

IDAPA 12 - DEPARTMENT OF FINANCE

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

DOCKET NO. 12-0108-1601

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections: 30-14-605 and 30-14-608, Idaho Code.

METHOD OF PARTICIPATION: Interested persons wishing to participate in the negotiated rulemaking must respond to this notice by contacting the undersigned either in writing, by fax, by email, or by calling the phone number listed below. To participate, responses must be received by June 3, 2016.

Should a reasonable number of persons respond to this notice, negotiated meetings will be scheduled and all scheduled meetings shall be posted and made accessible on the Idaho Department of Finance website at the following link: <http://www.finance.idaho.gov/currentrulemaking.aspx>.

Failure of interested persons to respond to this notice of intent or the lack of a sufficient number of responses to this notice of intent may result in the discontinuation of further informal proceedings. In either event, the Idaho Department of Finance shall have sole discretion in determining the feasibility of scheduling and conducting informal negotiated rulemaking and may proceed directly to formal rulemaking if proceeding with negotiated rulemaking is deemed infeasible.

Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary and made available on the Idaho Department of Finance website.

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principle issues involved:

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

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

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

II. Amendments Resulting from Federal Preemption of State Authority

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

III. Amendments Associated with Multi-State Uniform Guidelines

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

¹ Code of Federal Regulations

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

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

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

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

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

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

VI. Clarification Regarding Investment Adviser and Investment Adviser Representative Registration Platforms

Investment advisers and their representatives are required to use national registration platforms to license in the jurisdictions where they will conduct business. Presently, advisers use the “IARD”² while their representatives use a corollary system known as the “CRD.”³

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

VII. Update to Better Identify Suitability Standards Where Investment Advisers are Involved

Rule 104.04 proposes to add language that clarifies that investment advisers have a duty to provide suitable recommendations in connection with their advisory activities when advising clients to purchase or sell securities.

VIII. Clarification Regarding Investment Adviser Financial Statement

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

CONTACT INFORMATION, WEB ADDRESS, AND ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this negotiated rulemaking, contact Jim Burns at (208) 332-8080, jburns@finance.idaho.gov, or securitiesrules@finance.idaho.gov. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Department of Finance's web site at the following web address: <http://www.finance.idaho.gov/currentrulemaking.aspx>.

DATED this 5th Day of April, 2016.

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² Investment Adviser Registration Depository

³ Central Registration Depository