or territory; or
  - (c) A public utility holding company registered under the public utility holding company act of 1935 or a subsidiary of such a registered holding company within the meaning of that act;
- (6) A federal covered security specified in section 18(b)(1) of the securities act of 1933 (15 U.S.C. 77r(b)(1)) or by a rule adopted under that provision or a security listed or approved for listing on another securities market specified by rule under this chapter; a put or a call option contract; a warrant; a subscription right on or with respect to such securities; or an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the securities exchange act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the securities exchange act of 1934 or an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the securities and exchange commission under section 9(b) of the securities exchange act of 1934 (15 U.S.C. 78i(b));
- (7) A security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under section 3(c)(10)(b) of the investment company act of 1940 (15 U.S.C. 80a-3(c)(10)(B)); except that with respect to the offer or sale of a note, bond, debenture or other evidence of indebtedness issued by such a person, a rule may be adopted under this chapter limiting the availability of this exemption by classifying securities, persons and transactions, imposing different requirements for different classes, specifying with respect to paragraph (b) of this subsection the scope of the exemption and the grounds for denial or suspension, and requiring an issuer:

- (a) To file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and provide that the exemption becomes effective if the administrator does not disallow the exemption within the period established by the rule;
- (b) To file a request for exemption authorization for which a rule under this chapter may specify the scope of the exemption, the requirement of an offering statement, the filing of sales and advertising literature, the filing of consent to service of process complying with section 30-14-611, Idaho Code, and grounds for denial or suspension of the exemption; or
- (c) To register under section 30-14-304, Idaho Code;
- (8) A member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of a state, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative;
- (9) An equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under section 18(b)(1) of the securities act of 1933 (15 U.S.C. 77r(b)(1)); and
- (10) Any security issued by a domestic or foreign corporation, partnership, trust or association engaged in actual mining operations or the exploration and development of mining properties in this state, whether or not sold through a broker-dealer, provided the following conditions are met:
  - (a) The term "actual mining operations" within the meaning of this subsection does not include the development or production of gas or oil;
  - (b) The total amount of the securities to be offered and sold does not exceed five hundred thousand dollars (\$500,000) in any twelve (12) month period;
  - (c) All sales brochures, pamphlets, advertisements and literature are filed with the director prior to being used;
  - (d) At least eighty percent (80%) of the gross amount paid by the purchasers of the securities is used in actual mining operations or for actual exploration and development expenses, including legal, accounting, engineering and geological expenses; and
  - (e) The issuer shall file a report in a form prescribed by the director and at such times that the director by rule may provide, not to exceed once every three (3) months, stating the number of shares or amount of other securities sold, the number of purchasers, the amount of money obtained by the issuer from the sales, and the manner in which the moneys have been expended.

**30-14-202. EXEMPT TRANSACTIONS.** The following transactions are exempt from the requirements of sections 30-14-301 through 30-14-306, Idaho Code, and section 30-14-504, Idaho Code:

- (1) An isolated nonissuer transaction, whether or not effected by or through a broker-dealer;
- (2) A nonissuer transaction by or through a broker-dealer registered, or exempt from registration under this chapter, and a resale transaction by a sponsor of a unit investment trust registered under the investment company act of 1940, in a security of a class that has been

outstanding in the hands of the public for at least ninety (90) days, if, at the date of the transaction:

- (a) The issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;
- (b) The security is sold at a price reasonably related to its current market price;
- (c) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution;
- (d) A nationally recognized securities manual or its electronic equivalent designated by any rule adopted or an order issued under this chapter or a record filed with the securities and exchange commission that is publicly available and contains:
  - (i) A description of the business and operations of the issuer;
  - (ii) The names of the issuer's executive officers and the names of the issuer's directors, if any;
  - (iii) An audited balance sheet of the issuer as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and
  - (iv) An audited income statement for each of the issuer's two (2) immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and
- (e) Any one (1) of the following requirements is met:
  - (i) The issuer of the security has a class of equity securities listed on a national securities exchange registered under section 6 of the securities exchange act of 1934 or designated for trading on the national association of securities dealers automated quotation system;
  - (ii) The issuer of the security is a unit investment trust registered under the investment company act of 1940;
  - (iii) The issuer of the security, including its predecessors, has been engaged in continuous business for at least three (3) years; or
  - (iv) The issuer of the security has total assets of at least two million dollars (\$2,000,000) based on an audited balance sheet as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization;
- (3) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the board of governors of the federal reserve system;
- (4) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in an outstanding security if the guarantor of the security files

reports with the securities and exchange commission under the reporting requirements of section 13 or 15(d) of the securities exchange act of 1934 (15 U.S.C. 78m or 78o(d));

(5) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security that:

(a) Is rated at the time of the transaction by a nationally recognized statistical rating organization in one (1) of its four (4) highest rating categories; or

(b) Has a fixed maturity or a fixed interest or dividend, if:

(i) A default has not occurred during the current fiscal year or within the three (3) previous fiscal years of the issuer or any predecessor, in the payment of principal, interest, or dividends on the security; and

(ii) The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous twelve (12) months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(6) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter effecting an unsolicited order or offer to purchase;

(7) A nonissuer transaction executed by a bona fide pledgee without the purpose of evading this chapter;

(8) A nonissuer transaction by a federal covered investment adviser with investments under management in excess of one hundred million dollars (\$100,000,000) acting in the exercise of discretionary authority in a signed record for the account of others;

(9) A transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one (1) or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the administrator after a hearing as provided in section 30-14-202A, Idaho Code, or otherwise;

(10) A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(11) A transaction in a note, bond, debenture or other evidence of indebtedness secured by a mortgage or other security agreement if the note, bond, debenture or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;

(12) A transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator;

(13) A sale or offer to sell to:

(a) An institutional investor;

(b) A federal covered investment adviser; or

(c) Any other person exempted by a rule adopted or an order issued under this chapter;

(14) A sale or an offer to sell securities of an issuer, if the transaction is part of a single issue in which:

(a) Not more than ten (10) purchasers are present in this state during any twelve (12) consecutive months, other than those designated in subsection (13) of this section;

(b) A general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities;

(c) A commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this chapter or an agent registered under this chapter for soliciting a prospective purchaser in this state; and

(d) The issuer reasonably believes that all the purchasers in this state, other than those designated in subsection (13) of this section, are purchasing for investment;

(15) A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this state;

(16) An offer to sell, but not a sale, of a security not exempt from registration under the securities act of 1933 if:

(a) A registration or offering statement or similar record as required under the securities act of 1933 has been filed, but is not effective, or the offer is made in compliance with rule 165 adopted under the securities act of 1933 (17 CFR 230.165); and

(b) A stop order of which the offeror is aware has not been issued against the offeror by the administrator or the securities and exchange commission, and an audit, inspection or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending;

(17) An offer to sell, but not a sale, of a security exempt from registration under the securities act of 1933 if:

(a) A registration statement has been filed under this chapter, but is not effective;

(b) A solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the administrator under this chapter; and

(c) A stop order of which the offeror is aware has not been issued by the administrator under this chapter and an audit, inspection or proceeding that may culminate in a stop order is not known by the offeror to be pending;

(18) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties;

(19) A rescission offer, sale or purchase under section 30-14-510, Idaho Code;

(20) An offer or sale of a security to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this chapter;

(21) Employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to:

(a) Directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisers;

- (b) Family members who acquire such securities from those persons through gifts or domestic relations orders;
- (c) Former employees, directors, general partners, trustees, officers, consultants and advisers if those individuals were employed by or providing services to the issuer when the securities were offered; and
- (d) Insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty percent (50%) of their annual income from those organizations;

(22) A transaction involving:

- (a) A stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property or stock;
- (b) An act incident to a judicially approved reorganization in which a security is issued in exchange for one (1) or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash; or
- (c) The solicitation of tenders of securities by an offeror in a tender offer in compliance with rule 162 adopted under the securities act of 1933 (17 CFR 230.162); or

(23) A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this chapter, if the issuer is a reporting issuer in a foreign jurisdiction designated by this subsection or by a rule adopted or an order issued under this chapter; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than one hundred eighty (180) days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this subsection or by a rule adopted or an order issued under this chapter, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this subsection, Canada, together with its provinces and territories, is a designated foreign jurisdiction and the Toronto stock exchange, inc., is a designated securities exchange. After an administrative hearing in compliance with chapter 52, title 67, Idaho Code, the administrator, by rule adopted or an order issued under this chapter, may revoke the designation of a securities exchange under this subsection, if the administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

**30-14-202A. FAIRNESS HEARING.** (a) The administrator is expressly authorized to hold a hearing and consider the fairness of the terms and conditions of a transaction described in section 30-14-202(9), Idaho Code. This section 30-14-202A, Idaho Code, is intended to provide for a fairness hearing before the administrator with respect to transactions which, if approved by the administrator, will be exempt from the registration requirements of the federal securities laws under section 3(a)(10) of the securities act of 1933, or any section comparable thereto which may subsequently be enacted.

(b) An application for approval shall describe the proposed transaction and shall be in such form, contain such information and be accompanied by such documents as the administrator

shall reasonably require by rule or otherwise. The applicant shall pay to the administrator a filing fee of three hundred dollars (\$300) and shall file with the administrator an undertaking to defray the costs of a hearing officer and a stenographer for the hearing.

(c) An application for approval shall be set for hearing within thirty (30) days after the filing of an application. The applicant shall give notice of the hearing to all persons to whom securities are to be issued in the proposed transaction, and all such persons shall have the right to appear at the hearing.

(d) Within ten (10) days after the hearing, the administrator shall issue an order either granting or denying approval of the terms of conditions of the proposed plan. The order shall grant approval if the proposed transaction is fair, equitable and free from fraud. The order shall deny approval if the proposed transaction is unfair, inequitable or not free from fraud.

**30-14-203. ADDITIONAL EXEMPTIONS AND WAIVERS.** (1) A rule adopted or an order issued under this chapter may exempt a security, transaction or offer.

(2) A rule adopted under this chapter may exempt a class of securities, transactions or offers from any or all of the requirements of sections 30-14-301 through 30-14-306, Idaho Code, and section 30-14-504, Idaho Code.

(3) An order issued under this chapter may waive, in whole or in part, any or all of the conditions for an exemption or offer under sections 30-14-201 and 30-14-202, Idaho Code.

**30-14-204. DENIAL, SUSPENSION, REVOCATION, CONDITION OR LIMITATION OF EXEMPTIONS.** (a) Enforcement related powers. Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this chapter may deny, suspend application of, condition, limit, or revoke an exemption created under section 30-14-201(3)(c), (7) or (8), Idaho Code, or section 30-14-202, Idaho Code, or an exemption or waiver created pursuant to section 30-14-203, Idaho Code, with respect to a specific security, transaction or offer. An order under this section may be issued only pursuant to the procedures set forth in section 30-14-306(d) or 30-14-604, Idaho Code, and only prospectively.

(b) Knowledge of order required. A person does not violate section 30-14-301, 30-14-303 through 30-14-306, 30-14-504 or 30-14-510, Idaho Code, by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care could not have known, of the order.

### **PART 3. REGISTRATION OF SECURITIES AND NOTICE FILING OF FEDERAL COVERED SECURITIES**

**30-14-301. SECURITIES REGISTRATION REQUIREMENT.** It is unlawful for a person to offer or sell a security in this state unless:

- (a) The security is a federal covered security;
- (b) The security, transaction or offer is exempted from registration under sections 30-14-201 through 30-14-203, Idaho Code; or
- (c) The security is registered under this chapter.



**30-14-302. NOTICE FILING.** (a) Required filing of records. With respect to a federal covered security, as defined in section 18(b)(2) of the securities act of 1933 (15 U.S.C. 77r(b)(2)), that is not otherwise exempt under sections 30-14-201 through 30-14-203, Idaho Code, a rule adopted or an order issued under this chapter may require the filing of any or all of the following records:

(1) Before the initial offer of a federal covered security in this state, all records that are part of a federal registration statement filed with the securities and exchange commission under the securities act of 1933 and a consent to service of process complying with section 30-14-611, Idaho Code, signed by the issuer and the payment of a fee of three hundred dollars (\$300) for mutual funds and one hundred dollars (\$100) for unit investment trusts;

(2) After the initial offer of the federal covered security in this state, all records that are part of an amendment to a federal registration statement filed with the securities and exchange commission under the securities act of 1933; and

(3) To the extent necessary or appropriate to compute fees, a report of the value of the federal covered securities sold or offered to persons present in this state, if the sales data are not included in records filed with the securities and exchange commission; and

(4) Each series or portfolio of an investment company offering shall be required to make a separate notice filing. Separate notice filings for classes of an investment company are not required so long as classes are used solely as a method of distinguishing payment plans within a series or portfolio.

(b) Notice filing effectiveness and renewal. A notice filing under subsection (a) of this section is effective for one (1) year commencing on the later of the notice filing or the effectiveness of the offering filed with the securities and exchange commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the securities and exchange commission that are required by rule or order under this chapter to be filed and by paying a renewal fee of three hundred dollars (\$300) for mutual funds and one hundred dollars (\$100) for unit investment trusts. A previously filed consent to service of process complying with section 30-14-611, Idaho Code, may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

(c) Notice filings for federal covered securities under section 18(b)(4)(D). With respect to a security that is a federal covered security under section 18(b)(4)(D) of the securities act of 1933 (15 U.S.C. 77r(b)(4)(D)), a rule or order under this chapter may require a notice filing by or on behalf of an issuer to include a copy of form D and the payment of a fee of fifty dollars (\$50.00).

(d) Stop orders. Except with respect to a federal security under section 18(b)(1) of the securities act of 1933 (15 U.S.C. 77r(b)(1)), if the administrator finds that there is a failure to comply with a notice or fee requirement of this section, the administrator may issue a stop order suspending the offer and sale of a federal covered security in this state. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the administrator.

**30-14-303. SECURITIES REGISTRATION BY COORDINATION.** (a) Registration permitted. A security for which a registration statement has been filed under the securities act of 1933 in connection with the same offering may be registered by coordination under this section.

(b) Required records. A registration statement and accompanying records under this section must contain or be accompanied by the following records in addition to the information specified in section 30-14-305, Idaho Code, and a consent to service of process complying with section 30-14-611, Idaho Code:

- (1) A copy of the latest form of prospectus filed under the securities act of 1933;
- (2) A copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy or description of the security that is required by any rule adopted or an order issued under this chapter;
- (3) Copies of any other information or any other records filed by the issuer under the securities act of 1933 requested by the administrator; and
- (4) An undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the securities and exchange commission.

(c) Conditions for effectiveness of registration statement. A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied:

- (1) A stop order issued pursuant to subsection (d) of this section or section 30-14-306, Idaho Code, or issued by the securities and exchange commission, is not in effect and a proceeding is not pending against the issuer under section 30-14-306, Idaho Code, and the administrator has not given written notice of deficiencies that are unresolved and that would constitute grounds for a stop order under section 30-14-306, Idaho Code; and
- (2) The registration statement has been on file for at least twenty (20) days or a shorter period provided by a rule adopted or an order issued under this chapter.

(d) Notice of federal registration statement effectiveness. The registrant shall promptly notify the administrator in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall promptly file a record containing the price amendment. If the notice is not timely received, the administrator may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The administrator shall promptly notify the registrant of an order by telegram, telephone or electronic means and shall promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of its issuance.

(e) Effectiveness of registration statement. If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the administrator, the registration statement is automatically effective under this chapter when all the conditions are satisfied or waived. If the registrant notifies the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly notify the registrant by telegram, telephone or electronic means and shall promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether

the administrator intends the institution of a proceeding under section 30-14-306, Idaho Code. The notice by the administrator does not preclude the institution of such a proceeding.

**30-14-304. SECURITIES REGISTRATION BY QUALIFICATION.** (a) Registration permitted. A security may be registered by qualification under this section.

(b) Required records. A registration statement under this section must contain the information or records specified in section 30-14-305, Idaho Code, a consent to service of process complying with section 30-14-611, Idaho Code, and, if required by rule adopted under this chapter, the following information or records unless waived by the administrator for good cause shown:

- (1) With respect to the issuer and any significant subsidiary, its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;
- (2) With respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five (5) years; the amount of securities of the issuer held by the person as of the thirtieth day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three (3) years or proposed to be effected;
- (3) With respect to persons covered by paragraph (2) of this subsection, the aggregate sum of the remuneration paid to those persons during the previous twelve (12) months and estimated to be paid during the next twelve (12) months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries and affiliates of the issuer;
- (4) With respect to a person owning of record or owning beneficially, if known, ten percent (10%) or more of the outstanding shares of any class of equity security of the issuer, the information specified in paragraph (2) of this subsection other than the person's occupation;
- (5) With respect to a promoter, if the issuer was organized within the previous three (3) years, the information or records specified in paragraph (2) of this subsection, any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment;
- (6) With respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous three (3) years or proposed to be effected; and a statement of the reasons for making the offering;
- (7) The capitalization and long-term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or

anything else of value, for which the issuer or any subsidiary has issued its securities within the previous two (2) years or is obligated to issue its securities;

(8) The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis on which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which the distribution is to be made or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter;

(9) The estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition;

(10) A description of any stock options or other security options outstanding, or to be created in connection with the offering, and the amount of those options held or to be held by each person required to be named in paragraph (2), (4), (5), (6) or (8) of this subsection and by any person that holds or will hold ten percent (10%) or more in the aggregate of those options;

(11) The dates of, parties to, and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous two (2) years, and a copy of the contract;

(12) A description of any pending litigation, action or proceeding to which the issuer is a party and that materially affects its business or assets, and any litigation, action or proceeding known to be contemplated by governmental authorities;

(13) A copy of any prospectus, pamphlet, circular, form letter, advertisement or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with section 30-14-202(17)(b), Idaho Code;

(14) A specimen or copy of the security being registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their

substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered;

(15) A signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer;

(16) A signed or conformed copy of a consent of any accountant, engineer, appraiser or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public, which is used in connection with the registration statement;

(17) A balance sheet of the issuer as of a date within four (4) months before the filing of the registration statement; a statement of income and a statement of cash flows for each of the three (3) fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three (3) years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant; and

(18) Any additional information or records required by a rule adopted or an order issued under this chapter.

(c) Conditions for effectiveness of registration statement. A registration statement under this section becomes effective thirty (30) days, or any shorter period provided by a rule adopted or an order issued under this chapter, after the date the registration statement or the last amendment other than a price amendment is filed, if:

(1) A stop order is not in effect and a proceeding is not pending under section 30-14-306, Idaho Code;

(2) The administrator has not issued an order under section 30-14-306, Idaho Code, delaying effectiveness; and

(3) The applicant or registrant has not requested that effectiveness be delayed.

(d) Delay of effectiveness of registration statement. The administrator may delay effectiveness once for not more than ninety (90) days if the administrator determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination. The administrator may also delay effectiveness for a further period of not more than thirty (30) days if the administrator determines that the delay is necessary or appropriate.

(e) Prospectus distribution may be required. A rule adopted or an order issued under this chapter may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in subsection (b) of this section be sent or given to each person to which an offer is made, before or concurrently, with the earliest of:

(1) The first offer made in a record to the person otherwise than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution;

(2) The confirmation of a sale made by or for the account of the person;

- (3) Payment pursuant to such a sale; or
- (4) Delivery of the security pursuant to such a sale.

**30-14-305. SECURITIES REGISTRATION FILINGS.** (a) Who may file. A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this chapter.

(b) Filing fee. A person filing a registration statement shall pay a filing fee of three hundred dollars (\$300). If a registration statement is withdrawn before the effective date or a pre-effective stop order is issued under section 30-14-306, Idaho Code, the administrator shall retain the fee.

(c) Status of offering. A registration statement filed under section 30-14-303 or 30-14-304, Idaho Code, must specify:

- (1) The amount of securities to be offered in this state;
- (2) The states in which a registration statement or similar record in connection with the offering has been or is to be filed; and
- (3) Any adverse order, judgment or decree issued in connection with the offering by a state securities regulator, the securities and exchange commission, or a court.

(d) Incorporation by reference. A record filed under this chapter or the predecessor act within five (5) years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

(e) Nonissuer distribution. In the case of a nonissuer distribution, information or a record may not be required under subsection (i) of this section or section 30-14-304, Idaho Code, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

(f) Escrow and impoundment. A rule adopted or an order issued under this chapter may require as a condition of registration that a security issued within the previous five (5) years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by a rule adopted or an order issued under this chapter, provided however that the administrator may not reject a depository institution solely because of its location in another state.

(g) Form of subscription. A rule adopted or an order issued under this chapter may require as a condition of registration that a security registered under this chapter be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this chapter or preserved for a period specified by the rule or order, which may not be longer than five (5) years.

(h) Effective period. Except while a stop order is in effect under section 30-14-306, Idaho Code, a registration statement is effective for one (1) year after its effective date, or for any longer period designated in an order under this chapter during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. A

registration statement remains effective for each additional year by filing a renewal as prescribed by a rule adopted or an order issued under this chapter. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this chapter are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one (1) year after its effective date. A registration statement may be withdrawn only with the approval of the administrator.

(i) Periodic reports. While a registration statement is effective, a rule adopted or an order issued under this chapter may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

(j) Posteffective amendments. A registration statement shall be amended after its effective date if there are material changes in information or documents in the registration statement. The posteffective amendment becomes effective when the administrator so orders.

**30-14-306. DENIAL, SUSPENSION, AND REVOCATION OF SECURITIES REGISTRATION.** (a) Stop orders. The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the administrator finds that the order is in the public interest and that:

(1) Any of the following is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact:

(A) The registration statement as of its effective date, or before the effective date in the case of an order denying effectiveness;

(B) A posteffective amendment under section 30-14-305(j), Idaho Code, as of its effective date; or

(C) A periodic report under section 30-14-305(i), Idaho Code;

(2) This chapter or a rule adopted or an order issued under this chapter, or a condition imposed under this chapter, has been willfully violated in connection with the offering, by: the person filing the registration statement; the issuer, a partner, officer or director of the issuer or a person having a similar status or performing a similar function; a promoter of the issuer; or a person directly or indirectly controlling or controlled by the issuer; but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or by an underwriter;

(3) The security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign or state law other than this chapter applicable to the offering, provided however the administrator may not institute a proceeding against an effective registration statement under this paragraph more than one (1) year after the date of the order or injunction on which it is based, and the administrator may not issue an order under this paragraph on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section;

(4) The issuer's enterprise or method of business includes or would include activities that are unlawful where performed;

(5) With respect to a security sought to be registered under section 30-14-303, Idaho Code, there has been a failure to comply with the undertaking required by section 30-14-303(b)(4), Idaho Code;

(6) The applicant or registrant has not paid the filing fee, provided however the administrator shall void the order if the deficiency is corrected; or

(7) The offering:

(A) Will work or tend to work a fraud upon purchasers or would so operate;

(B) Has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options; or

(C) Is being made on terms that are unfair, unjust or inequitable.

(b) Enforcement. To the extent practicable, the administrator by a rule adopted or an order issued under this chapter shall publish standards that provide notice of conduct that violates subsection (a)(7) of this section.

(c) Institution of stop order. The administrator may not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the administrator when the registration statement became effective unless the proceeding is instituted within thirty (30) days after the registration statement became effective.

(d) Summary process. The administrator may summarily revoke, deny, postpone or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the administrator shall promptly notify each person specified in subsection (e) of this section that the order has been issued, the reasons for the revocation, denial, postponement or suspension, and that within fifteen (15) days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator, within thirty (30) days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the administrator, after notice of and an opportunity for a hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

(e) Procedural requirements for stop order. A stop order may not be issued under this section without:

(1) Appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;

(2) An opportunity for a hearing; and

(3) Findings of fact and conclusions of law in a record in accordance with chapter 52, title 67, Idaho Code.

(f) Modification or vacation of stop order. The administrator may modify or vacate a stop order issued under this section if the administrator finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.



**30-14-307. WAIVER AND MODIFICATION.** The administrator may waive or modify, in whole or in part, any or all of the requirements of sections 30-14-302, 30-14-303 and 30-14-304(b), Idaho Code, or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to section 30-14-305(i), Idaho Code.

**PART 4.**

**BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES, AND FEDERAL COVERED INVESTMENT ADVISERS**

**30-14-401. BROKER-DEALER REGISTRATION REQUIREMENT AND EXEMPTIONS.** (a) Registration requirement. It is unlawful for a person to transact business in this state as a broker-dealer unless the person is registered under this chapter as a broker-dealer or is exempt from registration as a broker-dealer under subsection (b) or (d) of this section.

(b) Exemptions from registration. The following persons are exempt from the registration requirement of subsection (a) of this section:

(1) A broker-dealer without a place of business in this state if its only transactions effected in this state are with:

(A) The issuer of the securities involved in the transactions;

(B) A broker-dealer registered as a broker-dealer under this chapter or not required to be registered as a broker-dealer under this chapter;

(C) An institutional investor;

(D) A nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars (\$100,000,000) acting for the account of others pursuant to discretionary authority in a signed record;

(E) A bona fide preexisting customer whose principal place of residence is not in this state and the person is registered as a broker-dealer under the securities exchange act of 1934 or is not required to be registered under the securities exchange act of 1934 and is registered under the securities act of the state in which the customer maintains a principal place of residence;

(F) A bona fide preexisting customer whose principal place of residence is in this state but who was not present in this state when the customer relationship was established, if:

(i) The broker-dealer is registered under the securities exchange act of 1934 or is not required to be registered under the securities exchange act of 1934 and is registered under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence; and

(ii) Within forty-five (45) days after the customer's first transaction in this state, the person files an application for registration as a broker-dealer in this state and a further transaction is not effected more than seventy-five (75) days after the date on which the application is filed or, if earlier, the date on which the administrator notifies the person that the administrator

has denied the application for registration or has stayed the pendency of the application for good cause;

(G) Not more than three (3) customers in this state during the previous twelve (12) months, in addition to those customers specified in subsections (b)(1)(A) through (b)(1)(F) and subsection (b)(1)(H) of this section, if the broker-dealer is registered under the securities exchange act of 1934 or not required to be registered under the securities exchange act of 1934 and is registered under the securities act of the state in which the broker-dealer has its principal place of business; and

(H) Any other person exempted by a rule adopted or an order issued under this chapter; and

(2) A person that deals solely in United States government securities and is supervised as a dealer in government securities by the board of governors of the federal reserve system, the comptroller of the currency, the federal deposit insurance corporation, or the office of thrift supervision.

(c) Limits on employment or association. It is unlawful for a broker-dealer, or for an issuer engaged in offering, offering to purchase, purchasing, or selling securities in this state, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser, or a federal covered investment adviser by an order of the securities regulator of a state, the securities and exchange commission, or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation or bar. Upon request from a broker-dealer or issuer and for good cause, an order under this chapter may modify or waive, in whole or in part, the application of the prohibitions of this subsection to the broker-dealer.

(d) Foreign transactions. A rule adopted or an order issued under this chapter may permit:

(1) A broker-dealer that is registered in Canada or other foreign jurisdiction and that does not have a place of business in this state to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by:

(A) An individual from Canada or other foreign jurisdiction who is temporarily present in this state and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States;

(B) An individual from Canada or other foreign jurisdiction who is present in this state and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction; or

(C) An individual who is present in this state, with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently resident in Canada or the other foreign jurisdiction; and

(2) An agent who represents a broker-dealer that is exempt under this subsection to effect transactions in securities or attempt to effect the purchase or sale of securities in this state as permitted for a broker-dealer described in subsection (b)(1) of this subsection [section].

**30-14-402. AGENT REGISTRATION REQUIREMENT AND EXEMPTIONS.** (a)

Registration requirement. It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this chapter as an agent or is exempt from registration as an agent under subsection (b) of this section.

(b) Exemptions from registration. The following individuals are exempt from the registration requirement of subsection (a) of this section:

(1) An individual who represents a broker-dealer in effecting transactions in this state limited to those described in section 15(h)(2) of the securities exchange act of 1934 (15 U.S.C. 78o(h)(2));

(2) An individual who represents a broker-dealer that is exempt under section 30-14-401(b) or (d), Idaho Code;

(3) An individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(4) An individual who represents an issuer and who effects transactions in the issuer's securities exempted by section 30-14-202, Idaho Code, other than section 30-14-202(14), Idaho Code;

(5) An individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, provided however that an individual who effects transactions in a federal covered security under section 18(b)(3) or 18(b)(4)(D) of the securities act of 1933 (15 U.S.C. 77r(b)(3) or 77r(b)(4)(D)) is not exempt 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;

(6) An individual who represents a broker-dealer registered in this state under section 30-14-401(a), Idaho Code, or exempt from registration under section 30-14-401(b), Idaho Code, in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars (\$100,000,000) acting for the account of others pursuant to discretionary authority in a signed record;

(7) An individual who represents an issuer in connection with the purchase of the issuer's own securities;

(8) An individual who represents an issuer and who restricts participation to performing clerical or ministerial acts; or

(9) Any other individual exempted by a rule adopted or an order issued under this chapter.

(c) Registration effective only while employed or associated. The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this chapter or an issuer that is offering, selling or purchasing its securities in this state.

(d) Limit on employment or association. It is unlawful for a broker-dealer, or an issuer engaged in offering, selling or purchasing securities in this state, to employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is

registered under subsection (a) of this section or is exempt from registration under subsection (b) of this section.

(e) Limit on affiliations. Unless prohibited by a rule adopted or an order issued under this chapter, an individual may act as an agent for more than one (1) broker-dealer or one (1) issuer at a time.

**30-14-403. INVESTMENT ADVISER REGISTRATION REQUIREMENT AND EXEMPTIONS.** (a) Registration requirement. It is unlawful for a person to transact business in this state as an investment adviser unless the person is registered under this chapter as an investment adviser or is exempt from registration as an investment adviser under subsection (b) of this section.

(b) Exemptions from registration. The following persons are exempt from the registration requirement of subsection (a) of this section:

(1) A person without a place of business in this state that is registered under the securities act of the state in which the person has its principal place of business if its only clients in this state are:

(A) Federal covered investment advisers, investment advisers registered under this chapter, or broker-dealers registered under this chapter;

(B) Institutional investors;

(C) Bona fide preexisting clients whose principal places of residence are not in this state if the investment adviser is registered under the securities act of the state in which the clients maintain principal places of residence; or

(D) Any other client exempted by a rule adopted or an order issued under this chapter;

(2) A person without a place of business in this state if the person has had, during the preceding twelve (12) months, not more than five (5) clients that are resident in this state in addition to those specified under subsection (b)(1) of this section;

(3) A federal covered investment adviser; or

(4) Any other person exempted by a rule adopted or an order issued under this chapter.

(c) Limits on employment or association. It is unlawful for an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to investment advice in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with an investment adviser, federal covered investment adviser, or broker-dealer by an order under this chapter, the securities and exchange commission, or a self-regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation or bar. Upon request from the investment adviser and for good cause, the administrator, by order, may waive, in whole or in part, the application of the prohibitions of this subsection to the investment adviser.

(d) Investment adviser representative registration required. It is unlawful for an investment adviser to employ or associate with an individual required to be registered under this chapter as an investment adviser representative who transacts business in this state on behalf of the investment adviser unless the individual is registered under section 30-14-404(a), Idaho Code, or is exempt from registration under section 30-14-404(b), Idaho Code.

**30-14-404. INVESTMENT ADVISER REPRESENTATIVE REGISTRATION REQUIREMENT AND EXEMPTIONS.** (a) Registration requirement. It is unlawful for an individual to transact business in this state as an investment adviser representative unless the individual is registered under this chapter as an investment adviser representative or is exempt from registration as an investment adviser representative under subsection (b) of this section.

(b) Exemptions from registration. The following individuals are exempt from the registration requirement of subsection (a) of this section:

(1) An individual who is employed by or associated with an investment adviser that is exempt from registration under section 30-14-403(b), Idaho Code, unless the individual has a place of business in this state or is not an investment adviser representative as defined by this chapter; and

(2) Any other individual exempted by a rule adopted or an order issued under this chapter.

(c) Registration effective only while employed or associated. The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under this chapter or a federal covered investment adviser that has made or is required to make a notice filing under section 30-14-405, Idaho Code.

(d) Limit on affiliations. An individual may transact business as an investment adviser representative for more than one (1) investment adviser or federal covered investment adviser unless a rule adopted or an order issued under this chapter prohibits or limits an individual from acting as an investment adviser representative for more than one (1) investment adviser or federal covered investment adviser.

(e) Limits on employment or association. It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in this state on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is suspended or revoked or the individual is barred or enjoined from employment or association with an investment adviser or a federal covered investment adviser by an order under this chapter, the securities and exchange commission, or a self-regulatory organization, or a court of competent jurisdiction. Upon request from a federal covered investment adviser and for good cause, the administrator, by order issued, may waive, in whole or in part, the application of the requirements of this subsection to the federal covered investment adviser.

(f) Referral fees. An investment adviser registered under this chapter, a federal covered investment adviser that has filed a notice under section 30-14-405, Idaho Code, or a broker-dealer registered under this chapter, is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser registered under this chapter, a federal covered investment adviser who has filed a notice under section 30-14-405, Idaho Code, or a broker-dealer registered under this chapter with which the individual is employed or associated as an investment adviser representative.

**30-14-405. FEDERAL COVERED INVESTMENT ADVISER NOTICE FILING REQUIREMENT.** (a) Notice filing requirement. Except with respect to a federal covered investment adviser described in subsection (b) of this section, it is unlawful for a federal covered investment adviser to transact business in this state as a federal covered investment adviser unless the federal covered investment adviser complies with subsection (c) of this section.

(b) Notice filing requirement not required. The following federal covered investment advisers are not required to comply with subsection (c) of this section:

(1) A federal covered investment adviser without a place of business in this state if its only clients in this state are:

(A) Federal covered investment advisers, investment advisers registered under this chapter, and broker-dealers registered under this chapter;

(B) Institutional investors;

(C) Bona fide preexisting clients whose principal places of residence are not in this state; or

(D) Other clients specified by a rule adopted or an order issued under this chapter;

(2) A federal covered investment adviser without a place of business in this state if the person has had, during the preceding twelve (12) months, not more than five (5) clients that are resident in this state in addition to those specified under subsection (b)(1) of this section; and

(3) Any other person excluded by a rule adopted or an order issued under this chapter.

(c) Notice filing procedure. A person acting as a federal covered investment adviser, not excluded under subsection (b) of this section, shall file a notice, a consent to service of process complying with section 30-14-611, Idaho Code, and such records as have been filed with the securities and exchange commission under the investment advisers act of 1940 required by a rule adopted or an order issued under this chapter and pay the fees specified in section 30-14-410(e), Idaho Code.

(d) Effectiveness of filing. The notice under subsection (c) of this section becomes effective upon its filing and expires on December thirty-first of each year unless renewed.

**30-14-406. REGISTRATION BY BROKER-DEALER, AGENT, INVESTMENT ADVISER, AND INVESTMENT ADVISER REPRESENTATIVE.** (a) Application for initial registration. A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with section 30-14-611, Idaho Code, and paying the fee specified in section 30-14-410, Idaho Code, and any reasonable fees charged by the designee of the administrator for processing the filing. The application must contain:

(1) The information or record required for the filing of a uniform application; and

(2) Upon request by the administrator, any other financial or other information or record that the administrator determines is appropriate.

(b) Amendment. If the information or record contained in an application filed under subsection (a) of this section is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) Effectiveness of registration. If an order is not in effect and a proceeding is not pending under section 30-14-412, Idaho Code, registration becomes effective at noon on the

forty-fifth day after a completed application is filed, unless the registration is denied. A rule adopted or an order issued under this chapter may set an earlier effective date or may defer the effective date until noon on the forty-fifth day after the filing of any amendment completing the application.

(d) Registration renewal. A registration is effective until midnight on December thirty-first of the year for which the application for registration is filed. Unless an order is in effect under section 30-14-412, Idaho Code, a registration may be automatically renewed each year by filing such records as are required by a rule adopted or an order issued under this chapter, by paying the fee specified in section 30-14-410, Idaho Code, and by paying costs charged by the designee of the administrator for processing the filings.

(e) Additional conditions or waivers. A rule adopted or an order issued under this chapter may impose such other conditions, not inconsistent with the national securities markets improvement act of 1996 (110 Stat. 3416). An order issued under this chapter may waive, in whole or in part, specific requirements in connection with registration as are in the public interest and for the protection of investors.

**30-14-407. SUCCESSION AND CHANGE IN REGISTRATION OF BROKER-DEALER OR INVESTMENT ADVISER.** (a) Succession. A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration pursuant to section 30-14-401 or 30-14-403, Idaho Code, or a notice pursuant to section 30-14-405, Idaho Code, for the unexpired portion of the current registration or notice filing.

(b) Organizational change. A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of this chapter. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. A predecessor registered under this chapter shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within forty-five (45) days after filing its amendment to effect succession.

(c) Name change. A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant.

(d) Change of control. A change of control of a broker-dealer or investment adviser may be made in accordance with a rule adopted or an order issued under this chapter.

**30-14-408. TERMINATION OF EMPLOYMENT OR ASSOCIATION OF AGENT AND INVESTMENT ADVISER REPRESENTATIVE AND TRANSFER OF EMPLOYMENT OR ASSOCIATION.** (a) Notice of termination. If an agent registered under this chapter terminates employment by or association with a broker-dealer or issuer, or if an

investment adviser representative registered under this chapter terminates employment by or association with an investment adviser or federal covered investment adviser, or if either registrant terminates activities that require registration as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser, or federal covered investment adviser shall promptly file a notice of termination. If the registrant learns that the broker-dealer, issuer, investment adviser, or federal covered investment adviser has not filed the notice, the registrant may do so.

(b) Transfer of employment or association. If an agent registered under this chapter terminates employment by or association with a broker-dealer registered under this chapter and begins employment by or association with another broker-dealer registered under this chapter; or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under section 30-14-405, Idaho Code, and begins employment by or association with another investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under section 30-14-405, Idaho Code; then upon the filing by or on behalf of the registrant, within thirty (30) days after the termination, of an application for registration that complies with the requirement of section 30-14-406(a), Idaho Code, and payment of the filing fee required under section 30-14-410, Idaho Code, the registration of the agent or investment adviser representative is:

- (1) Immediately effective as of the date of the completed filing, if the agent's central registration depository record or successor record or the investment adviser representative's investment adviser registration depository record or successor record does not contain a new or amended disciplinary disclosure within the previous twelve (12) months; or
- (2) Temporarily effective as of the date of the completed filing, if the agent's central registration depository record or successor record or the investment adviser representative's investment adviser registration depository record or successor record contains a new or amended disciplinary disclosure within the preceding twelve (12) months.

(c) Withdrawal of temporary registration. The administrator may withdraw a temporary registration if there are or were grounds for discipline as specified in section 30-14-412, Idaho Code, and the administrator does so within thirty (30) days after the filing of the application. If the administrator does not withdraw the temporary registration within the thirty (30) day period, registration becomes automatically effective on the thirty-first day after filing.

(d) Power to prevent registration. The administrator may prevent the effectiveness of a transfer of an agent or investment adviser representative under subsection (b)(1) or (2) of this section based on the public interest and the protection of investors.

(e) Termination of registration or application for registration. If the administrator determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator or guardian, or cannot reasonably be located, a rule adopted or an order issued under this chapter may require the registration be canceled or terminated or the application denied. The administrator may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.



**30-14-409. WITHDRAWAL OF REGISTRATION OF BROKER-DEALER, AGENT, INVESTMENT ADVISER AND INVESTMENT ADVISER REPRESENTATIVE.** Withdrawal of registration by a broker-dealer, agent, investment adviser or investment adviser representative becomes effective sixty (60) days after the filing of the application to withdraw or within any shorter period as provided by a rule adopted or an order issued under this chapter unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal becomes effective when and upon such conditions as required by a rule adopted or an order issued under this chapter. The administrator may institute a revocation or suspension proceeding under section 30-14-412, Idaho Code, within one (1) year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending.

**30-14-410. FILING FEES.** (a) Broker-dealers. A person shall pay a fee of two hundred dollars (\$200) when initially filing an application for registration as a broker-dealer and a fee of two hundred dollars (\$200) when filing a renewal of registration as a broker-dealer. If the filing results in a denial or withdrawal, the administrator shall retain the fee.

(b) Agents. The fee for an individual is fifty dollars (\$50.00) when filing an application for registration as an agent, a fee of fifty dollars (\$50.00) when filing a renewal of registration as an agent, and a fee of fifty dollars (\$50.00) when filing for a change of registration as an agent. If the filing results in a denial or withdrawal, the administrator shall retain the fee.

(c) Investment advisers. A person shall pay a fee of one hundred fifty dollars (\$150) when filing an application for registration as an investment adviser and a fee of one hundred fifty dollars (\$150) when filing a renewal of registration as an investment adviser. If the filing results in a denial or withdrawal, the administrator shall retain the fee.

(d) Investment adviser representatives. The fee for an individual is thirty dollars (\$30.00) when filing an application for registration as an investment adviser representative, a fee of thirty dollars (\$30.00) when filing a renewal of registration as an investment adviser representative, and a fee of thirty dollars (\$30.00) when filing a change of registration as an investment adviser representative. If the filing results in a denial or withdrawal, the administrator shall retain the fee.

(e) Federal covered investment advisers. A federal covered investment adviser required to file a notice under section 30-14-405, Idaho Code, shall pay an initial fee of thirty dollars (\$30.00) and an annual notice fee of thirty dollars (\$30.00).

(f) Payment. A person required to pay a filing or notice fee under this section may transmit the fee through or to a designee as a rule or order provides under this chapter.

(g) Dual agent/investment adviser representative. An investment adviser representative who is registered as an agent under section 30-14-402, Idaho Code, and who represents a person that is both registered as a broker-dealer under section 30-14-401, Idaho Code, and registered as an investment adviser under section 30-14-403, Idaho Code, or required as a federal covered investment adviser to make a notice filing under section 30-14-405, Idaho Code, is not required to pay an initial or annual registration fee for registration as an investment adviser representative.

**30-14-411. POSTREGISTRATION REQUIREMENTS.** (a) Financial requirements. Subject to section 15(h) of the securities exchange act of 1934 (15 U.S.C. 78o(h)) or section 222 of the investment advisers act of 1940 (15 U.S.C. 80b-22), a rule adopted or an order issued

under this chapter may establish minimum financial requirements for broker-dealers registered or required to be registered under this chapter and investment advisers registered or required to be registered under this chapter.

(b) Financial reports. Subject to section 15(h) of the securities exchange act of 1934 (15 U.S.C. 78o(h)) or section 222(b) of the investment advisers act of 1940 (15 U.S.C. 80b-22), a broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall file such financial reports as are required by a rule adopted or an order issued under this chapter. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) Recordkeeping. Subject to section 15(h) of the securities exchange act of 1934 (15 U.S.C. 78o(h)) or section 222 of the investment advisers act of 1940 (15 U.S.C. 80b-22):

(1) A broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall make and maintain the accounts, correspondence, memoranda, papers, books and other records required by a rule adopted or an order issued under this chapter;

(2) Broker-dealer records required to be maintained under subsection (c)(1) of this section may be maintained in any form of data storage acceptable under section 17(a) of the securities exchange act of 1934 (15 U.S.C. 78q(a)) if they are readily accessible to the administrator; and

(3) Investment adviser records required to be maintained under subsection (c)(1) of this section may be maintained in any form of data storage required by a rule adopted or an order issued under this chapter.

(d) Audits or inspections. The records of every person issuing or guaranteeing any securities subject to the provisions of this chapter, if such person is registered or required to be registered under this chapter, and of every broker-dealer, agent, investment adviser or investment adviser representative registered or required to be registered under this chapter are subject to such reasonable periodic, special or other audits or inspections by a representative of the administrator, within or without this state, as the administrator considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The administrator may copy, and may remove for audit or inspection copies of, all records the administrator reasonably considers necessary or appropriate to conduct the audit or inspection. The administrator may assess a reasonable charge for conducting an audit or inspection under this subsection.

(e) Custody and discretionary authority bond or insurance. Subject to section 15(h) of the securities exchange act of 1934 (15 U.S.C. 78o(h)) or section 222 of the investment advisers act of 1940 (15 U.S.C. 80b-22), a rule adopted or an order issued under this chapter may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security in an amount not to exceed twenty-five thousand dollars (\$25,000). The administrator may determine the requirements of the insurance, bond or other satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer registered under this chapter whose net capital exceeds, or of an investment adviser registered under this chapter whose minimum financial requirements exceed, the amounts required by rule or order under this chapter. The insurance, bond or other satisfactory form of security must

permit an action by a person to enforce any liability on the insurance, bond or other satisfactory form of security if instituted within the time limitations in section 30-14-509(j)(2), Idaho Code.

(f) Requirements for custody. Subject to section 15(h) of the securities exchange act of 1934 (15 U.S.C. 78o(h)) or section 222 of the investment advisers act of 1940 (15 U.S.C. 80b-22), an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or an order issued under this chapter may prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

(g) Investment adviser brochure rule. With respect to an investment adviser registered or required to be registered under this chapter, a rule adopted or an order issued under this chapter may require that information or other record be furnished or disseminated to clients or prospective clients in this state as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

(h) Continuing education. A rule adopted or an order issued under this chapter may require an individual registered under section 30-14-402 or 30-14-404, Idaho Code, to participate in a continuing education program approved by the securities and exchange commission and administered by a self-regulatory organization or, in the absence of such a program, a rule adopted or an order issued under this chapter may require continuing education for an individual registered under section 30-14-404, Idaho Code.

**30-14-412. DENIAL, REVOCATION, SUSPENSION, WITHDRAWAL, RESTRICTION, CONDITION OR LIMITATION OF REGISTRATION.** (a) Disciplinary conditions -- Applicants. If the administrator finds that the order is in the public interest and subsection (d) of this section authorizes the action, an order issued under this chapter may deny an application, or may condition or limit registration of an applicant to be a broker-dealer, agent, investment adviser or investment adviser representative, and, if the applicant is a broker-dealer or investment adviser of any partner, officer, director or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

(b) Disciplinary conditions -- Registrants. If the administrator finds that the order is in the public interest and subsection (d) of this section authorizes the action, an order issued under this chapter may revoke, suspend, condition or limit the registration of a registrant and, if the registrant is a broker-dealer or investment adviser of any partner, officer, director or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser. Provided however, the administrator may not:

- (1) Institute a revocation or suspension proceeding under this subsection based on an order issued under a law of another state that is reported to the administrator or a designee of the administrator more than one (1) year after the date of the order on which it is based; or
- (2) Under subsection (d)(5)(A) or (B) of this section, issue an order on the basis of an order issued under the securities act of another state unless the other order was based on conduct for which subsection (d) of this section would authorize the action had the conduct occurred in this state.

(c) Disciplinary penalties -- Registrants. If the administrator finds that the order is in the public interest and subsections (d)(1) through (6), (8), (9), (10), (12) or (13) of this section authorizes the action, an order under this chapter may censure, impose a bar or suspension from association with a broker-dealer or investment adviser registered in this state, or impose a civil penalty in an amount not to exceed five thousand dollars (\$5,000) for each violation, on a registrant and, if the registrant is a broker-dealer or investment adviser, a partner, officer, director or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

(d) Grounds for discipline. A person may be disciplined under subsections (a) through (c) of this section if the person:

- (1) Has filed an application for registration in this state under this chapter or the predecessor act within the previous ten (10) years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;
- (2) Willfully violated or willfully failed to comply with this chapter or the predecessor act or a rule adopted or an order issued under this chapter or the predecessor act within the previous ten (10) years;
- (3) Has been convicted of any felony or within the previous ten (10) years has been convicted of a misdemeanor involving a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking or finance;
- (4) 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 involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking or finance;
- (5) Is the subject of an order, issued after notice and opportunity for hearing by:
  - (A) The securities, depository institution, insurance or other financial services regulator of a state or by the securities and exchange commission or other federal agency denying, revoking, barring or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative;
  - (B) The securities regulator of a state or the securities and exchange commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser;
  - (C) The securities and exchange commission or a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization;
  - (D) A court adjudicating a United States postal service fraud order;
  - (E) The insurance regulator of a state denying, suspending or revoking registration as an insurance agent; or
  - (F) A depository institution regulator suspending or barring the person from the depository institution business;

- (6) Is the subject of an adjudication or determination, after notice and opportunity for hearing, by the securities and exchange commission, the commodity futures trading commission; the federal trade commission; a federal depository institution regulator, or a depository institution, insurance or other financial services regulator of a state that the person willfully violated the securities act of 1933, the securities exchange act of 1934, the investment advisers act of 1940, the investment company act of 1940, or the commodity exchange act, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking or finance is regulated;
- (7) Is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, provided however that the administrator may not enter an order against an applicant or registrant under this paragraph (7) without a finding of insolvency as to the applicant or registrant;
- (8) Refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under section 30-14-411(d), Idaho Code, or refuses access to a registrant's office to conduct an audit or inspection under section 30-14-411(d), Idaho Code;
- (9) Has failed to reasonably supervise an agent, investment adviser representative or other individual, if the agent, investment adviser representative or other individual was subject to the person's supervision and committed a violation of this chapter or the predecessor act or a rule adopted or an order issued under this chapter or the predecessor act within the previous ten (10) years;
- (10) Has not paid the proper filing fee within thirty (30) days after having been notified by the administrator of a deficiency, provided however that the administrator shall vacate an order under this paragraph (10) when the deficiency is corrected;
- (11) After notice and opportunity for a hearing, has been found within the previous ten (10) years:
- (A) By a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking or finance is regulated;
  - (B) To have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative or similar person; or
  - (C) To have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction;
- (12) Is the subject of a cease and desist order issued by the securities and exchange commission or issued under the securities, commodities, investment, franchise, banking, finance or insurance laws of a state;
- (13) Has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance or insurance business within the previous ten (10) years; or
- (14) Is not qualified on the basis of factors such as training, experience and knowledge of the securities business. Provided however, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for

registration as an investment adviser representative, a denial order may not be based on this paragraph (14) if the individual has successfully completed all examinations required by subsection (e) of this section. The administrator may require an applicant for registration under section 30-14-402 or 30-14-404, Idaho Code, who has not been registered in a state within the two (2) years preceding the filing of an application in this state to successfully complete an examination.

(e) Examinations. A rule adopted or an order issued under this chapter may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this chapter may waive, in whole or in part, an examination as to an individual and a rule adopted under this chapter may waive, in whole or in part, an examination as to a class of individuals if the administrator determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

(f) Summary process. The administrator may suspend or deny an application summarily; restrict, condition, limit or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the administrator shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within fifteen (15) days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator within thirty (30) days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(g) Procedural requirements. An order issued may not be issued under this section, except under subsection (f) of this section, without:

- (1) Appropriate notice to the applicant or registrant;
- (2) Opportunity for hearing; and
- (3) Findings of fact and conclusions of law in a record in accordance with chapter 52, title 67, Idaho Code.

(h) Control person liability. A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the administrator under subsections (a) through (c) of this section to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

(i) Limit on investigation or proceeding. The administrator may not institute a proceeding under subsection (a), (b) or (c) of this section based solely on material facts actually known by the administrator unless an investigation or the proceeding is instituted within one (1) year after the administrator actually acquires knowledge of the material facts.

**PART 5.**  
**FRAUD AND LIABILITIES**

**30-14-501. GENERAL FRAUD.** It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

- (1) To employ a device, scheme, or artifice to defraud;
- (2) To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
- (3) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person; or
- (4) To divert investor money to the personal use of the issuer, offeror or seller, or to pay prior investors without specifically disclosing that use before receiving the investor's money.

**30-14-502. PROHIBITED CONDUCT IN PROVIDING INVESTMENT ADVICE.**

(a) Fraud in providing investment advice. It is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities:

- (1) To employ a device, scheme, or artifice to defraud another person;
- (2) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person; or
- (3) To divert investor money to the personal use of the issuer, offeror or seller, or to pay prior investors without specifically disclosing that use before receiving the investor's money.

(b) Rules defining fraud. A rule adopted under this chapter may define an act, practice, or course of business of an investment adviser or an investment adviser representative, as fraudulent, deceptive or manipulative, and prescribe means reasonably designed to prevent investment advisers and investment adviser representatives, from engaging in acts, practices, and courses of business defined as fraudulent, deceptive or manipulative.

(c) Rules specifying contents of advisory contract. A rule adopted or an order issued under this chapter may specify the contents of an investment advisory contract entered into, extended or renewed by an investment adviser.

**30-14-503. EVIDENTIARY BURDEN.** (a) Civil. In a civil action or administrative proceeding under this chapter, a person claiming an exemption, exception, preemption or exclusion has the burden to prove the applicability of the claim.

(b) Criminal. In a criminal proceeding under this chapter, a person claiming an exemption, exception, preemption or exclusion has the burden of going forward with evidence of the claim.

**30-14-504. FILING OF SALES AND ADVERTISING LITERATURE.** (a) Filing requirement. Except as otherwise provided in subsection (b) of this section, a rule adopted or an order issued under this chapter may require the filing of a prospectus, pamphlet, circular, form letter, advertisement, sales literature or other advertising record relating to a security or investment advice, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this chapter.

(b) Excluded communications. This section does not apply to sales and advertising literature specified in subsection (a) of this section which relates to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by section 30-14-201, 30-14-202 or 30-14-203, Idaho Code, except as required pursuant to section 30-14-201(7), Idaho Code.

**30-14-505. MISLEADING FILINGS.** It is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this chapter, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

**30-14-506. MISREPRESENTATIONS CONCERNING REGISTRATION OR EXEMPTION.** The filing of an application for registration, a registration statement, a notice filing under this chapter, the registration of a person, the notice filing by a person, or the registration of a security under this chapter does not constitute a finding by the administrator that a record filed under this chapter is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption or exclusion for a security or a transaction does not mean that the administrator has passed upon the merits or qualifications of, or recommended or given approval to, a person, security or transaction. It is unlawful to make, or cause to be made, to a purchaser, customer, client, or prospective customer or client a representation inconsistent with this section.

**30-14-507. QUALIFIED IMMUNITY.** A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by the administrator, or designee of the administrator, the securities and exchange commission or a self-regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

**30-14-508. CRIMINAL PENALTIES.** (a) Criminal penalties. A person that willfully violates this chapter, or a rule adopted or an order issued under this chapter, except section 30-14-504, Idaho Code, or the notice filing requirements of section 30-14-302 or 30-14-405, Idaho Code, or that willfully violates section 30-14-505, Idaho Code, knowing the statement made to be false or misleading in a material respect, shall be guilty of a felony and upon



conviction, shall be fined not more than ten thousand dollars (\$10,000) or imprisoned not more than five (5) years, or both. An individual convicted of violating a rule or order under this chapter may be fined, but may not be imprisoned, if the individual did not have knowledge of the rule or order.

(b) A person that willfully violates section 30-14-501 or 30-14-502(a), Idaho Code, and in connection with that violation, the violator knowingly accepts any money representing:

- (1) Equity in a person's home;
- (2) A withdrawal from any individual retirement account or similar retirement account;  
or
- (3) A withdrawal from any qualified retirement plan as defined in the Internal Revenue Code, shall upon conviction be punished by imprisonment for not less than three (3) years or more than fifteen (15) years if, at the time the crime was committed, the property, money or thing unlawfully obtained or sought to be obtained was worth ten thousand dollars (\$10,000) or more.

(c) If, in the commission of an offense described in subsection (a) or (b) of this section, the victim is an elder or dependent adult, and the violator has knowledge that the victim is an elder or dependent adult, the defendant shall receive an additional term of imprisonment as follows:

- (1) Three (3) years if the victim is under seventy (70) years of age.
- (2) Five (5) years if the victim is seventy (70) years of age or older.
- (d) As used in this section, "elder" means any person who is sixty-five (65) years of age or older.

(e) As used in this section, "dependent adult" means any person who is between the ages of eighteen (18) and sixty-four (64) years, who has physical or mental limitations which restrict the person's ability to carry out normal activities or to protect the person's rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age.

(f) No indictment or information may be returned under this chapter more than five (5) years after the alleged violation.

(g) Criminal reference not required. The attorney general or the proper prosecuting attorney with or without a reference from the administrator, may institute criminal proceedings under this chapter.

(h) No limitation on other criminal enforcement. This chapter does not limit the power of this state to punish a person for conduct that constitutes a crime under other laws of this state.

**30-14-509. CIVIL LIABILITY.** (a) Securities litigation uniform standards act. Enforcement of civil liability under this section is subject to the securities litigation uniform standards act of 1998, as cited in section 30-14-103, Idaho Code.

(b) Liability of seller to purchaser. A person is liable to the purchaser if the person sells a security in violation of section 30-14-301, Idaho Code, or, by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:

(1) The purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest at the annual rate of interest set forth in section 28-22-104(2), Idaho Code, from the date of the purchase, costs, and reasonable attorneys' fees determined by the court, upon the tender of the security, or for actual damages as provided in subsection (b)(3) of this section.

(2) The tender referred to in subsection (b)(1) of this section may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in subsection (b)(3) of this section.

(3) Actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, and interest at the annual rate of interest set forth in section 28-22-104(2), Idaho Code, from the date of the purchase, costs, and reasonable attorneys' fees determined by the court.

(c) Liability of purchaser to seller. A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the seller not knowing of the untruth or omission, and the purchaser not sustaining the burden of proof that the purchaser did not know, and in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:

(1) The seller may maintain an action to recover the security, and any income received on the security, costs, and reasonable attorneys' fees determined by the court, upon the tender of the purchase price, or for actual damages as provided in subsection (c)(3) of this section.

(2) The tender referred to in subsection (c)(1) of this section may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in subsection (c)(3) of this section.

(3) Actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, and at the annual rate of interest set forth in section 28-22-104(2), Idaho Code, from the date of the sale of the security, costs, and reasonable attorneys' fees determined by the court.

(d) Liability of unregistered broker-dealer and agent. A person acting as a broker-dealer or agent that sells or buys a security in violation of section 30-14-401(a), 30-14-402(a) or 30-14-506, Idaho Code, is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in subsections (b)(1) through (3) of this section, or, if a seller, for a remedy as specified in subsections (c)(1) through (3) of this section.

(e) Liability of unregistered investment adviser and investment adviser representative. A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of section 30-14-403(a), 30-14-404(a) or 30-14-506, Idaho Code, is liable to the client. The client may maintain an action to recover the

consideration paid for the advice, interest at the annual rate of interest set forth in section 28-22-104(2), Idaho Code, from the date of payment, costs, and reasonable attorneys' fees determined by the court.

(f) Liability for investment advice. A person that receives directly or indirectly any consideration for providing investment advice to another person and that employs a device, scheme or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person, is liable to the other person. An action under this subsection is governed by the following:

(1) The person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest at the annual rate of interest set forth in section 28-22-104(2), Idaho Code, from the date of the fraudulent conduct, costs, and reasonable attorneys' fees determined by the court, less the amount of any income received as a result of the fraudulent conduct.

(2) This subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice.

(g) Joint and several liability. The following persons are liable jointly and severally with and to the same extent as persons liable under subsections (b) through (f) of this section:

(1) A person that directly or indirectly controls a person liable under subsections (b) through (f) of this section, unless the controlling person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;

(2) An individual who is a managing partner, executive officer, or director of a person liable under subsections (b) through (f) of this section, including an individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;

(3) An individual who is an employee of or associated with a person liable under subsections (b) through (f) of this section and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist; and

(4) A person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections (b) through (f) of this section, unless the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which liability is alleged to exist.

(h) Right of contribution. A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.

(i) Survival of cause of action. A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.

(j) Statute of limitations. A person may not obtain relief:

(1) Under subsection (b) of this section for violation of section 30-14-301, Idaho Code, or under subsection (d) or (e) of this section, unless the action is instituted within one (1) year after the violation occurred; or

(2) Under subsection (b) of this section, other than for violation of section 30-14-301, Idaho Code, or under subsection (c) or (f) of this section, unless the action is instituted within the earlier of two (2) years after discovery of the facts constituting the violation or five (5) years after the violation.

(k) No enforcement of violative contract. A person that has made, or has engaged in the performance of, a contract in violation of this chapter or a rule adopted or an order issued under this chapter, or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this chapter, may not base an action on the contract.

(l) No contractual waiver. A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this chapter or a rule adopted or an order issued under this chapter is void.

(m) Survival of other rights or remedies. The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist, but this chapter does not create a cause of action not specified in this section or section 30-14-411(e), Idaho Code.

**30-14-510. RESCISSION OFFERS.** A purchaser, seller, or recipient of investment advice may not maintain an action under section 30-14-509, Idaho Code, if:

(a) The purchaser, seller, or recipient of investment advice receives in a record, before the action is instituted:

(1) An offer stating the respect in which liability under section 30-14-509, Idaho Code, may have arisen and fairly advising the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer, and any financial or other information necessary to correct all material misrepresentations or omissions in the information that was required by this chapter to be furnished to that person at the time of the purchase, sale, or investment advice;

(2) If the basis for relief under this section may have been a violation of section 30-14-509(b), Idaho Code, an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest at the annual rate of interest set forth in section 28-22-104(2), Idaho Code, from the date of the purchase, less the amount of any income received on the security, or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest at the annual rate of interest set forth in section 28-22-104(2), Idaho Code, from the date of the purchase in cash equal to the damages computed in the manner provided in this subsection;

(3) If the basis for relief under this section may have been a violation of section 30-14-509(c), Idaho Code, an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest at the annual rate of interest set forth in section 28-22-104(2), Idaho Code, from the date of the sale; or if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the

difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest at the annual rate of interest set forth in section 28-22-104(2), Idaho Code, from the date of the sale;

(4) If the basis for relief under this section may have been a violation of section 30-14-509(d), Idaho Code; and if the customer is a purchaser, an offer to pay as specified in subsection (b) of this section; or, if the customer is a seller, an offer to tender or to pay as specified in subsection (c) of this section;

(5) If the basis for relief under this section may have been a violation of section 30-14-509(e), Idaho Code, an offer to reimburse in cash the consideration paid for the advice and interest at the annual rate of interest set forth in section 28-22-104(2), Idaho Code, from the date of payment; or

(6) If the basis for relief under this section may have been a violation of section 30-14-509(f), Idaho Code, an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest at the annual rate of interest set forth in section 28-22-104(2), Idaho Code, from the date of the violation causing the loss;

(b) The offer under subsection (a)(1) of this section states that it must be accepted by the purchaser, seller, or recipient of investment advice within thirty (30) days after the date of its receipt by the purchaser, seller, or recipient of investment advice or any shorter period, of not less than three (3) days, that the administrator, by order, specifies;

(c) The offeror has the present ability to pay the amount offered or to tender the security under subsection (a)(1) of this section;

(d) The offer under subsection (a)(1) of this section is delivered to the purchaser, seller, or recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice; and

(e) The purchaser, seller, or recipient of investment advice that accepts the offer under subsection (a)(1) of this section in a record within the period specified under subsection (a)(2) of this section is paid in accordance with the terms of the offer.

## **PART 6.**

### **ADMINISTRATION AND JUDICIAL REVIEW**

**30-14-601. ADMINISTRATION.** (a) Administration. The administration of the provisions of this chapter shall be under the general supervision and control of the administrator.

(b) Unlawful use of records or information. It is unlawful for the administrator or an officer, employee, or designee of the administrator to use for personal benefit or the benefit of others records or other information obtained by or filed with the administrator that are not public under section 30-14-607(b), Idaho Code. This chapter does not authorize the administrator or an officer, employee, or designee of the administrator to disclose the record or information, except in accordance with section 30-14-602, 30-14-607(c) or 30-14-608, Idaho Code.

(c) No privilege or exemption created or diminished. This chapter does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.

(d) Investor education. The administrator may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the administrator may collaborate with public and nonprofit organizations with an interest in investor education. The administrator may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the administrator to require participation or monetary contributions of a registrant in an investor education program.

(e) The securities investor education and training fund. The securities investor education and training fund is hereby created to provide funds for the purposes specified in subsection (d) of this section. All moneys received by the state by reason of civil penalties and administrative fines collected pursuant to this chapter shall be deposited in the securities investor education and training fund up to but not exceeding fifty thousand dollars (\$50,000) per year. The administrator may use funds in this account in a manner consistent with the duties of the department of finance under this chapter.

**30-14-602. INVESTIGATIONS AND SUBPOENAS.** (a) Authority to investigate. The administrator may:

- (1) Conduct public or private investigations within or outside of this state which the administrator considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this chapter or a rule adopted or an order issued under this chapter, or to aid in the enforcement of this chapter or in the adoption of rules and forms under this chapter;
- (2) Require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and
- (3) Publish a record concerning an action, proceeding, or an investigation under, or a violation of, this chapter or a rule adopted or an order issued under this chapter if the administrator determines it is necessary or appropriate in the public interest and for the protection of investors.

(b) Administrator powers to investigate. For the purpose of an investigation or proceeding under this chapter, the administrator or its designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the administrator considers relevant or material to the investigation or proceeding.

(c) Procedure and remedies for noncompliance. If a person does not appear or refuses to testify, file a statement, produce records, or otherwise does not obey a subpoena as required by the administrator under this chapter, the administrator may apply to any court of competent jurisdiction or a court of another state for an order to enforce compliance. The court may:

- (1) Hold the person in contempt;
- (2) Order the person to appear before the administrator;
- (3) Order the person to testify about the matter under investigation or in question;
- (4) Order the production of records;

(5) Grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice;

(6) Impose a civil penalty of not less than five hundred dollars (\$500) and not greater than five thousand dollars (\$5,000) for each violation; and

(7) Grant any other necessary or appropriate relief.

(d) Application for relief. This section does not preclude a person from applying to any court of competent jurisdiction or a court of another state for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

(e) Use immunity procedure. An individual is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the administrator under this chapter or in an action or proceeding instituted by the administrator under this chapter on the ground that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If the individual refuses to testify, file a statement, or produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the administrator may apply to any court of competent jurisdiction to compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other evidence compelled under such an order may not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.

(f) Assistance to securities regulator of another jurisdiction. At the request of a law enforcement or other governmental or regulatory agency or self-regulatory organization, the administrator may provide assistance if the requesting entity states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters that the requesting regulator administers or enforces. The administrator may provide the assistance by using the authority to investigate and the powers conferred by this section as the administrator determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this chapter or other law of this state if occurring in this state. In deciding whether to provide the assistance, the administrator may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its state, federal or foreign jurisdiction to the administrator on securities matters when requested; whether compliance with the request would violate or prejudice the public policy of this state; and the availability of resources and employees of the administrator to carry out the request for assistance.

**30-14-603. CIVIL ENFORCEMENT.** (a) Civil action instituted by administrator. If the administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or an order issued under this chapter or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this chapter or a rule adopted or an order issued under this chapter, the administrator may maintain an action in any court of competent jurisdiction to enjoin the act, practice, or course of business and to enforce compliance with this chapter or a rule adopted or an order issued under this chapter.

(b) Relief available. In an action under this section and on a proper showing, the court may:

- (1) Issue a permanent or temporary injunction, restraining order, or declaratory judgment;
- (2) Order other appropriate or ancillary relief, which may include:
  - (A) An asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the administrator, for the defendant or the defendant's assets;
  - (B) Ordering the administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;
  - (C) Imposing a civil penalty not to exceed ten thousand dollars (\$10,000) for each violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or the predecessor act or a rule adopted or an order issued under this chapter or the predecessor act; and
  - (D) Ordering the payment of prejudgment and postjudgment interest; or
- (3) Order such other relief as the court considers appropriate.

(c) No bond required. The administrator shall not be required to post a bond in an action or proceeding under this chapter.

(d) Statute of limitation. If the administrator brings a civil action under this section, such action must be instituted within three (3) years from the discovery by the administrator of the facts constituting the alleged violation.

**30-14-604. ADMINISTRATIVE ENFORCEMENT.** (a) Issuance of an order or notice. If the administrator determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or an order issued under this chapter or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or a rule adopted or an order issued under this chapter, the administrator may:

- (1) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter;
- (2) Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under section 30-14-401(b)(1)(D) or (F), Idaho Code, or an investment adviser under section 30-14-403(b)(1)(C), Idaho Code; or
- (3) Issue an order under section 30-14-204, Idaho Code.

(b) Summary process. An order under subsection (a) of this section is effective on the date of issuance. Upon issuance of the order, the administrator shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement whether the administrator will seek a civil penalty or costs of the investigation, a statement of the reasons for the order, and notice that, within fifteen (15) days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the administrator within thirty (30) days after the date of service of the order, the order, which may include a civil penalty or costs of the investigation if a civil penalty or costs were sought in the statement



accompanying the order, becomes final as to that person by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(c) Procedure for final order. If a hearing is requested or ordered pursuant to subsection (b) of this section, a hearing must be held pursuant to chapter 52, title 67, Idaho Code. A final order may not be issued unless the administrator makes findings of fact and conclusions of law in a record pursuant to chapter 52, title 67, Idaho Code. The final order may make final, vacate, or modify the order issued under subsection (a) of this section.

(d) Civil penalty. In a final order under subsection (c) of this section, the administrator may impose a civil penalty not to exceed five thousand dollars (\$5,000) for each violation.

(e) Costs. In a final order, the administrator may charge the actual cost of an investigation or proceeding for a violation of this chapter or a rule adopted or an order issued under this chapter.

(f) Filing of certified final order with court -- Effect of filing. If a petition for judicial review of a final order is not filed in accordance with section 30-14-609, Idaho Code, the administrator may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

(g) Enforcement by court -- Further civil penalty. If a person does not comply with an order under this section, the administrator may petition a court of competent jurisdiction to enforce the order. The court may not require the administrator to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not less than five hundred dollars (\$500) but not greater than five thousand dollars (\$5,000) for each violation and may grant any other relief the court determines is just and proper in the circumstances.

**30-14-605. RULES, FORMS, ORDERS, INTERPRETATIVE OPINIONS, AND HEARINGS.** (a) Issuance and adoption of forms, orders, and rules. The administrator may:

- (1) Issue forms and orders and, after notice and comment, may adopt and amend rules necessary or appropriate to carry out this chapter and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records;
- (2) By rule, define terms, whether or not used in this chapter but those definitions may not be inconsistent with this chapter; and
- (3) By rule, classify securities, persons, and transactions and adopt different requirements for different classes.

(b) Findings and cooperation. Under this chapter, a rule or form may not be adopted or amended, or an order issued or amended, unless the administrator finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this chapter. In adopting, amending, and repealing rules and forms, section 30-14-608, Idaho Code, applies in order to achieve uniformity among the states and coordination with federal laws in the form and content of registration

statements, applications, reports, and other records, including the adoption of uniform rules, forms, and procedures.

(c) Financial statements. Subject to section 15(h) of the securities exchange act and section 222 of the investment advisers act of 1940, the administrator may require that a financial statement filed under this chapter be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or an order issued under this chapter. A rule adopted or an order issued under this chapter may establish:

- (1) Subject to section 15(h) of the securities exchange act and section 222 of the investment advisors act of 1940, the form and content of financial statements required under this chapter;
- (2) Whether unconsolidated financial statements must be filed; and
- (3) Whether required financial statements must be audited by an independent certified public accountant.

(d) Interpretative opinions. The administrator may provide interpretative opinions or issue determinations that the administrator will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this chapter. A rule adopted or an order issued under this chapter may establish a reasonable charge for interpretative opinions or determinations that the administrator will not institute an action or a proceeding under this chapter.

(e) Effect of compliance. A penalty under this chapter may not be imposed for, and liability does not arise from conduct that is engaged in or omitted in good faith believing it conforms to a rule, form, or order of the administrator under this chapter.

(f) Presumption for public hearings. A hearing in an administrative proceeding under this chapter must be conducted in public unless the administrator for good cause consistent with this chapter determines that the hearing will not be so conducted.

**30-14-606. ADMINISTRATIVE FILES AND OPINIONS.** (a) Public register of filings. The administrator shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this chapter or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this chapter or the predecessor act; and interpretative opinions or no action determinations issued under this chapter.

(b) Public availability. The administrator shall make all rules, forms, interpretative opinions, and orders available to the public.

(c) Copies of public records. The administrator shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person that so requests. A rule adopted under this chapter may establish a reasonable charge for furnishing the record or certification. A copy of the record certified or a certificate by the administrator of a record's nonexistence is prima facie evidence of a record or its nonexistence.

**30-14-607. PUBLIC RECORDS – CONFIDENTIALITY.** (a) Presumption of public records. Except as otherwise provided in subsection (b) of this section, records obtained by the administrator or filed under this chapter, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for public examination.

(b) Nonpublic records. Records as set forth in section 9-340H, Idaho Code, are not public records and are not available for public examination under subsection (a) of this section.

(c) Administrator discretion to disclose. If disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in section 30-14-608(a), Idaho Code, the administrator may disclose a record obtained in connection with an audit or inspection under section 30-14-411(d), Idaho Code, or a record obtained in connection with an investigation under section 30-14-602, Idaho Code.

**30-14-608. UNIFORMITY AND COOPERATION WITH OTHER AGENCIES.** (a) Objective of uniformity. The administrator shall, in its discretion, cooperate, coordinate, consult, and, subject to section 30-14-607, Idaho Code, share records and information with the securities regulator of another state, Canada, a Canadian province or territory, a foreign jurisdiction, the securities and exchange commission, the United States department of justice, the commodity futures trading commission, the federal trade commission, the securities investor protection corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking or insurance regulator, and a governmental law enforcement or regulatory agency to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, states, and foreign governments.

(b) Policies to consider. In cooperating, coordinating, consulting, and sharing records and information under this section and in acting by rule, order, or waiver under this chapter, the administrator shall, in the administrator's discretion, take into consideration in carrying out the public interest the following general policies:

- (1) Maximizing effectiveness of regulation for the protection of investors;
- (2) Maximizing uniformity in federal and state regulatory standards; and
- (3) Minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.

(c) Subjects for cooperation. The cooperation, coordination, consultation, and sharing of records and information authorized by this section include:

- (1) Establishing or employing one (1) or more designees as a central depository for registration and notice filings under this chapter and for records required or allowed to be maintained under this chapter;
- (2) Developing and maintaining uniform forms;
- (3) Conducting a joint examination or investigation;
- (4) Holding a joint administrative hearing;
- (5) Instituting and prosecuting a joint civil or administrative proceeding;
- (6) Sharing and exchanging personnel;
- (7) Coordinating registrations under section 30-14-301, Idaho Code, and sections 30-14-401 through 30-14-404, Idaho Code, and exemptions under section 30-14-203, Idaho Code;
- (8) Sharing and exchanging records, subject to section 30-14-607, Idaho Code;

- (9) Formulating rules, statements of policy, guidelines, forms, and interpretative opinions and releases;
- (10) Formulating common systems and procedures;
- (11) Notifying the public of proposed rules, forms, statements of policy, and guidelines;
- (12) Attending conferences and other meetings among securities regulators, which may include representatives of governmental and private sector organizations involved in capital formation, deemed necessary or appropriate to promote or achieve uniformity; and
- (13) Developing and maintaining a uniform exemption from registration for small issuers, and taking other steps to reduce the burden of raising investment capital by small businesses.

**30-14-609. JUDICIAL REVIEW. JUDICIAL REVIEW OF ORDERS.** A final order issued by the administrator under this chapter is subject to judicial review in accordance with chapter 52, title 67, Idaho Code.

**30-14-610. JURISDICTION.** (a) Sales and offers to sell. Sections 30-14-301, 30-14-302, 30-14-401(a), 30-14-402(a), 30-14-403(a), 30-14-404(a), 30-14-501, 30-14-506, 30-14-509 and 30-14-510, Idaho Code, do not apply to a person that sells or offers to sell a security unless the offer to sell or the sale is made in this state or the offer to purchase or the purchase is made and accepted in this state.

(b) Purchases and offers to purchase. Sections 30-14-401(a), 30-14-402(a), 30-14-403(a), 30-14-404(a), 30-14-501, 30-14-506, 30-14-509 and 30-14-510, Idaho Code, do not apply to a person that purchases or offers to purchase a security unless the offer to purchase or the purchase is made in this state or the offer to sell or the sale is made and accepted in this state.

(c) Offers in this state. For the purpose of this section, an offer to sell or to purchase a security is made in this state, whether or not either party is then present in this state, if the offer:

- (1) Originates from within this state; or
- (2) Is directed by the offeror to a place in this state and received at the place to which it is directed.

(d) Acceptances in this state. For the purpose of this section, an offer to purchase or to sell is accepted in this state, whether or not either party is then present in this state, if the acceptance:

- (1) Is communicated to the offeror in this state and the offeree reasonably believes the offeror to be present in this state and the acceptance is received at the place in this state to which it is directed; and
- (2) Has not previously been communicated to the offeror, orally or in a record, outside this state.

(e) Publications, radio, television, or electronic communications. An offer to sell or to purchase is not made in this state when a publisher circulates or there is circulated on the publisher's behalf in this state a bona fide newspaper or other publication of general, regular, and paid circulation that is not published in this state, or that is published in this state but has had more than two-thirds (2/3) of its circulation outside this state during the previous twelve (12) months or when a radio or television program or other electronic communication originating outside this state is received in this state. A radio or television program, or other electronic

communication is considered as having originated in this state if either the broadcast studio or the originating source of transmission is located in this state, unless:

- (1) The program or communication is syndicated and distributed from outside this state for redistribution to the general public in this state;
- (2) The program or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside this state for redistribution to the general public in this state;
- (3) The program or communication is an electronic communication that originates outside this state and is captured for redistribution to the general public in this state by a community antenna or cable, radio, cable television, or other electronic system; or
- (4) The program or communication consists of an electronic communication that originates in this state, but which is not intended for distribution to the general public in this state.

(f) Investment advice and misrepresentations. Sections 30-14-403(a), 30-14-404(a), 30-14-405(a), 30-14-502, 30-14-505 and 30-14-506, Idaho Code, apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this state, whether or not either party is then present in this state.

**30-14-611. SERVICE OF PROCESS.** (a) Signed consent to service of process. A consent appointing the administrator the person's agent for service of process in a noncriminal action or proceeding against the person, or the person's successor or personal representative under this chapter or a rule adopted or an order issued under this chapter after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. Registrants shall be required to submit a consent to service of process only if there has been a material change.

(b) Conduct constituting appointment of agent for service. If a person, including a nonresident of this state, engages in an act, practice, or course of business prohibited or made actionable by this chapter or a rule adopted or an order issued under this chapter and the person has not filed a consent to service of process under subsection (a) of this section, the act, practice, or course of business constitutes the appointment of the administrator as the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative.

(c) Procedure for service of process. Service under subsection (a) or (b) of this section may be made by providing a copy of the process to the office of the administrator, but it is not effective unless:

- (1) The plaintiff, which may be the administrator, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address, or takes other reasonable steps to give notice; and
- (2) The plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the administrator in a proceeding before the administrator, allows.

(d) Service in administrative proceedings or civil actions by administrator. Service pursuant to subsection (c) of this section may be used in a proceeding before the administrator or by the administrator in a civil action in which the administrator is the moving party.

(e) Opportunity to defend. If process is served under subsection (c) of this section, the court, or the administrator in a proceeding before the administrator, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

**30-14-612. SEVERABILITY CLAUSE.** If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

## **PART 7. TRANSITION**

**30-14-701. EFFECTIVE DATE.** This act takes effect on September 1, 2004.

**30-14-702. REPEALS.** The following chapter is repealed: The Idaho securities act, chapter 14, title 30, Idaho Code.

**30-14-703. APPLICATION OF CHAPTER TO EXISTING PROCEEDING AND EXISTING RIGHTS AND DUTIES.** (a) Applicability of predecessor act to pending proceedings and existing rights. The predecessor act exclusively governs all actions or proceedings that are pending on the effective date of this act or may be instituted on the basis of conduct occurring before the effective date of this act, but a civil action may not be maintained to enforce any liability under the predecessor act unless instituted within any period of limitation that applied when the cause of action accrued or within five (5) years after the effective date of this act, whichever is earlier.

(b) Continued effectiveness under predecessor act. All effective registrations under the predecessor act, all administrative orders relating to the registrations, rules, statements of policy, interpretative opinions, declaratory rulings, no action determinations, and conditions imposed on the registrations under the predecessor act remain in effect while they would have remained in effect if this act had not been enacted. They are considered to have been filed, issued, or imposed under this act, but are exclusively governed by the predecessor act.

(c) Applicability of predecessor act to offers or sales. The predecessor act exclusively applies to an offer or sale made within one (1) year after the effective date of this act pursuant to an offering made in good faith before the effective date of this act on the basis of an exemption available under the predecessor act.

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