

STATE OF IDAHO
CONTROL SHARE ACQUISITION ACT



(UNOFFICIAL COPY)

DEPARTMENT OF FINANCE

(As Amended 2014)

CONTROL SHARE ACQUISITION ACT

CHAPTER 16, TITLE 30, IDAHO CODE

30-1601. DEFINITIONS. In this chapter the following terms have the meaning specified:

(1) "Acquiring person" means a person that makes or proposes to make a control share acquisition. If two (2) or more persons act as a partnership, limited partnership, syndicate or other group pursuant to any agreement, arrangement, relationship, understanding or otherwise, whether or not in writing, for the purposes of acquiring, owning or voting shares of an issuing public corporation, all members of the partnership, syndicate or other group constitute a "person." An "acquiring person" does not include a licensed broker or dealer or licensed underwriter that purchases shares of an issuing public corporation solely for purposes of resale to the public and is not acting in concert with an acquiring person.

(2) "Affiliate" means a person that directly or indirectly controls, is controlled by, or is under common control with a specified person.

(3) "Associate," when used to indicate a relationship with any person, means:

(a) Any corporation or organization of which the person is an officer, director or partner or is, directly or indirectly, the beneficial owner of ten per cent (10%) or more of any class or series of shares entitled to vote or other equity interests;

(b) Any trust or estate in which the person has a ten per cent (10%) or more beneficial interest or as to which the person serves as trustee or personal representative or in a similar fiduciary capacity; or

(c) Any relative or spouse of the person, or any relative of the spouse, residing in the home of the person.

(4) "Beneficial owner," when used with respect to shares or other securities, includes any person who, directly or indirectly, through any agreement, arrangement, relationship, understanding or otherwise, whether or not in writing, has or shares the power to vote, or direct the voting of, the shares or securities or has or shares the power to dispose of, or direct the disposition of, the shares or securities, except that:

(a) A person is not deemed the beneficial owner of shares or securities tendered pursuant to a tender or exchange offer made by the person or any of the person's affiliates or associates until the tendered shares or securities are accepted for purchase or exchange or payment, or purchased or exchanged; and

(b) A person is not deemed the beneficial owner of shares or securities with respect to which the person has the power to vote or direct the voting arising solely from a revocable proxy given in response to a proxy solicitation made in accordance with the applicable rules and regulations under the Securities Exchange Act of 1934, as amended, and is not then reportable under that act on a schedule 13D or comparable report under that act.

(5) "Beneficial ownership" includes the right to acquire shares or securities through the exercise of options, warrants or rights, the conversion of convertible securities or otherwise, regardless of whether exercisable only after the passage of time (whether or not less than sixty (60) days) or the occurrence or nonoccurrence of a future event. The shares or securities subject

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to the options, warrants, rights or conversion privileges held by a person are deemed to be outstanding for the purpose of computing the percentage of outstanding shares or securities of the class or series owned by the person but are not deemed to be outstanding for the purpose of computing the percentage of the class or series owned by any other person. A person is deemed the beneficial owner of shares and securities beneficially owned by an affiliate or associate of the person.

(6) "Business combination," when used in reference to any issuing public corporation and any interested shareholder of the issuing public corporation, means:

(a) Any merger or consolidation of the issuing public corporation or any subsidiary of the issuing public corporation with either:

1. The interested shareholder; or
2. Any other domestic or foreign corporation, whether or not itself an interested shareholder of the issuing public corporation, that is, or after the merger would be, an affiliate or associate of the interested shareholder, except that the foregoing does not include the merger of a wholly owned subsidiary of the issuing public corporation into the issuing public corporation or the merger of two (2) or more wholly owned subsidiaries of the issuing public corporation; or

(b) Any exchange, pursuant to a plan of exchange under the laws of this state or a comparable statute of any other state or jurisdiction, of shares of the issuing public corporation or any subsidiary of the issuing public corporation for shares of either:

1. The interested shareholder; or
2. Any other domestic or foreign corporation, whether or not itself an interested shareholder of the issuing public corporation, that is, or after the exchange would be, an affiliate or associate of the interested shareholder; or

(c) Any sale, lease, exchange, mortgage, pledge, transfer or other disposition, in a single transaction or a series of transactions, to or with the interested shareholder or any affiliate or associate of the interested shareholder, whether as part of a dissolution or otherwise, of assets of the issuing public corporation or any subsidiary of the issuing public corporation to which any of the following applies:

1. Has an aggregate market value equal to ten per cent (10%) or more of the aggregate market value of all the assets, determined on a consolidated basis, of the issuing public corporation;
2. Has an aggregate market value equal to ten per cent (10%) or more of the aggregate market value of all the outstanding shares of the issuing public corporation; or
3. Represents ten per cent (10%) or more of the earning power or net income, determined on a consolidated basis, of the issuing public corporation; or

(d) Any transaction which results in the issuance or transfer by the issuing public corporation or any subsidiary of the issuing public corporation, in a single transaction or a series of transactions, of any shares of the issuing public corporation that have an aggregate market value equal to five per cent (5%) or more of the aggregate market value of all the outstanding shares of the issuing public corporation to the interested shareholder or any affiliate or associate of the interested shareholder, except pursuant to the exercise of warrants or rights to purchase shares offered or distributed or a dividend or distribution paid or made pro rata to all shareholders of the issuing public corporation, and except

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pursuant to the exercise or conversion of securities exercisable for or convertible into shares of the issuing public corporation or any subsidiary of the issuing public corporation which securities were outstanding prior to the time that the interested stockholder became such; or

(e) The adoption of any plan or proposal for the liquidation or dissolution of the issuing public corporation, or any reincorporation of the issuing public corporation in another state or jurisdiction, proposed by, on behalf of or pursuant to any agreement, arrangement or understanding, whether or not in writing, with the interested shareholder or any affiliate or associate of the interested shareholder; or

(f) Any transaction involving any reclassification of securities, including any share dividend or split, reverse share split or other distribution of shares in respect of shares, recapitalization of the issuing public corporation, merger or consolidation of the issuing public corporation with any subsidiary of the issuing public corporation, exchange of shares of the issuing public corporation with any subsidiary of the issuing public corporation or other transaction, whether or not with or into or otherwise involving the interested shareholder, proposed by, on behalf of or pursuant to any agreement, arrangement or understanding, whether or not in writing, with the interested shareholder or any affiliate or associates of the interested shareholder that has the effect directly, or indirectly, of increasing the proportionate share of the outstanding shares of any class or series of shares entitled to vote, or securities that are exchangeable for or convertible into or that carry a right to acquire shares entitled to vote, of the issuing public corporation or any subsidiary of the issuing public corporation that is, directly or indirectly, owned by the interested shareholder of any affiliate or associate of the interested shareholder, except as a result of immaterial changes due to fractional share adjustments; or

(g) Any receipt by the interested shareholder or any affiliate or associate of the interested shareholder of the benefit, directly or indirectly, except proportionately as a shareholder of the issuing public corporation, of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by or through the issuing public corporation or any subsidiary of the issuing public corporation.

(7) "Control," "controlling," "controlled by" or "under common control with" means the possession, directly or indirectly, of the power to direct or to cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise. A person's beneficial ownership of ten per cent (10%) or more of the voting power of a corporation's outstanding shares entitled to vote in the election of directors creates a presumption that the person has control of the corporation. A person is not considered to have control of a corporation if the person holds voting power, in good faith and not for the purpose of avoiding the provisions of this chapter, as an agent, bank, broker, nominee, custodian or trustee for one (1) or more beneficial owners who do not individually or as a group have control of the corporation.

(8) "Control share acquisition" means an acquisition, directly or indirectly, by an acquiring person of beneficial ownership of shares of an issuing public corporation that, except for the provisions of this chapter, would, when added to all other shares of the issuing public corporation, beneficially owned by the acquiring person, entitle the acquiring person, immediately after the acquisition, to exercise or direct the exercise of a new range of voting

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power within any of the ranges specified in section 30-1604(1)(d), Idaho Code, but does not include any of the following:

- (a) An acquisition by a donee pursuant to an inter vivos gift not made to avoid the provisions of this chapter or by a distributee as defined in section 15-1-201, Idaho Code;
- (b) An acquisition pursuant to a security agreement not created to avoid the provisions of this chapter;
- (c) An acquisition from the issuing public corporation; and
- (d) An acquisition for the benefit of others by a person acting in good faith and not made to avoid the provisions of this chapter to the extent that the person may not exercise or direct the exercise of voting power or disposition of the shares except on the instruction of others.

All shares, the beneficial ownership of which is acquired within a one hundred twenty (120) day period, and all shares, the beneficial ownership of which is acquired pursuant to a plan to make a control share acquisition, are deemed to have been acquired in the same acquisition.

(9) "Day" means a calendar day and shall consist of the time period from 12:01 a.m. through 12:00 midnight, Idaho time.

(10) "Interested shareholder," when used in reference to any issuing public corporation, means any person, other than the issuing public corporation or any subsidiary of the issuing public corporation, that is either:

- (a) The beneficial owner, directly or indirectly, of ten per cent (10%) or more of the voting power of the outstanding shares entitled to vote of the issuing public corporation;
- or
- (b) An affiliate or associate of the issuing public corporation.

(11) "Interested shares" mean the shares of an issuing public corporation with respect to which any of the following persons may exercise or direct the exercise of voting power in the election of directors of the issuing public corporation:

- (a) An acquiring person;
- (b) Any officer of the issuing public corporation; or
- (c) Any director of the issuing public corporation.

(12) "Issuing public corporation" means a publicly held corporation which has at least fifty (50) shareholders and which either:

- (a) Is incorporated under the laws of this state; or
- (b) (i) Has a place of business or its principal executive office located in this state, (ii) owns or controls assets located within this state that have a fair market value of at least one million dollars (\$1,000,000), (iii) has more than two hundred fifty (250) employees residing in this state, and (iv) has either (X) more than ten per cent (10%) of its shareholders resident in this state, or (Y) more than ten per cent (10%) of its shares owned of record by state residents. For purposes of this subsection, the number of employees shall be computed by including all employees of subsidiaries or affiliates of the publicly held corporation. For purposes of this subsection, the record date for determining the percentages and number of shareholders and shares shall be the last shareholder record date before the event requiring that the determination be made, except that if a shareholder record date has not been fixed by the board of directors of the issuing public corporation within the preceding four (4) months, the determination shall be made as of the end of the issuing public corporation's most recent fiscal quarter. The residence

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of a shareholder is presumed to be the address appearing in the records of the issuing public corporation. Shares held of record by banks (except as trustee or guardian), brokers, or nominees shall be disregarded for purposes of calculating percentages and numbers described in this subsection. Shares of an issuing public corporation allocated to the account of an employee or former employee or beneficiaries of employees or former employees of an issuing public corporation held in a plan that is qualified under section 401(a) of the Internal Revenue Code of 1986, as amended, and is a defined contribution plan within the meaning of section 414(i) of the code, shall be deemed for purposes of this subsection, to be held of record by the employee to whose account such shares are allocated.

(13) "Market value," when used in reference to shares or property of any issuing public corporation or any of its subsidiaries, means:

(a) In the case of shares, the highest closing sale price during the thirty (30) day period immediately preceding the date in question of a share of the composite tape for New York Stock Exchange listed shares or, if the shares are not quoted on the composite tape or not listed on the New York Stock Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934, as amended, on which the shares are listed or, if the shares are not listed on any such exchange, on the National Association of Securities Dealers, Inc. Automated Quotations National Market System or, if the shares are not quoted on the National Association of Securities Dealers, Inc. Automated Quotations National Market System, the highest closing bid quotation during the thirty (30) day period preceding the date in question of a share on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use or, if no such quotation is available, the fair market value on the date in question of a share as determined in good faith by the board of the issuing public corporation; and

(b) In the case of property other than cash or shares, the fair market value of the property on the date in question as determined in good faith by the board of the issuing public corporation.

(14) "Publicly held corporation" means a corporation that has a class of equity securities registered pursuant to section 12 or is subject to section 15(d) of the Securities Exchange Act of 1934, as amended.

30-1602. DUTIES OF DIRECTOR. In discharging the duties of the position of director of an issuing public corporation, a director, in considering the best interests of the corporation, shall consider the long-term as well as the short-term interests of the corporation and its shareholders including the possibility that these interests may be best served by the continued independence of the corporation. In addition, a director may consider the interests of Idaho employees, suppliers, customers and communities in discharging his duties.

30-1603. APPLICATION. (1) The provisions of this chapter shall not apply to a control share acquisition if:

(a) The acquiring person was an acquiring person on, or became an acquiring person pursuant to a tender offer commenced prior to, the day following the effective date of this act, and remained such;

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(b) The original articles or bylaws of the issuing public corporation contain a provision expressly electing not to be subject to this chapter;

(c) The issuing public corporation, by action of its board of directors, adopts an amendment to its bylaws expressly electing not to be subject to this chapter; or

(d) The issuing public corporation, by action of its shareholders, adopts an amendment to its articles of incorporation or bylaws approved by the shareholders holding sixty-six and two-thirds per cent (66 2/3%) of the outstanding voting power of all shares entitled to vote, excluding the shares of interested shareholders and their affiliates and associates, under which the issuing public corporation by such shareholder action expressly elects not to be subject to this chapter, and such amendment provides that it is not to be effective until eighteen (18) months after the effective date of this chapter.

(2) The shares of an issuing public corporation acquired by an acquiring person in a control share acquisition that exceed the threshold of voting power of any of the ranges specified in section 30-1604(1)(d), Idaho Code, have only the voting rights accorded them pursuant to section 30-1607, Idaho Code, and then only as provided in such section, and will not otherwise have any voting rights regardless of the terms thereof.

(3) This chapter does not apply to insurance companies regulated under Title 41, Idaho Code.

30-1604. INFORMATION STATEMENT. (1) An acquiring person shall deliver to the issuing public corporation at its principal executive office an information statement containing all the following:

(a) The identity of the acquiring person, including the identity of each member of any partnership, limited partnership, syndicate or other group constituting the acquiring person and the identity of each affiliate and associate of the acquiring person, including the identity of each affiliate and associate of each member of such partnership, syndicate or other group;

(b) A reference that the information is made under the provisions of this section;

(c) The number and class or series of shares of the issuing public corporation beneficially owned, directly or indirectly, before the control share acquisition by each of the persons identified pursuant to paragraph (a) of this subsection;

(d) The number and class or series of shares of the issuing public corporation acquired or proposed to be acquired pursuant to the control share acquisition by each of the persons identified pursuant to paragraph (a) of this subsection and specification of which of the following ranges of voting power in the election of directors that, except for the provisions of this chapter, the acquiring person in good faith believes resulted or would result from consummation of control share acquisition:

1. At least twenty percent (20%) but less than thirty-three and one-third per cent (33 1/3%);

2. At least thirty-three and one-third percent (33 1/3%) but less than or equal to fifty percent (50%); or

3. Over fifty per cent (50%); and

(e) The terms of the control share acquisition or proposed control share acquisition, including the source of moneys or other consideration and the material terms of the financial arrangements for the control share acquisition, plans or proposals of the

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acquiring person, including plans or proposals under consideration to enter into a business combination or combinations involving the issuing public corporation, to liquidate or dissolve the issuing public corporation, to sell all or a substantial part of its assets or merge or consolidate it or exchange its shares with any other person, to change the location of its principal place of business or its principal executive office or of a material portion of its business activities, to change materially its management or policies of employment, to change materially its charitable or community contributions or its policies, programs or practices relating thereto, to change materially its relationship with suppliers or customers or the communities in which it operates or to make any other material change in its business, corporate structure, management or personnel and such other objective facts as would be substantially likely to affect the decision of a shareholder with respect to voting on the control share acquisition.

(2) If any material change occurs in the facts set forth in the information statement, including any material increase or decrease in the number of shares of the issuing public corporation acquired or proposed to be acquired by the persons identified pursuant to subsection (1)(a) of this section, the acquiring person shall promptly deliver to the issuing public corporation at its principal executive office an amendment to the information statement containing information relating to such material change. An increase or decrease or proposed increase or decrease equal, in the aggregate for all persons identified pursuant to subsection (1)(a) of this section, to one percent (1%) or more of the total number of outstanding shares of any class or series of the issuing public corporation is deemed material for purposes of this subsection. An increase or decrease or proposed increase or decrease of less than this amount may be material, depending on the facts and circumstances.

30-1605. MEETING OF SHAREHOLDERS. If the acquiring person so requests in writing at the time of delivery of an information statement pursuant to section 30-1604, Idaho Code, and has made, or has made a bona fide written offer to make, a control share acquisition and gives a written undertaking to pay or reimburse the issuing public corporation's expenses of a special meeting, except the expenses of the issuing public corporation in opposing approval of the control share acquisition, within ten (10) days after receipt by the issuing public corporation of the information statement, a special meeting of the shareholders of the issuing public corporation shall be called for the purpose of considering the voting rights to be accorded to shares referred to in section 30-1603(2), Idaho Code, acquired or to be acquired pursuant to the control share acquisition. The special meeting shall be held no later than fifty-five (55) days after receipt of the information statement, unless the acquiring person agrees to a later date. If no request for a special meeting is made, consideration of the voting rights to be accorded to shares referred to in section 30-1603(2), Idaho Code, acquired or to be acquired pursuant to the control share acquisition shall be presented at the next special or annual meeting of the shareholders, which takes place more than fifty-five (55) days after the receipt of the information statement by the issuing public corporation, unless the matter of the voting rights becomes moot. The notice of the meeting shall be accompanied at a minimum by a copy of the information statement and a copy of any amendment to the information statement previously delivered to the issuing public corporation and a statement disclosing that the board of the issuing public corporation recommends approval of, expresses no opinion and is remaining neutral toward, recommends rejection of or is unable to take a position with respect to according voting rights to shares

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referred to in section 30-1603(2), Idaho Code, acquired or to be acquired in the control shares acquisition. The notice of meeting shall be given at least ten (10) days before the meeting.

30-1606. FINANCING. No call of a special meeting of the shareholders of the issuing public corporation is required to be made pursuant to section 30-1605, Idaho Code, and no consideration of the voting rights to be accorded to shares referred to in section 30-1603(2), Idaho Code, acquired or to be acquired pursuant to a control share acquisition shall be presented at any special or annual meeting of the shareholders of the issuing public corporation unless at the time of delivery of the information statement pursuant to section 30-1604, Idaho Code, the acquiring person has entered into and has delivered to the issuing public corporation a copy or copies of a definitive financing agreement or agreements with one (1) or more responsible financial institutions or other entities having the necessary financial capacity for any financing of the control share acquisition not to be provided by moneys of the acquiring person.

30-1607. VOTING RIGHTS. (1) Shares referred to in section 30-1603(2), Idaho Code, acquired in a control share acquisition have the same voting rights as were accorded the shares before the control share acquisition but only if and to the extent approved by a resolution of shareholders of the issuing public corporation at a special or annual meeting of shareholders pursuant to section 30-1605, Idaho Code.

(2) The resolution of shareholders must be approved by the affirmative vote of the holders of sixty-six and two-thirds per cent ($66 \frac{2}{3}\%$) of the voting power of all shares entitled to vote excluding all interested shares.

(3) A class or series of shares of the issuing public corporation is entitled to vote separately as a class or series if any provision of the control share acquisition would, if contained in a proposed amendment to the articles of the issuing public corporation, entitle the class or series to vote separately as a class or series.

(4) To have the voting rights accorded by approval of a resolution of shareholders, any proposed control share acquisition not consummated before the time of the shareholder approval must be consummated within one hundred eighty (180) days after the shareholders' approval.

(5) Any shares referred to in section 30-1603(2), Idaho Code, acquired in a control share acquisition that do not have voting rights accorded to them by approval of a resolution of shareholders shall regain their voting rights on transfer to a person other than the acquiring person or any affiliate or associate of the acquiring person unless the acquisition of the shares by the other person constitutes a control share acquisition, in which case the voting rights of the shares are subject to the provisions of this chapter.

30-1608. RIGHTS OF ACTION. (1) An acquiring person, an issuing public corporation and shareholders of an issuing public corporation may sue at law or in equity to enforce the provisions of this chapter.

(2) The issuing public corporation may make application to a court of competent jurisdiction to obtain a declaration of the issuing public corporation's and other persons' obligations and rights under the act, and the court in any such action may, to the extent it deems appropriate, modify the timing requirements under this act during the time the court is determining the matter, provided, however, that, consistent with the proper adjudication of the matter, courts of this state will determine the matter in the most expeditious manner practicable.

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30-1609. REDEMPTION. (1) Unless otherwise expressly provided in the articles or in bylaws of an issuing public corporation, the issuing public corporation may call for redemption of all but not less than all shares referred to in section 30-1603(2), Idaho Code, acquired in a control share acquisition at a redemption price equal to the market value of the shares at the time the call for redemption is given if either:

- (a) An information statement has not been delivered to the issuing public corporation by the acquiring person by the tenth day after the control share acquisition; or
- (b) An information statement has been delivered but the shareholders have voted not to accord voting rights to such shares pursuant to section 30-1607(2), Idaho Code.

(2) The issuing public corporation shall give the call for redemption within thirty (30) days after the event giving the issuing public corporation the option to call the shares for redemption and the shares shall be redeemed within sixty (60) days after the call is given.

30-1610. SCOPE. (1) Nothing contained in this chapter is intended or shall be construed in any way to limit, modify or restrict an issuing public corporation's authority to take any action which the directors may appropriately determine to be in furtherance of the protection of the interests of the corporation and its shareholders, including without limitation the authority to adopt or enter into plans, arrangements or instruments that deny rights, privileges, power or authority to the holder or holders of at least a specified number of shares or percentage of share ownership or voting power in certain circumstances.

(2) The requirements imposed by this chapter are to be in addition to, and not in lieu of, requirements imposed on a transaction by any provision in the articles or the bylaws of the issuing public corporation, or otherwise.

30-1611. JURISDICTION. (1) If the jurisdiction under the laws of which the issuing public corporation is organized has adopted or adopts any law comparable to this chapter which imposes limitations on the voting rights of any person in the event that the person acquires or proposes to acquire shares of the issuing public corporation which exceed or meet any level or range of ownership or voting powers specified in such law, and that law contains provisions which are expressly inconsistent with, or cannot practically be applied in a manner consistent with, the provisions of this chapter as applicable to the issuing public corporation, the provisions of this chapter shall be inapplicable to the issuing public corporation to the extent necessary to resolve such inconsistency.

(2) If any jurisdiction other than the jurisdiction under the laws of which the issuing public corporation is organized has adopted or adopts any law comparable to the provisions of this chapter which imposes limitations on the voting rights of any person in the event that the person acquires or proposes to acquire shares of the issuing public corporation which exceed or meet any level or range of ownership specified in such law and that law contains provisions which are expressly inconsistent with, or cannot practically be applied in a manner consistent with, the provisions of this chapter as applicable to the issuing public corporation, the provisions of this chapter shall be inapplicable to the issuing public corporation to the extent that (i) a greater percentage of shareholders of the issuing public corporation reside in that jurisdiction than in this state, computed in accordance with provisions of section 30-1601(12), Idaho Code, and then, only to the extent necessary to resolve such inconsistency or (ii) the director of the department of finance determines within three (3) business days from the date on which this

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chapter's provisions are first applicable to a particular control share acquisition that the other jurisdiction's law adequately provides for the protection of Idaho shareholders.

30-1612. SEVERABILITY. The provisions of this chapter are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act that can be given effect without the invalid provision or application. The invalidity of any provision of this act shall not affect the remaining provisions of this act.

30-1613. ELECTION. Any publicly held corporation which meets the requirements specified in section 30-1601(12)(b)(i), (ii) and (iii), Idaho Code, may, by action of its board of directors, adopt an amendment to its bylaws electing to be subject to this chapter, provided such corporation has one thousand (1,000) or more shareholders of record in this state, and thereby shall be subject to the provisions of this chapter as an issuing public corporation.

30-1614. SHORT TITLE. This chapter shall be known and may be cited as the "Control Share Acquisition Law."